

CASE NO.:
Appeal (civil) 5943 of 2007

PETITIONER:
Akhilesh Kumar Singh

RESPONDENT:
State of Jharkhand & Ors.

DATE OF JUDGMENT: 14/12/2007

BENCH:
S.B. Sinha & Harjit Singh Bedi

JUDGMENT:
J U D G M E N T
(Arising out of SLP (C) No.3171 of 2007)

S.B. Sinha, J.

1. Leave granted.
2. Appellant herein was working as a writer constable in the Bihar Military Police at Bokaro Steel City. A Departmental proceeding was initiated against him on the following imputation of charges:
\023(1) While he was posted in March 1985 in \021C\022

Company made an entry in general diary with regard to arrival of S.I. (S), R.B. Sahu, Company Commander on 28.3.1985. Before opening the diary, column in which details of Ohededar and officers are being filled, he shown presence of S.I. (S) Sahu at the company head quarter, but on the same day, as per the entry No.700 his arrival is shown at 8.45 O\022clock. This entry No.700 was recorded two times, on first time it was 8.45 and on second time it was at 9.30. Entry No.700 recorded at 8.45 is certainly inserted later on.

(2) According to his statement when he was posted at Dhanbad with his \021C\022 Company, he was out from the company headquarter from 14.12.84 to 16.12.84 and from 9.1.85 to 12.1.85 as per the order of Company Commander, Sh. Sahu. Despite the same he shown his presence in Company Headquarter and claimed for food allowance and obtained the same.

(3) From \021C\022 Company Aurangabad he was directed by Command No.227376 with constable 576 Kaushal Kumar and Vahini Mukhyalaya. He alsong with Constable No.576 Kaushal Kumar returned on 24.3.84, their arrival is shown on 26.3.85 at 9.00 a.m. On the voucher of food allowance for the said period payment was made and obtained which is a forgery.\024

3. In the said departmental proceeding, he was found guilty of all the charges. He admitted the charges in relation to charge No.2. He was found guilty of other charges also. The appointing authority, relying on the report of the Enquiry Officer, passed a final order on or about 31.8.1987 dismissing him from service.

4. An appeal preferred thereagainst was dismissed by the Director General of Police, Bihar, Patna. In the said appeal, one of the contentions raised by the appellant was that in a departmental proceeding involving one Kaushal Kumar who was also found guilty of identical charges, a lenient view was taken. Appellate authority in its order dated 9.8.1989 in that behalf opined :

\023The illustration given by the charge sheet constable regarding other departmental proceeding No.22/87 of BMP-4 against constable 576 Kaushal Kumar Singh is wrong. Constable Kaushal Kumar Singh has made an effort to raise a voice against the illegal act of commanding officer of that time. Company Commanding Police Inspector Ram Bhakt Sahu was punished also. Hence charge sheeted Constable and Constable 576 Kaushal Kumar Singh case is not similar.\024

5. Appellant, challenging the legality of the said order, filed a writ petition in the High Court of Judicature at Patna which was marked as CWJC No.9945 of 1996.

A learned Single Judge of the said Court dismissed the said writ petition opining :

\023As a matter of fact, Babban Ram was deputed as orderly to the Deputy Commandant, whereas the petitioner was the Writer Constable who was responsible for the entry in the Register regarding Diet allowances and, therefore, the charges against the petitioner were grievous in nature and, as such, the punishment has been awarded to him considering the gravity of the charges. The petitioner was provided full opportunity to defend his case and the departmental enquiry was held in fair and proper manner.

I have carefully gone through the recommendation of the Conducting Officer as well as the order passed by the disciplinary authority as contained in Annexure-4 to the writ application and also the order passed by the appellate authority as contained in Annexure-8 and 8/1 to the writ application. I find that the learned disciplinary authority as well as the appellate authority have carefully examined the materials on record and after appreciation of evidence, they have come to a definite finding on the basis of facts on record that the charges against the petitioner was fully established and, therefore, he was found to be guilty.

This Court while exercising the jurisdiction under Article 226 and 227 of the Constitution of India cannot act as an appellate authority and cannot substitute its own finding over the findings arrived at by the Enquiry Officer and also the order passed by the disciplinary authority as well as the appellate authority. The petitioner has not been able to show that the findings arrived at by the respondents were perverse or not based on the materials on record and, therefore, I do not find any material to upset the findings arrived at by the respondents.

So far as the quantum of punishment is concerned, I find that in view of the nature and gravity of the charge, which has been proved against the petitioner, the punishment for dismissal passed by the authorities concerned also needs no interference by this Court.\024

6. An intra court appeal preferred thereagainst has been dismissed by a Division Bench of the said Court by reason of the impugned judgment.

7. This Court issued a limited notice stating :

\023Counsel submits that for the same misconduct a much lighter punishment was given to another constable while the punishment of dismissal has been imposed on the petitioner.

