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IN THE HIGH COURT OF JHARKHAND AT RANCHI

W. P. (S) No. 6662 of 2010

Sanjay Kumar S/o Late Arun Kumar Das resident of S.T.F. Camp, Dhurwa, P.O. Hatia, P.S. Jagarnathpur, District-Ranchi

… … Petitioner

Versus

1.The State of Jharkhand
2.Director General cum I.G. of Police, Police Headquarter, P.O. Hatia, P.S. Dhurwa, District-Ranchi
3. Deputy Inspector General of Police, Coal Range, Bokaro, B. S. City, Bokaro Steel City P.O. and P.S. Sector- IV, District- Bokaro
4. Supdt. of Police, Bokaro
Sector-I, P.S. B. S. City, P.O. B. S. City, District- Bokaro

. … … Respondents

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

Through Video Conferencing

05/04.02.2022

1. Heard Mr. Pradeep Kumar, learned counsel appearing on behalf of the petitioner.

2. Heard Mr. Rahul Saboo, learned counsel appearing on behalf of the respondent-State.

Arguments of the Petitioner

3. Learned counsel for the petitioner submits that the present writ petition has been filed challenging the major punishment of forfeiture of increment for 6 months, which would be effective in future as well and directed to be equivalent to one Black Mark upon the petitioner. The punishment has been awarded by the Superintendent of Police, Bokaro on 14.02.2009 in Departmental Proceeding No. 60/2008. The learned counsel for the petitioner submits that the order of the appellant authority, namely, D.I.G., Coal Range, Bokaro rejecting the appeal of the petitioner on 09.06.2009 is also under challenge as the same is a piece of complete non-application of mind.

4. Learned counsel for the petitioner submits that the petitioner was appointed as Sub-Inspector of Police in the year 1994. In the year 2008, while the petitioner was posted as Officer-in-charge of Chas (Muffasil) P.S. in the District of Bokaro, a departmental proceeding was initiated against him by the Superintendent of Police, Bokaro on the charges of investigating Chas (M) P.S. Case No. 18/2008 dated 01.03.2008 under Sections 395/397 of Indian Penal Code in wrong

direction and on calling two persons, namely, Nawin Tiwari and Ajay Barnwal in police station for interrogation, even when, they were not accused in the case and for harassing them. The learned counsel has further submitted that the witnesses, namely, Nawin Tiwari and Ajay Barnwal, who were said to be the victims of the acts of the petitioner, have clearly denied the allegation and had stated that they were neither assaulted by the petitioner nor kept in police lockup.

5. The learned counsel has submitted that the conducting officer in his report has clearly stated that the allegation brought against the petitioner was not supported by the victim witnesses and accordingly, charges against the petitioner were not proved. The learned counsel has submitted that in spite of aforesaid fact the conducting officer had given an adverse finding by stating that when the petitioner was asked as to why he had kept these two persons in the police station, the petitioner had responded that he was hundred and ten percent sure that Nawin Kumar Tiwari was involved in the case, but released Nawin Kumar Tiwari and accordingly, the conducting officer found the petitioner guilty of the allegations levelled against him. The learned counsel has further submitted that the Superintendent of Police, Bokaro while passing the punishment order did not take care to scrutinize the findings of the conducting officer and ignored the relevant portion and awarded aforesaid major punishment.

6. Learned counsel has also submitted that the punishment awarded to the petitioner is in violation of Rule 832 of the Police Manual and against Section 7 of the Police Act, as such, the punishment awarded by the Superintendent of Police, Bokaro is apparently illegal, void and fit to be set-aside. The learned counsel has further submitted that even the appellate authority has not considered these aspects of the matter and therefore, both the orders passed by the disciplinary authority as well as the appellate authority are fit to be set-aside.

Arguments of the Respondents

7. Learned counsel appearing on behalf of the respondent-State, on the other hand, has opposed the prayer and has referred to a judgment passed by the Hon'ble Supreme Court reported in ***(2020) 9 SCC 471 (Pravin Kumar vs. Union of India)*** para 25 to 30 and

submitted that the scope of judicial review is very limited and both the authorities have given concurrent finding with regard to the guilt of the petitioner and the appellate authority has upheld the order of punishment. The learned counsel submits that the petitioner has not pointed out any illegality or irregularity, so far as the procedural aspect is concerned and there is no scope for entering into the merits of the case by re-appreciating the materials on record produced before the enquiry officer and considered by the disciplinary authority and upheld by the appellate authority. The learned counsel submits that there is neither any manifest error of law or procedure resulting in any injustice to the petitioner nor the present case is a case of bias or gross unreasonableness of the ultimate punishment, which has been imposed upon the petitioner. The learned counsel submits that the order of punishment against the petitioner is a result of his reckless acts as indicated in the charge-sheet. He submits that in the charge-sheet, it has clearly been mentioned that the petitioner was to take the call details of a particular mobile number and had taken the call details of another mobile number, which resulted in misdirected investigation of the criminal case and harassing two persons.

