
(2019) 08 JH CK 0100
In the Jharkhand High Court
Case No : Writ Petition (S) No. 4632 Of 2007

Basudeo Mahto

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 02-08-2019

Acts Referred:

Prevention Of Corruption Act, 1988 — Section 7, 13

Citation : (2019) 08 JH CK 0100

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Sameer Saurabh, Vishal Sinha, Vikash Kumar

Final Decision : Dismissed

Judgement

1. Heard Mr. Sameer Saurabh, learned counsel for the petitioner and Mr. Vikash Kumar, A.C to learned Advocate General, learned counsel for the respondents-State.

2. The petitioner has preferred this writ petition for quashing order dated 29.01.2004 whereby the petitioner has been dismissed from services and for quashing order dated 12.01.2007, whereby the appeal preferred by the petitioner has been rejected.

3. Mr. Sameer Saurabh, learned counsel for the petitioner submits that while the petitioner was posted in Home Guard Office, Deoghar on the post of Home Guard Clerk, an F.I.R was lodged against him under Section 7/13 of the Prevention of Corruption Act for demanding and accepting Rs. 1000/- as an illegal gratification, for which he was taken into custody and later on granted bail by Hon'ble Apex Court. Pursuant thereto, memo of charge was served upon the petitioner vide memo no. 251 dated 15.07.2003 and conducting officer was appointed to conduct the departmental proceeding. In the departmental proceeding the petitioner appeared but when the petitioner was not feeling well, he submitted leave application for four days for the period 08.08.2003 to 11.08.2003. He

further submits that during the leave period, the petitioner found some pain in chest, hence he got examined by Dr. A.K. Chatterjee, who advised him to proceed for expertise treatment at Indira Gandhi Institute of Cardiology, Patna, where his regular treatment was done. In support of his submission, learned counsel for the petitioner referred to medical prescriptions and certificates annexed at Annexure 5 series to the writ petition. It has further been submitted that the petitioner well in time intimated about his illness to the superior authorities sending several letters annexing therewith the medical prescriptions but that was not taken into consideration by the authorities and the departmental proceeding proceeded ex-parte, in which, the enquiry officer submitted enquiry report stating that the charges levelled against the petitioner has been proved. Basing on such report, the disciplinary authority passed the impugned order of dismissal, which has been confirmed by the appellate authority.

4. Mr. Sameer Saurabh, learned counsel for the petitioner submits that it was incumbent upon the authorities to take into consideration his ailment as he has already intimated about his illness by sending several letters annexing therewith medical prescriptions, but, the enquiry officer has not given any finding on the point that the petitioner is absents willfully or not. Learned counsel for the petitioner further submits that neither enquiry report was given to the petitioner nor second show cause notice was served upon the petitioner before passing of order of dismissal, as such the impugned orders are vitiated in the eye of law.

5. To substantiate his argument, learned counsel for the petitioner referred to the decision rendered in the case of Union of India & Ors vs. I.S. Singh as reported in 1994 Supp (2) SCC 518, wherein the request made by delinquent for adjournment in departmental proceeding on medical grounds allegedly accompanied by medical certificate, was ignored by enquiry officer, and proceeded ex-parte, the Hon'ble Court held that in such a case the enquiry officer ought to demand the medical certificate or direct the delinquent to be examined by a specified medical officer and submits that the case of the petitioner is fully covered by this case.

6. Learned counsel for the petitioner further assailed the impugned orders on the ground that one of the grounds taken by the disciplinary authority while passing the impugned order is not the subject matter of memo of charge, as such the impugned order is not sustainable. In support of his submission, learned counsel for the petitioner referred to the decision rendered in the case of State of Haryana Vs. Om Prakash, Constable as reported in 1990 (Supp) SCC 282.

7. Per contra, learned counsel for the respondents-State drawing attention of the Court to Annexure B submits that the petitioner was intimated about the enquiry proceeding by several letters, which was tried to be served upon the petitioner by the Constables in person but the petitioner did not appear in the departmental proceeding, as such the ground taken by the petitioner that he has not been informed is not tenable. Learned counsel for the respondents further submits

that the disciplinary authority and appellate authority within all its jurisdiction passed the order. Learned counsel for the respondents further submits that for the charge of illegal gratification, the petitioner has also been criminally proceeded under the provisions of Prevention of Corruption Act and has been convicted.

8. At this stage, learned counsel for the petitioner submits that against the conviction, the petitioner has preferred appeal being Cr. Appeal No. 1597 of 2005, which is pending before this Court.

9. In the facts and circumstances of this case and even accepting the argument of learned counsel for the petitioner that the enquiry proceeding ex-parte, this Court is to examine what will be the effect if the matter is remanded back to the disciplinary authority, after quashing the impugned order, to start the enquiry from the stage of disciplinary proceeding. In the facts of the case, the Court's view on the point of principles of natural justice is being diluted. The rules of natural justice are to be followed for doing substantial justice and not for completing a mere ritual of hearing without possibility of any change in the decision of the case on merits.

10. Hence, even the case of the petitioner is remitted back to the authorities, in the facts of the case at hand, it appears that it will be a futile exercise.

11. Accordingly, this Court comes to a finding that if the case of the petitioner is remitted back to be considered from the stage of departmental proceeding, it will be a futile exercise.

12. Hence, the writ petition stands dismissed.