
(2016) 06 JH CK 0041
In the Jharkhand High Court
Case No : L.P.A. No. 627 of 2015

Abhay Kumar

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 27-06-2016

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2016) 4 AIRJharR 760 : (2016) 3 JBCJ 506 : (2017) 1 JCR 222 :
(2016) 3 JLJR 576

Hon'ble Judges : Mr. Virender Singh, CJ. and Mr. Shree Chandrashekhar, J.

Bench : Division Bench

Advocate : Mr. Anil Kr. Sinha, Senior Advocate, Mrs. Chaitali C. Sinha and Mr. Kumar Harsh, Advocates, for the Appellant; Mr. Vikash Kumar, JC to AAG, for the State

Final Decision : Allowed

Judgement

Virender Singh, C.J.—The writ petitioner (hereinafter to be referred as "petitioner") is aggrieved of order dated 23.09.2015 passed in W.P.(S) No. 317 of 2015 whereby, his challenge to initiation of the departmental proceeding and the prayer seeking quashing of charge-sheet have been declined.

2. At the outset, Mr. Anil Kumar Sinha, the learned Senior Counsel for the petitioner submits that he would confine his arguments only to the legality of the charge-sheet issued to the petitioner and such challenge is primarily based on the erroneous finding of fact recorded by the learned Single Judge in paragraph no. 9 of the impugned order. The contention, in short, is that the charge-sheet which was served upon the petitioner which is required to be approved by the competent authority was never approved by him however, the learned Single Judge has dismissed the said plea on the ground that the Minister of Rural Development Department approved the proposal relating to the initiation of departmental proceeding on 23.11.2011, based on the charge-sheet.

3. The protection guaranteed under Article 311 of the Constitution of India is of

overwhelming importance and any infraction of the said constitutional guarantee would render the penalty order illegal. The precise issue involved in the present appeal is, whether a departmental proceeding can commence to enquire into the charges contained in a charge-memo which was not approved by the competent authority. Taking leaf from the decision in "Union of India & Ors. v. B.V. Gopinath" (2014) 1 SCC 351, Mr. Anil Kumar Sinha, the learned Senior Counsel for the petitioner submits that unless the competent authority approves the charge-memo, the departmental proceeding to enquire into the charges framed against the delinquent officer cannot commence.

4. In "B.V. Gopinath Case", the Hon"ble Supreme Court repelled the contention raised on behalf of the Union of India that once the disciplinary authority approves the initiation of the disciplinary proceeding, the charge-sheet can be drawn by any authority other than the disciplinary authority. The Supreme Court further held that the provision seeking approval of the charge-memo subsequent to the decision taken by the competent authority for initiation of the departmental proceedings is in consonance with the mandate contained under Article 311 (1) & (2) of the Constitution of India.

5. Vide order dated 07.12.2015, original file was called for and today, the learned counsel for the respondent-State of Jharkhand has produced the original record of the case. On a perusal of the original records, both by the counsel for the respondent-State of Jharkhand as well as the counsel for the petitioner, they agree that after the approval for initiation of departmental proceeding was taken on 11.11.2011 from the Minister of Rural Development Department, the file was not placed before the competent authority i.e., the Minister seeking his approval of the charges contained in the charge-memo. A photocopy of the relevant extract of the record which was obtained by the petitioner through RTI has also been placed on record by way of supplementary affidavit. We, for our satisfaction, have also perused the original records and we find that the charge-memo served upon the petitioner was not approved by the competent authority, though required under the Rules.

6. Now, in view of the decision in "B.V. Gopinath Case", the charge-sheet is rendered illegal and incompetent and consequently, it is quashed. The proceeding initiated against the petitioner on the basis of such charge-sheet stands quashed. However, a liberty is reserved with the respondent-State of Jharkhand to issue a fresh charge-sheet to the petitioner, in accordance with law and continue with the departmental proceeding.

7. The instant Letters Patent Appeal stands allowed, in the aforesaid terms.