8. Learned counsel has referred to Section 7 of the Police Act and also referred to Rule 824 of the Police Manual under Chapter 25 and in particular refers to Rules 824(e) which provides forfeiture of last increment or future increments as one of the punishments which can be awarded in a departmental proceeding. The learned counsel while referring to Rule 832 of the Police Manual has submitted that the sub-para of Rule 832 which has been relied upon by the petitioner is to be read with Section 7 of the Police Act as Section 7 of the Act provides that there can be penalty subject to maximum of one month’s pay but the present case is not a case of penalty but stoppage of increment as punishment. He submits that there is no bar under the Police Manual in awarding punishment of withholding 6 months’ increments having its effect till his entire service period. The learned counsel has submitted that there is no illegality or perversity or irregularity or any procedural lapse in the matter of the departmental proceedings or in the matter of punishment awarded to the petitioner and accordingly,

the impugned orders do not call for any interference under Article 226 of the Constitution of India.

Findings of this Court

9. It is not in dispute that the petitioner was appointed as Sub-Inspector of Police in the year 1994 and at the relevant point of time, the petitioner was posted as Officer-in-charge of Chas (Muffasil) P.S. in the District of Bokaro. It is further not in dispute that a First Information Report was filed on 01.03.2008 for offence under Section 395/397 of Indian Penal Code and was registered as Chas (M) P.S. Case No. 18/2008 dated 01.03.2008, in which, the petitioner was the investigating officer.

10. It is also not in dispute that a departmental proceeding was initiated against the petitioner in connection with the investigation of the case wherein it was alleged that the petitioner was required to obtain call details of certain mobile number, but instead of that, he demanded call details of another mobile number. It was also alleged that due to this irresponsible step, the investigation was misdirected and also that the petitioner had taken illegal custody of two persons, namely, Nawin Kumar Tiwari and Ajay Barnwal for three days and tortured them in police custody and consequently a phone call was received by the Sub-Divisional Police Officer, Chas in this regard. Further, it was also alleged that the petitioner without any information and permission of the superior officer, released these persons from the police custody on P. R. Bond. On account of such irregularities, which tarnished the prestige of the police, a report was prepared and consequently a departmental proceeding No. 60/2008 was initiated against the petitioner.

11. An enquiry report was submitted giving a finding that the two persons, namely, Nawin Kumar Tiwari and Ajay Barnwal were not put under police lockup for three days but were interrogated on three days and not put under police lockup. They were ultimately released on 04.05.2008. It has also come in the enquiry report that as per the petitioner, Nawin Kumar Tiwari was hundred and ten percent involved in the criminal case, but in spite of that, Nawin Kumar Tiwari was released under P. R. Bond and while doing this, the petitioner neither informed any senior officer nor consulted them,

although as per the petitioner, Nawin Kumar Tiwari was hundred and ten percent involved in the offence.

12. The petitioner also filed his show cause and his stand was that the call details were taken in connection with looted mobile number and since the name of Nawin Kumar Tiwari was there in the call details, he was called for in the police station for interrogation, who said that the mobile was purchased from the shop of Ajay Barnwal and the petitioner interrogated two of them on three different dates. The Superintendent of Police, Bokaro considered his reply and he recorded that the petitioner had taken the call details of incorrect mobile due to which the investigation stood misdirected and when the Sub-Divisional Police Officer asked him the reason, he explained by stating that hundred and ten percent Nawin Kumar Tiwari was involved in the commission of offence, but released the aforesaid two persons on P. R. Bond without consulting or informing the higher authority. On account of such irresponsible act, the petitioner was found guilty of the charges levelled against him and was imposed punishment for forfeiture of annual increments for six months which was to be treated equivalent to one black mark and would remain effective for the whole service period.

13. Thereafter, the petitioner filed his appeal before the appellate authority and the appellate authority found that the petitioner was rightly found guilty and was rightly punished and accordingly, dismissed the appeal vide impugned order dated 09.06.2009.

14. Considering the aforesaid judgment relied upon by the respondent reported in ***(2020) 9 SCC 471 (Pravin Kumar vs. Union of India)*** para-25 to 30, it is not in dispute that the writ court does not sit in appeal against the orders passed in departmental proceedings, particularly when there are concurrent findings with regard to the proved charges upon considering the materials produced before the authorities. Para 25 to 30 of the aforesaid report is quoted as under:-

> ***" I. Scope of judicial review in service matters***
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> ***25.*** *The learned counsel for the appellant spent considerable time taking us through the various evidence on record with the intention of highlighting lacunae and contradictions. We feel that such an exercise was in vain, as the threshold of interference in the present proceedings is quite high. The power of judicial review discharged by constitutional courts under*

Article 226 or 32, or when sitting in appeal under Article 136, is distinct from the appellate power exercised by a departmental appellate authority. It would be gainsaid that judicial review is an evaluation of the decision-making process, and not the merits of the decision itself. Judicial review seeks to ensure fairness in treatment and not fairness of conclusion. It ought to be used to correct manifest errors of law or procedure, which might result in significant injustice; or in case of bias or gross unreasonableness of outcome.

