
(2013) 04 JH CK 0065
In the Jharkhand High Court
Case No : WP (S) No. 704 of 2003

Barmeshwar Nath Singh Yadav

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 18-04-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 379, 411, 461

Citation : (2013) 4 AJR 10 : (2013) 2 JLJR 628

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : S.N. Pathak, for the Appellant; Shivani Verma, for the Respondent

Final Decision : Dismissed

Judgement

S. Chandrashekhar, J.—The short question involved in this writ petition is, whether non-supply of enquiry report before issuance of a show-cause notice by the disciplinary authority inviting objection to the proposed penalty, would vitiate the order of penalty dated 10.8.2001. The facts disclosed in the writ petition are that the petitioner while posted as a constable in Padmda Police Station in District-Singhbhum, had proceeded with the officer-in-charge of the police station on a secret information received in the night of 24/25.9.2000 that theft would be committed from a godown at Handubani near Swarnrekha river, was apprehended by the villagers. A First Information Report was lodged being Padmda P.S. Case No. 66 of 2000 registered under Sections 461, 379 and 411 of the Indian Penal Code against the petitioner and the said officer-in-charge of the police station. The petitioner was suspended with effect from 6.10.2000 and a departmental proceeding was initiated. On 20.6.2001, the Superintendent of Police issued a show-cause notice along with the enquiry report to the petitioner to submit his defence as to why his service be not terminated. Again, the second show-cause notice was issued to the petitioner on 25.7.2001 and the petitioner filed his reply to the show cause notice however, by order dated 10.8.2001, the respondent No. 4 dismissed the petitioner from service. The petitioner preferred

an appeal before the respondent No. 3 which was dismissed on 29.10.2001. In these circumstances, the petitioner has moved this Court by filing the present writ petition.

2. A counter-affidavit has been filed in which it has not been denied that the petitioner was not granted an opportunity to submit his reply to the enquiry report. A copy of the enquiry report was furnished to the petitioner along with the show-cause notice dated 20.6.2001 issued by the respondent No. 4, the Superintendent of Police. A second show-cause notice was also issued on 25.7.2001 to which the petitioner submitted his reply.

3. Heard learned counsel appearing for the parties and perused the documents on record.

4. Mr. S.N. Pathak, learned senior counsel appearing for the petitioner has confined his argument only to the plea that prejudice has been caused to the petitioner by non-supply of enquiry report before the disciplinary authority formed an opinion about the proposed order of penalty. He has further submitted that as the disciplinary authority had already prejudged the issue, the order of penalty dated 10.8.2001 is vitiated on that count. As against this, Ms. Shivani Verma, the learned counsel appearing for the respondents has submitted that no prejudice has been caused to the petitioner as a copy of the enquiry report was furnished to him along with the show-cause notice dated 20.6.2001. A plea of prejudice has to be specifically averred and established and mere non-supply of the enquiry report prior to issuance of show-cause notice dated 20.6.2001 would not vitiate the penalty order as the petitioner has failed to prove any prejudice caused to him.

5. A perusal of the enquiry report would disclose that the petitioner was apprehended on the spot by the villagers in the night of 24/25.9.2000 and a First Information Report was lodged against him. During the departmental enquiry, the villagers have deposed that the petitioner was apprehended on the spot and he along with the officer-in-charge of the police station and other two persons facilitated the theft of iron rods from the godown. In the show-cause notice dated 20.6.2001, the registration of the criminal case and confinement of the petitioner by the villagers on the spot, have been clearly mentioned. A copy of the enquiry report was furnished to the petitioner along with the show-cause notice dated 20.6.2001. The second show-cause notice was issued on 25.7.2001 and the petitioner submitted his reply on 31.7.2001. The only defence taken by the petitioner is that he had gone to the place of occurrence obeying the order of his superior, that is, the officer-in-charge of the police station and he was mistaken by the villagers as the person at whose instance the theft was being committed. The outcome of the criminal case has not been brought on record and to a query raised by the Court the learned senior counsel appearing for the petitioner has stated that the said criminal case is still pending. Since the criminal case against the petitioner has proceeded and the plea of the petitioner has not found favour with the investigating officer or the Criminal Court trying

the said case, I am of the view that no prejudice has been caused to the petitioner by non-supply of enquiry report prior to issuance of show-cause notice dated 20.6.2001.

6. In *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, it has been observed that in the event enquiry officer's report was not furnished to the employee in the disciplinary proceedings, a copy of the same should be made available to him to enable him to explain as what prejudice had been caused to him on account of non-supply of the report. It has been held that the order of punishment should not be set aside mechanically on the ground that the copy of the enquiry report was not supplied to the employee.

7. In *Union of India (UOI) and Others Vs. Bishamber Das Dogra*, in which a Security Guard in C.I.S.F. remained absent from duty without justification for more than five times and an order of removal from service was passed, the Hon''ble Supreme Court while examining the effect of non-supply of enquiry report, has observed as under:--

21. Thus, in view of the above, we are of the considered opinion that in case the enquiry report had not been made available to the delinquent employee it would not ipso facto vitiate the disciplinary proceedings as it would depend upon the facts and circumstances of the case and the delinquent employee has to establish that real prejudice has been caused to him by not furnishing the enquiry report to him.

8. Moreover, I further find that in cases of this nature which involves moral turpitude, the order of dismissal from service is the appropriate punishment. In *U.P. State Road Transport Corporation Vs. Suresh Chand Sharma*, the Hon''ble Supreme Court has held as under:-

23. In *Divisional Controller, N.E.K.R.T.C. Vs. H. Amaresh*, and *U.P. State Road Transport Corporation Vs. Vinod Kumar*, this Court held that the punishment should always be proportionate to the gravity of the misconduct. However, in a case of corruption/misappropriation, the only punishment is dismissal.

In view of the aforesaid discussion, I find no merit in the writ petition. and accordingly, the writ petition is dismissed.