

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (S) No. 2305 of 2017

Md. Asif Ansari

.... ..

Petitioner

Versus

1. The Union of India, through the Secretary, Ministry of Railways, Railway Board, Rail Bhawan, P.O., P.S. and District New Delhi.
 2. The Director General, Railway Protection Force, Railway Board, Rail Bhawan, P.O., P.S. and District New Delhi.
 3. The Chief Security Commissioner, R.P.S.F. Railway Board, P.O., P.S. and District New Delhi.
 4. The Deputy Inspector General, R.P.S.F. Railway Board, Rail Bhawan, P.O., P.S. and District New Delhi.
 5. The commandant-cum-disciplinary R.P.S.F. 10th Battalion, Dhanbad, District-Dhanbad, E.C. Railway, P.O., P.S. and District Dhanbad.
 6. The Assistant Commandant R.P.S.F, 10th Battalion, Dhanbad, E.C. Railway, P.O., P.S. and District Dhanbad
 7. The Company Commander R.P.S.F. 10th Battalion, Dhanbad, E.C. Railway, P.O., P.S. and District Dhanbad
- ... Respondents.

CORAM: HON'BLE MR. JUSTICE ANANDA SEN.

For the petitioner: Mr. Mahavir Pd. Sinha, Advocate

For the Respondents: Mr. Gautam Rakesh, Advocate

06/30.04.2019. The petitioner in this writ application has challenged the order dated 01.04.2014 by which after, departmental proceedings, he has been removed from service. The petitioner has also challenged the order dated 30.07.2015 passed by the appellate authority on the appeal filed by the petitioner as well as the order dated 26.10.2015, passed by the Revisional Authority.

2. The brief facts of this case is that the petitioner was appointed as a constable and was posted at 10th Battalion, R.P.S.F., Dhanbad. He was suffering from some orthopaedic problem since 2008, as such, he was referred to the railway hospital, E.C. Railway at Dhanbad. After special medical check-up the Chief Health Director, Orthopaedic Hospital, Eastern Railway declared that the petitioner was suffering from instability of right knee for the last five years and some light duty should be given to him, if possible. Thereafter, on 10.06.2009, he was declared unfit for the job of constable in medical category B-1 and was fit for sedentary job only. A special super-numery post was created temporarily for the said medical D-categorisation. The petitioner was absorbed in the special super-numery post and was allowed to draw the same pay which he was drawing as a constable. After three years, petitioner was directed to report for re-examination to Jagjeevan Ram Hospital, Mumbai Central. The petitioner was medically examined and was found fit for duty as a constable.

3. It is the case of the petitioner that he resumed his duty but again fell ill for which he was treated by one Dr. D.P. Bhusan, Assistant Professor, Department of Orthopaedic, P.M.C.H., Dhanbad from 03.10.2012 till January 2016. The petitioner submits that he submitted all the medical documents to his department but ignoring the same the department proceeded against the petitioner on the charge of unauthorized absence. A charge-sheet was served to the petitioner. The petitioner filed his reply. As his reply was found unsatisfactory, he was proceeded against. A proper regular departmental enquiry was conducted. The petitioner participated in the said enquiry. The petitioner also furnished some medical documents in support of his contention. The enquiry officer enquired into the misconduct and thereafter submitted his enquiry report finding the petitioner guilty of the charges of remaining unauthorizedly absent.

4. Second show cause notice was issued to the petitioner. The petitioner replied to the same. Considering the enquiry report and the reply, the disciplinary authority vide impugned order dated 01.04.2014 imposed the penalty of removal from service. The petitioner being, aggrieved preferred, a writ application before this Court being W.P. No. 5095 of 2013. Since there was a provision of appeal in the Act, the petitioner was directed to file an appeal. The appeal filed by the petitioner was dismissed vide order dated 26.10.2015 thereafter the revision was also dismissed.