26. *These principles are succinctly elucidated by a three-Judge Bench of this Court in B.C. Chaturvedi v. Union of India in the following extract: (SCC pp. 759-60, paras 12-13)*

> *"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal concerned is to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of the Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.*
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> *13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel this Court*

held at SCR pp. 728-29 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

27. *These parameters have been consistently reiterated by this Court in a catena of decisions, including:*

(i) State of T.N. v. S. Subramaniam.

(ii) Lalit Popli v. Canara Bank.

(iii) H.P. SEB v. Mahesh Dahiya.

28. *It is thus well settled that the constitutional courts while exercising their powers of judicial review would not assume the role of an appellate authority. Their jurisdiction is circumscribed by limits of correcting errors of law, procedural errors leading to manifest injustice or violation of principles of natural justice. Put differently, judicial review is not analogous to venturing into the merits of a case like an appellate authority.*

29. *The High Court was thus rightly concerned more about the competence of the enquiry officer and adherence to natural justice, rather than verifying the appellant's guilt through documents and statements. It clearly noted that evidence was led, cross-examination was conducted and opportunities of addressing arguments, raising objections, and filing appeal were granted. The conclusion obtained was based upon these very evidence and was detailed and well-reasoned. Furthermore, the High Court did not restrict the scope of judicial review, rather adopted a liberal approach, and delved further to come to its own independent conclusion of guilt. Similarly, we have no doubt in our minds that the appellate authority had carefully dealt with each plea raised by the appellant in his appeal and had given detailed responses to all the contentions to satisfy the appellant's mind. The disciplinary authority too was impeccable and no infirmity can be found in the report of the enquiry officer either.*

30. *Even in general parlance, where an appellate or reviewing court/authority comes to a different conclusion, ordinarily the decision under appeal ought not to be disturbed insofar as it remains plausible or is not found ailing with perversity. The present case is neither one where there is no evidence, nor is it one where we can arrive at a different conclusion than the disciplinary authority, especially for the reasons stated hereunder."*

15. This court finds that in the instant case the petitioner has not been able to point out any perversity or illegality or errors of law/ procedural errors leading to manifest injustice or violation of principles of natural justice in the enquiry proceedings or in findings recorded by the disciplinary authority based on the enquiry report. The

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appellate court affirmed the order of the disciplinary authority and found that no ground for interference was called for in the findings expressed by the disciplinary authority.

16. The learned counsel for the petitioner has also submitted that the punishment awarded to the petitioner is in violation of Rule 832 of the Police Manual read with Section 7 of the Police Act and his specific plea is as per Rule 832 every order of withholding of increment or its deduction or forfeiture shall set forthwith the pecuniary penalty entailed thereby subject to a maximum of one month's pay as provided under Section 7 of the Police Act and therefore punishment of withholding of increments is not permissible.

17. Section 7 of the Police Act clearly provides that subject to the provision of Article 311 of the Constitution and to such Rules as the State Government may from time to time frame, the Inspector General, Deputy Inspector General, Assistant Inspector General, District Superintendents of Police may at any time dismiss, suspend or reduce any police-officer of the subordinate ranks, whom they shall think remiss or negligent in the discharge of his duty, or unfit for the same and may, interalia, impose fine of any amount not exceeding one month's pay. Under Rule 824 of the Police Manual, one of the punishments which can be inflicted departmentally on a police officer of below the rank of Inspector is forfeiture of last increment(s) or future increment(s). Rule 832 provides that every order reducing an officer to a lower post or to a lower stage in his time scale, or withholding an increment, shall state the period for which it shall be effective. In the present case punishment of withholding of six months' increments has been imposed clearly indicating that it will have effect in his future which essentially means for his whole service period. Considering Section 7 of the Police Act read with Rules 824 and 832 under Chapter-25 of the Jharkhand Police Manual, this Court does not find any illegality, perversity or impropriety in the punishment imposed upon the petitioner.

18. In view of the limited jurisdiction of judicial review in the matter of departmental proceedings and that this court does not sit in appeal against the findings of the disciplinary proceedings and in the light of the aforesaid judgement passed by the Hon'ble Supreme

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Court, no ground for interference in the impugned orders is made out under Article 226 of the Constitution of India. Consequently, the present writ petition is dismissed.

19. Pending interlocutory application, if any, is closed.

(Anubha Rawat Choudhary, J.)

Mukul/Pankaj