
(2003) 06 JH CK 0059

In the Jharkhand High Court

Case No : Writ Petition (S) No. 6399 of 2002

Civil Paswan

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 18-06-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Police Manual Rules — Rule 824, 825, 853A

Citation : (2003) 3 JCR 169

Hon'ble Judges : Vikramaditya Prasad, J

Bench : Single Bench

Advocate : S.N. Pathak, for the Appellant; K. Shankar, JC to AG, for the Respondent

Final Decision : Allowed

Judgement

Vikramaditya Prasad, J.—This writ petition has been filed for quashing the order of dismissal passed by Annexure-6 by the D.I.G. and also the appellate order passed by the D.G.P. as contained in Annexure-8.

2. The petitioner was a Sub-Inspector of Police. There was a truck seized allegedly loaded with stolen mustard oil. Some employees of the particular Police Station Tisra demanded bribe and Rs. 20,000/- was paid, which was subsequently recovered from the possession of Laljee Mishra. It appears that the petitioner, who was on duty, left the police station without informing this matter to his superior. Subsequently, Tisra P.S. Case No. 109/1994 was filed, which is still unconcluded and pending trial. In the meantime, a departmental proceeding was initiated against the petitioner and in the departmental proceedings, charges were found proved and the petitioner was recommended to be dismissed by the S.P. The then D.I.G. stayed the departmental proceedings. Subsequently, it was submitted that after six years, a new incumbent to the office of the D.I.G. directed for a fresh enquiry and after submission of the enquiry report, the D.I.G. passed the order of dismissal, against which the petitioner preferred an appeal,

which was also dismissed. It is relevant to mention here that the petitioner had also come to this Court earlier in CWJC No. 1054/ 1998(R) for quashing the departmental proceedings. That prayer was rejected and the Court directed to conclude the proceedings after notice to the petitioner. This order was passed on 19.8.1999. The impugned order has been assailed on the grounds that (i) the witnesses were cross-examined behind the back of the petitioner and there was no information that the witnesses will be cross-examined, (ii) the previous statements made by a few witnesses, particularly Amar Nath Rai, Rabinder Singh and Anil Singh, were used against the petitioner, though the copies of the previous statements made by them had not been supplied to the petitioner, (iii) the subsequent D.I.G. had no jurisdiction (this is one of the questions framed) to review the order of stay of the proceedings passed by his predecessor, (iv) under the Police Manual, Rule 853-A D.I.G. is not competent to pass an order of dismissal and therefore, according to the petitioner, the impugned order of dismissal is beyond jurisdiction and (v) the D.G.P., in his appellate jurisdiction, did not consider these aspects of the matter, though these points were in the memorandum of appeal, Annexure-7.

3. The respondents have altogether denied the allegations and made out a case that the petitioner was duly informed and it was he, who himself absented on particular dates when the witnesses appeared.

Consequently, the witnesses were examined and therefore, it is wrong on the part of the petitioner to submit that no reasonable opportunity was given to him to cross-examine the witnesses. Another point taken by the respondents is that the D.I.G. had directed for continuation of the enquiry in view of the order of the Court and thirdly, the respondents denied the allegation that the D.I.G. had no jurisdiction to pass the order of dismissal.

4. In course of argument, the learned counsel appearing for the petitioner, relying upon the decision of the Apex Court rendered in the case of Kuldeep Singh v. Commissioner of Police reported in (1999) SCC 429 and on Rule 853-A of the Police Manual submitted that the previous statements, if not supplied to the proceegee, cannot be used against him without affording a reasonable opportunity to him for cross-examining the witnesses and further he relied on the decision of the Apex Court rendered in the case of Bhupinder Pal Singh Vs. Director General of Civil Aviation and Others, for the same purpose to say that if the reasonable opportunity is not given to cross-examine the witnesses, that evidence cannot be used.

