

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(S) No. 132 of 2022

Ram Chand Dwivedi, son of Shri Rama Kant Dwivedi, R/o Vill-Badrudainpur, P.O.- Surajpur, PS-Jaipur, Dist-Ambedkar Nagar (U.P.)
.... Petitioner

Versus

1. The State of Jharkhand through its Chief Secretary, Ranchi.
2. Director General-cum-Inspector General of Police, Government of Jharkhand, Ranchi.
3. Dy. Inspector General of Police, North Chhotanagpur Region, Hazaribagh.
4. Superintendent of Police, Chatra. Respondents

CORAM : HON'BLE DR. JUSTICE S.N. PATHAK

For the Petitioner : Mr. Ashim Kumar Sahani, Advocate
Mr. Ajit Kumar, Advocate
For the Respondents : Mr. Anil Kumar Singh, AC to GP-I

10/ 01.10.2024 Heard the learned counsel for the petitioner and learned counsel for the respondents.

2. The petitioner has filed this writ petition challenging the order contained in Memo No. 114 dated 29.04.2019, whereby the Director General-cum-Inspector General of Police, Ranchi, in exercise of power enshrined under Rule 853-A(a) of the Jharkhand Police Manual has replaced the earlier order of punishment of withholding of one increment for a period of six months equivalent to one black mark to the order of dismissal from service. Upon quashment of the said order, the petitioner has prayed for his reinstatement in service with all consequential benefits.

3. Briefly stated, the petitioner was appointed on 27.09.1991 on the post of Constable in District Force. While the petitioner was posted as Thana Writer (Munsi), a complaint was lodged by one Vikash Kumar Yadav on 23.07.2015 alleging inter alia that the petitioner along with one Sub-Inspector had demanded bribe for his verification of passport, which led to arrest of the petitioner in a trap set up by the Anti-Corruption Bureau. Thereafter, the petitioner was suspended and a memo of charge dated 25.8.2015 was framed. The petitioner submitted his reply on 21.11.2015 denying the allegation. The enquiry officer submitted the report on 30.03.2016 proving the charge to be true. The disciplinary authority agreeing with the findings of the enquiry officer inflicted the punishment for

withholding of one increment for a period of six months equivalent to one black mark vide Memo No. 233 dated 30.03.2016. Thereafter, the punishment inflicted upon the petitioner was reviewed by the Deputy Inspector General of Police, Jharkhand under the purported exercise of power under Rule 853(A)-a of the Jharkhand Police Manual and by its order dated 29.4.2019, i.e. after three years from the earlier date of punishment, the petitioner was inflicted the punishment of dismissal from service. Aggrieved thereby, the petitioner has knocked the door of this Court.

4. Learned counsel representing the petitioner submits that the impugned order is not sustainable in the eyes of law as the same amounts to double jeopardy. Learned counsel further submits that earlier the order of withholding of one increment for six months by order dated 30.03.2016 was passed against the petitioner and the petitioner has already served the punishment. However, after reviewing the punishment order taking into consideration the criminal case, the same was enhanced to the capital punishment of dismissal under the purported exercise of Rule 853-A of the Jharkhand Police Manual after three years from the earlier punishment order. Though, learned counsel fairly submits that the Director General-cum-Inspector General of Police, Jharkhand has every right to review the punishment order awarded to a Constable under the provisions of Rule 853-A(a) of the Jharkhand Police Manual, but at the same time, this Rule prescribes that the Director General of Jharkhand has power to do so within a reasonable period. Learned counsel submits that the Director General of Police, Jharkhand has used this power after a period of three years, which is impermissible in the eyes of law, that too when the petitioner has already served the terms of earlier punishment order and hence, it was not open for the Director General of Police to recommend for enhancement of punishment. In support of his contention, learned counsel places heavy reliance upon the judgment rendered by this Court in ***Ram Narayan Raman Vs. The State of Jharkhand & Ors.***, reported in **2011 (3) JLJR 137** and submits that the period of three years for reviewing the punishment order cannot be said to be a reasonable period. Hence, it is a fit case in which interference of this Court is warranted for the ends of justice.

5. Learned counsel representing the respondents submits that there is no illegality and infirmity in the impugned order. Learned counsel submits that taking into consideration the involvement of the petitioner in the criminal case under the Prevention of Corruption Act, the earlier order of punishment was reviewed and it was enhanced to a capital punishment. Learned counsel submits that there is power vested with the Director General of Police, Jharkhand to review the punishment awarded to a Constable. As the disciplinary authority has overlooked the involvement of the petitioner in the criminal case, the earlier punishment was reviewed at the level of the highest authority of the Police Force and there is no illegality therein worth interference by this Court.

6. Having heard the learned counsel for the parties and upon perusal of the records, it appears that the petitioner was charge-sheeted with the allegation that he was taken into judicial custody for taking illegal gratification from the complainant for submission of verification report in making passport. The enquiry officer submitted his report finding the charge proved and agreeing with the findings arrived at by the enquiry officer, the disciplinary authority inflicted the punishment of withholding of one increment for six months equivalent to one black mark. Thereafter, the matter was reviewed by the Director General-cum-Inspector General of Police, Jharkhand and it was found that the punishment should be enhanced to the order of dismissal and the petitioner was dismissed by order dated 29.4.2019. Under the provisions of Rule 853(A) (a) of the Jharkhand Police Manual, the power is vested with the Director General of Jharkhand to review the punishment order imposed on the employee. To be more profitable, Rule 853-A is quoted herein below:-

“853-A. (a) Inspector-General may call for the file in any case even when no appeal lies and pass such order as lie may deem fit. The Deputy Inspector-General may call for any file but he should refer it to the Inspector-General with his recommendation for his order. The above action should be taken within a reasonable time from the date of final order in departmental proceeding.

(b) Notwithstanding anything contained in these Rules the State Government may call for the proceedings in any disciplinary case even when no appeal or memorial lies, and pass such order as it may deem fit.

(c) When an appeal has been filed and the Inspector-General on applying his mind thinks that he should enhance the punishment," he can dismiss the appeal but must simultaneously mention in that order that as per powers Given in the Rule 853-A (a), he has decided to review it for enhancement and take action for obtaining a show cause, etc. where necessary."

7. From perusal of the said Rule, it appears that the Legislature while framing the Rules were very much aware that how this power has to be exercised and therefore the words "reasonable time" has been inserted. In the present case, the Director General of Jharkhand has exercised this power after lapse of three years from the date of passing of the earlier punishment order dated 30.03.2016 and this period of three years certainly cannot be said to be a reasonable period.

8. The argument advanced by learned counsel for the respondents that since there is a provision for exercising that power, the same cannot be faulted with, is not accepted to this Court. The Director General of Jharkhand has every power to review the punishment order passed by the disciplinary authority, but the same has to be reviewed within a reasonable period. The period of three years cannot be said to be a reasonable period. Admittedly the petitioner has served the terms of the punishment order of stoppage of one increment for six months and thereafter awarding him with a capital punishment is certainly a case of double jeopardy. Punishing a person twice for the same offence is prohibited in the eyes of law. Nobody can be punished twice for the same set of offence. In the instant case, since the petitioner has served the terms of the punishment awarded to him vide order dated 30.03.2016, it was not open for the Director General of Police to pass the order of dismissal after three years.

9. As a sequitur to the aforesaid rules, regulations, guidelines and judicial pronouncements, the order contained in Memo No. 114 dated 29.04.2019 is hereby quashed and set aside. The respondents are directed to reinstate the petitioner in service with all consequential benefits.

10. The writ petition is, accordingly, allowed.

(Dr. S.N. Pathak, J.)