5. Counsel for the petitioner challenges the aforesaid dismissal order, appellate order and the revisional order on the ground that the punishment is excessive and does not commensurate with the charge. He submits that the petitioner was charged for the misconduct as enumerated in Rule 146.2 (III) and 147 (IV). He submits that the first charge is in respect of absence without leave and the second one relates to withdrawing from duty of his service without permission. He submits that the petitioner was not wilfully absent from his duty as he was under medical treatment and he was not in a position to attend the duty. He submits that the enquiry report will also suggest that he had submitted his medical documents before the enquiry officer, but merely on the ground that he was not an indoor patient and he did not get himself treated at any railway hospital, his misconduct was proved. He submits that as per the Railway Protection Force Rules there are several other punishments which could have been inflicted upon the petitioner but the punishment of removal is too harsh and does not

commensurate with the charge. In support of this submission he relies upon the judgment in the case of ***Bhagwan Lal Arya vs. Commissioner of Police, Delhi & Anr.*** reported in 2004 (4) JCR 107 (SC) and in the case of ***Vijay Kumar Singh vs. State of Bihar & Ors.*** reported in 2000 (1) BBCJ 223.

6. Counsel appearing on behalf of the Indian Railways submits that there is no flaw in the entire department of proceedings. He submits that all the procedures were followed and thereafter the order of punishment was passed. He submits that the petitioner was in a disciplined force as such the misconduct which he has committed is grave. He submits that immediately, when the petitioner was declared fit, he started absenting. He also submitted that the documents which the petitioner has filed does not suggest that he was an indoor patient. He submits that the cause of absence was not sufficient. He lastly submits that he should have informed the authorities and should have sought permission.

7. After hearing the parties, I find that there is no illegality or irregularity in the entire departmental proceedings. The petitioner was given sufficient and ample opportunity, which he availed. The enquiry was fair and proper. It was held that the petitioner was unauthorized absentee. On the basis of the said enquiry the disciplinary authority decided to remove the petitioner from service. The charge was of unauthorized absence. Admittedly, this is the first offence. The petitioner claims that he was under treatment for which he had submitted documents which was not relied upon by the respondents. The final order clearly suggest that the charge of misconduct under rule 147(IV) of the RPF Rules of 1947 is wholly not proved as the party regularly kept informed his whereabouts/self-sickness to the authority through postal department. This finding clearly suggest that the intention of the petitioner was not mala fide. He regularly kept on informing the authorities about his physical position and his inability. The only charge which stands proved is 146.2(III) which is of unauthorized absence. There is no dispute, he was not permitted any leave. Thus, naturally the period of absence was unauthorized for which he has been proceeded. The petitioner has plausible explanation for remaining absent which is his health ground. This absence cannot be said to be wilful but still is misconduct in terms of 146.2(III) of the Railway Protection Rules of 1947. Since, this misconduct has been proved, he has been punished.

It is well settled that awarding punishment is the prerogative of the employer. The same can be interfered in judicial review only if it is excessive and disproportionate to the proved charge. In this case, the punishment is of removal from service.

8. Relying on the judgment of "Bhagwan Lal Arya" (supra) wherein it has been held that no reasonable disciplinary authority would term absence on medical grounds with proper medical certificates from Government Doctors as grave misconduct, I find that the punishment of removal from service is excessive and harsh. Further taking into consideration that this is the first offence of the petitioner and the Rules of 1987 provides for several other punishment, which this Court feels the respondents could have resorted to, rather than awarding the harshest punishment, i.e. removal from service, which in fact, is equivalent to a death penalty in service law. The punishment is thus excessive and needs to be re-considered by the authorities. Thus, I set aside the impugned orders of punishment dated 26.10.2015, appellate order dated 30.07.2015 and the revisional order, so far as it relates to quantum of punishment and remand the matter to the disciplinary authority to consider the case of the petitioner on the quantum of punishment and pass an appropriate order within a period of eight weeks from the date of receipt of copy of this order.

9. With the aforesaid observation and direction, this writ application stands disposed of.

(Ananda Sen, J.)