5. In order to make it clear that reasonable opportunity was given to the petitioner during enquiry for cross-examining the witnesses, the departmental proceeding record was called for. On perusal of the record, the following facts have transpired :

"On 1.4.1995, the proceedings was made over to the Enquiry Officer and by this date, the first explanation of the petitioner has already been received. Then it

appears that the place of posting of the proceedee was not known. Consequently the show cause notice was not served upon him (27.4.95). Subsequently, it appeared that he was posted at Kumardhubi and on 27.11.95, he was informed through Police Line, Dhanbad, regarding the next date as 27.12.95. On 27.12.95, the petitioner appeared, but on that date, the witnesses were not present. Therefore, the next date, 27.1.96 was fixed. On that date, neither the proceedee, nor the witnesses appeared, then on the next date 27.2.96 also, no witness, nor the proceedee did appear. Then an order was passed for informing the next date of 27.3.96 to the proceedee and witnesses. It is not made clear from the office-notes whether or not this information was actually given to the proceedee and witnesses on 27.6.96. On the next date, neither the proceedee nor the witnesses was present, subsequently, on this date also, the next date fixed was 27.4.96 and again an order was passed for giving information to the proceedee and the witnesses, but it is not again clear that the information was actually given these persons on 27.4.96. Again the witnesses did not appear, nor the proceedee appeared and the same order was passed for fixing the next date, with same consequences, on the next date, the proceeding could proceed and the next date fixed was 27.6.96. On the next date, none appeared and again an order was passed for giving information. It is not clear from the office-notes of the record that the information was actually received. Then it appears that on 28.8.96, the petitioner appeared though the witnesses were not present and the date was fixed on 27.9.96. On that next date, again the petitioner absented, then another date was fixed with the same order to inform the petitioner, no proof of such information and on 27.10.96, the proceeding could not take place as the Enquiry Officer was busy otherwise and the next date was fixed with a direction to inform the proceedee, no proof of information. No recording of information on 28.11.96. The petitioner did not appear on 28.12.96. On the next date fixed, the proceedee was not present, though one of the witnesses was present and the statement of that witness was directed to be sent to the proceedee. Then on 27.1.97 the proceedee again presented himself though the date fixed was 28.12.96. Thereafter, the similar order has been passed that the proceedee is not present, the Enquiry Officer was transferred. Another Enquiry Officer took charge of the proceedee. Again on 5.3.98, the petitioner appeared, the witnesses did not appear. He demanded for supply of certain documents. 30.3.98 was fixed as the date and on 6.3.98 some evidence of Amar Nath Rai was brought on record, but on the next date fixed the petitioner did not appear. Then 30.4.98 was the next date fixed. As the petitioner did not submit his final explanation by 30.5.95, the proceeding was concluded and punishment awarded.

6. Thus, it is clear that in the beginning, the whereabouts of the petitioner was not known to the Enquiry Officer and consequently, the notice was sent to him through Police Line. The petitioner appeared. Subsequently, on some of the dates noted above, the petitioner was present and thereafter he absented. The question is what is meant by reasonable opportunity whether each and every date fixed in a proceeding has to be separately announced or informed to the

petitioner or whether if the petitioner himself has appeared in a proceeding and the next date is fixed in his presence, he can be allowed to say that he could not appear on the date so fixed because he was not given any information/notice thereof. If this view is taken that on every such date fixed, a fresh notice has to be issued, then I am afraid that any proceeding can come to a conclusion. What is required in law is that the petitioner be served with a proper notice of a proceeding and his appearance is secured. Once he appears and participates in the proceedings, then it is for him to appear on the next date, which is fixed in his presence. There is no case that on the subsequent date fixed, when he appeared in person, no opportunity was extended to him to cross-examine, whereas the case of the respondents is that the petitioner himself absented and therefore, he cannot say that he was not given an opportunity of hearing. One of the interesting arguments raised by the learned counsel appearing for the petitioner is that the petitioner should have been informed by even wireless of the dates and then he could have come to attend the proceeding. If in a departmental proceeding, the petitioner appeared on a particular date and the next date was fixed, then it was his duty to obtain permission from his superior for attending the proceeding on the date so fixed. Refusal of such permission by the Superior Authority would have entitled the petitioner to make out a case that he was restrained from appearing in the proceeding, therefore, he had no reasonable opportunity. Thus, in my view, once the petitioner appeared in the proceeding and the next date was fixed and then on the next date, the petitioner disappeared or remained absent without any reason and did not get the information of the subsequent date of the proceeding thereafter, then it was the unwillingness of the petitioner to co-operate with the proceeding and to delay the proceeding also. Therefore, in the aforesaid circumstances, it cannot be said that the petitioner had no information of the proceeding or he had no reasonable opportunity to defend himself.