Issue notice on the application for condonation of delay as also on the Special Leave Petition.\024

8. Mr. Mohan Pandey, learned counsel appearing on behalf of the appellant, submitted that the charges levelled against Shri Kaushal Kumar Singh were almost identical except the charge No.1. According to the learned counsel, but as the purported misconduct committed by him but did not result in any personal gains, the disciplinary authority should have taken a lenient view.

Our attention has been drawn to the order of punishment imposed upon the said Shri Kaushal Kumar Singh which is to the following effect :

\023After going through the statement and show cause present in record and realizing the opinion of Commanding Officer, I accept the opinion of commanding officer and found him guilty with regard to charge (1) absolutely and with regard to charge (2) partially. His illegal absent from 14.12.84 to 16.12.84 and 9.1.85 to 12.1.85 and 26.3.85 (totally eight days) will be treated as extraordinary leave. The allowance money which was paid to him of this period shall be deducted from his payable amount and deposited to the fund. Because he had immediately made a complaint against the Company Commander and he was found guilty for this sympathy his increment in annual salary shall be detained for one year. This punishment will not affect his future increment. Simultaneously warning for dismissal is given if it in future.\024

9. The learned counsel urged that as a very lenient punishment was awarded to Kaushal Kumar Singh, the High Court must be held to have committed a manifest error in not entertaining the writ petition. Reliance in this behalf has been placed on Director General of Police & Ors. v. G. Dasayan [(1998) 2 SCC 407] and Anand Regional Coop. Oil Seedgrowers\022 Union Ltd. v. Shaileshkumar Harshadbhai Shah. [(2006) 6 SCC 548).

10. Mr. Nitish Massey, learned counsel appearing on behalf of the respondent, on the other hand, submitted that the case of the appellant is not similarly situated to that of the aforesaid Shri Kaushal Kumar Singh as not only no charge like charge No.1 was framed against him, but even the charge No.2 was only proved particularly in his case. The appellate Authority, it was submitted, having given cogent and sufficient reason for not awarding a lesser punishment, this Court should not interfere therewith.

11. Charge No.1 framed against the appellant herein was a serious charge. He has been found guilty thereof. He tampered with the official records. Being only a Writer Constable, he could not have made an entry in the general diary as regards time of arrival of Company Commander.

So far as Charge No.2 is concerned, he accepted the same. Charge No.3 was proved against him. The Appellate Authority as also the learned Single Judge, as noticed hereinbefore, opined that the charges levelled against the petitioner were serious in nature.

It is true that delinquent officers similarly situated should be dealt with similarly and, thus if the charges against the employees are identical, it

is desirable that they be dealt with similarly.

12. Quantum of punishment imposed on a delinquent employee by the appointing authority, however, depends upon several factors. Conduct of the delinquent officers as also the nature of the charges play a vital role in this behalf. Apart from the fact that charge No.1 was a very serious one and Shri Kaushal Kumar Singh, having not been charged therewith, it cannot be said that the appellant and the said Kaushal Kumar Singh were similarly situated but also as noticed hereinbefore, so far as Kaushal Kumar Singh is concerned, charge No.2 had also been partly proved against him; whereas appellant admitted his guilt in relation thereto.

The enquiry officer in his report categorically held :

\023Simultaneously I have gone through attendance register and food allowance register no officer of the company had neither made a signature nor verified it. It is also horrible that on what basis Attendance register and food allowance register had been treated as correct. It is necessary that whenever food allowance claim is being made it should be verified from the register which is not found. Company Commander given the statement that entry regarding Charge sheet that he was present on 14.12.84 to 16.12.84 and 9.1.85 to 12.1.85 in the Company was made by the Charge Sheet on register by the help of constable 432 Birendera Kumar. Charge Sheet had not gone any where during that period and he stated in his statement that on that very day he was outside on the oral order of the Company Commander. It is very difficult to decide that whose statement should be treated as correct is of charge sheet or of Commander. Company Commander is the in charge of the Company. So weightage should be given to his statement. Charge Sheet certainly made forgery with company Commander because believing on him he made signature.\024

13. Appellant has, thus, been found guilty of tampering with records and committing forgery. He misappropriated food allowance. Shri Kaushal Kumar Singh was found guilty only for claiming food allowance illegally. The superior courts of India exercising power of judicial review, it is trite, would not ordinarily interfere with the quantum of punishment. Even the industrial court would not do so as has been noticed by this Court in Shaileshkumar (supra). In the said case, however, having regard to the fact situation obtaining therein, it was held :
\023There is, however, another aspect of the matter which cannot be lost sight of. Identical allegations were made against seven persons. The management did not take serious note of misconduct committed by six others although they were similarly situated. They were allowed to take the benefit of the voluntary retirement scheme.\024

The said decision does not assist the appellant at all.

14. G. Dayasan (supra) is a case where respondent therein as also the Head Constable were tried together, but as different punishments having been imposed upon them although they faced identical charges, this Court interfered with the quantum of punishment.

15. Such is not the case here. Charges against the appellant and Kaushal Kumar Singh being not identical in nature, the impugned judgment does not suffer from any legal infirmity.

16. The appeal is accordingly dismissed but there shall be no order as to costs.