7. The third question raised is whether the previous statements recorded at the pre-departmental proceedings stage could be used while making an answer to the enquiry, behind the back of the petitioner. The argument of the learned counsel appearing for the respondents is that the petitioner, on the dates when he appeared, always insisted that as the matter was sub-Judice, he was not going to give any explanation and in this way, the petitioner avoided the proceeding, but this not the reply to the question, which has been raised. There are three witnesses whose statements have been used (i) Rabinder Singh was present on that date, but the petitioner was absent, though on the previous date, the petitioner was present, but this witness has not disposed against the petitioner. Therefore, the petitioner does not feel aggrieved. There are two other witnesses Amar Nath Rai and Anil Kumar. Their statements have been used. Whether the copies of their previous statements were supplied to the petitioner is not empathetically asserted by the respondents. Therefore, if the copies are not supplied and these are used without examining the maker of that statement and the petitioner does not cross-examine, then definitely the petitioner was at

disadvantageous position. Had this been a case that the petitioner was supplied the copies thereof and it was due to the reluctance of the petitioner to appear for cross-examination of the witnesses the plea of prejudice to the petitioner could not be entertained, if the said statements were admitted in evidence, then it would have been another fact. The Apex Court in the judgment relied upon by the learned counsel appearing for the petitioner in (1999) SCC 429 (supra) held in clear terms that the witness whose statements are relied on must be produced. In this case, those witnesses have not been produced at all. Thus, this question whether it was proper and legal on the part of the Enquiry Officer to use those statements in absence of (i) supply of the statements and (ii) in absence of the production of those witnesses was proper is answered in negative it was unjustified.

8. The next question, which I would like to take up is whether the D.I.G. was empowered to pass in order of dismissal. The petitioner was a Sub-Inspector of Police at the relevant time. Rule 824 of the Police Manual prescribes certain punishments. Rule 825 reads as follows :

"825. Officer empowered to impose punishment--(a) No police officer shall be dismissed or compulsorily retired by an authority subordinate to that which appointed him (this is the general principle).

(b) The Inspector General may award to any police officer below the rank of Deputy Superintendent, any one or more the punishments in Rule 824.

(c) A Deputy Inspector General may impose on any police officer subordinate to him and below the rank of Deputy Superintendent, any of the punishments in Rule 824 except dismissal, compulsory retirement and removal in the case of an Inspector.

(d) A Superintendent may impose on any police officer subordinate to him and of and below the rank of Sub-Inspector any or more of the punishments in Rule 824 except dismissal, removal and compulsory retirement in the case of Sub-Inspector or Assistant Sub-Inspector....."

Thus, Rule 825(c), which is relevant in the instant case, according to the learned counsel appearing for the petitioner, puts an embargo on the D.I.G. to pass an order of dismissal, compulsory retirement and removal in the case of an Inspector. But it does not put any embargo on dismissal of a Sub-Inspector. There is no case that the Sub-Inspector or the Inspector are the same. Therefore, in view of this clear provisions, the D.I.G. does not appear to be incompetent to pass an order of dismissal in respect of the officer below the rank of Inspector and if the petitioner is the Sub-Inspector, then he is empowered to pass such an order. Consequently, this order of dismissal by the D.I.G. the impugned An-nexure-6 is not without jurisdiction, so far the jurisdiction under the Rules is concerned.

9. The appellate authority has not addressed itself to these questions. Thus, in

the result, it is to be held that the enquiry was conducted in violation of the principles of natural justice for the reasons stated above.

10. Now, the question to be answered is what is the effect of the violation of the principles of natural justice? The effect, at present according to the latest Apex Court decision, is that the proceeding as a whole is not vitiated, but only the order is vitiated, meaning thereby the proceeding may continue, while the impugned order becomes invalid because it arises out of the premises, which is based on the violation of the principles of natural justice.

11. In the result, the impugned orders are quashed and it is directed that the enquiry be conducted afresh and the copies of the statements be provided to the petitioner and the Enquiry-Officer shall conclude the enquiry within three months, and the disciplinary authority will pass order within a month thereafter. It is made clear that the petitioner should attend the proceeding. The petitioner will be reverted back to the position at which he was on the date of initiation of the departmental proceeding. The departmental enquiry records produced before the Court is delivered back to the learned counsel appearing for the State.

12. With the aforesaid observations/ directions this writ petition is allowed.