

(2020) 02 JH CK 0037

In the Jharkhand High Court

Case No : Letter Patents Appeal No. 334, 312, 313, 339, 348, 358, 373, 381 Of 2016

Dhananjay Kumar Dubey And Ors

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 17-02-2020

Acts Referred:

Citation : (2020) 02 JH CK 0037

Hon'ble Judges : H.C. Mishra, J;Deepak Roshan, J

Bench : Divison Bench

Advocate : Indrajit Sinha, Arpan Mishra, Ritu Kumar, Ritu Kumar, Santosh Kr. Shukla, Himanshu Kumar Mehta, Kanchan Kumari, Manjushri Patra, Sharad Kaushal, Rakesh Kr. Shahi

Final Decision : Dismissed

Judgement

1. As all these appeals arise out of the same impugned Judgement, they are heard together and are being disposed of by this common Judgment.

2. Heard learned counsels for the appellants and learned Additional Advocate General for the State.

3. All the appellants are aggrieved by the common Judgment dated 19.05.2016, passed by the Hon'ble Single Judge, in W.P.(S) No.6070 of 2013 and

seven other analogous matters, whereby the writ applications filed by the appellants writ petitioners against the order dated 13.06.2012, passed by the

Superintendent of Police, Garhwa, imposing the punishment of dismissal from service upon the appellants, which was also confirmed by the Appellate

Authority by order dated 19.10.2012 and by the Reviewing Authority by order dated 29.07.2013, have been dismissed by the Writ Court.

4. The appellants before us are the Hawaldars, Police Drivers and Constables,

who were working in the District Police of Garhwa, and they were assigned the duty of transferring two prisoners from the Divisional Jail, Garhwa, to the Central Jails at Ranchi and Dumka. One of the prisoner was brought by them and handed over at Central Jail, Ranchi, but it is alleged that the other prisoner, who was being taken again from Ranchi to Central Jail Dumka, was made to flee away in connivance with the writ petitioners police officials. One of constables was also missing after the occurrence, who reported later, and on his search, the key of the handcuff was also recovered from him.

5. The memo of charges was framed against all the delinquent police officials and they were put to the departmental proceeding and in the departmental proceeding, the evidences came that at the cost of the prisoner, who was made to flee away, they had taken food and liquor in the hotels in the way. The call details of their mobile phones were also proved, which showed that from the mobile phone of two constables several calls were made on the mobile of the wife of the prisoner who fled away. On the basis of these evidences, the appellants were found guilty of the charges, and the Disciplinary Authority, i.e., the Superintendent of Police, Garhwa, issued the second show-cause notice for imposition of major penalty upon them.

However, while issuing the second show cause notice, the appellants writ petitioners were not served with the copy of the enquiry report, though at the time of serving the dismissal order, the enquiry report was also made available to them.

6. The appellants challenged the impugned action of the Disciplinary Authority before the Appellate Authority, who also by the reasoned order dated 19.10.2012, dismissed their appeals. The appellants filed their memorials before the Reviewing Authority, which were also dismissed by the reviewing authority, i.e., the Director General of Police.

7. Aggrieved thereby, the appellants writ petitioners moved this Court in W.P.(S) No.6070 of 2013 and the analogous matters, which were adjudicated and dismissed by the Hon'ble Single Judge, by the impugned Judgment dated 19.05.2016.

8. The Hon'ble Single Judge, while dismissing the writ applications, has relied upon, amongst others, the decision of the Hon'ble Apex Court in

U.P. Gramin Bank Vs. Manoj Kumar Sinha, reported in (2010) 3 SCC 55,6

wherein it is held that unless the delinquent is able to show that non supply of the report of the Enquiry Officer had resulted in prejudice or miscarriage of justice, an order of punishment cannot be held to be vitiated. The Hon'ble Single Judge, has also relied upon the decision of the Hon'ble Apex Court in State of U.P. & Anr. Vs. Man Mohan Nath Sinha & Anr., reported in (2009) 8 SCC 310, wherein it is held that in such cases, the judicial review is not directed against the decision, but it is confined to the decision-making process, and it is not open to the High Courts to reappraise and reappraise the evidence led before the Inquiry Officer, as a Court of appeal, so as to reach to its own conclusions. Relying upon these decisions the Hon'ble Single Judge dismissed the writ applications filed by the appellants. Aggrieved thereby, the appellants have preferred of these Letters Patent Appeals.

9. Learned counsels for the appellants strenuously argued that the impugned Judgment passed by the Hon'ble Single Judge is vitiated and cannot be sustained in the eyes of law, inasmuch as, the Writ Court has failed to take into consideration the well settled principle of law that non supply of the enquiry report along with the second show cause notice, shall vitiate the proceeding. Learned counsels have also drawn our attention towards the orders of dismissal passed by the Disciplinary Authority as well as the order passed by the Appellate Authority, in their efforts to show that non supply of the enquiry report had caused prejudice to the appellants, but while going through these orders, we find that at the time of serving the punishment order, the copy of the enquiry report had been served upon the appellants. As such, the appellants had all the opportunity to challenge the same before the Appellate Authority, which they did challenge, but considering all the defenses of the appellants, the Appellate Authority by a detailed order has dismissed their appeals.

10. Learned Additional Advocate General, on the other hand, has opposed the prayer and submitted that it is well settled principle of law that non supply of copy of the enquiry report with the second show cause notice, per se, shall not vitiate the punishment and in the present case, the copy of the enquiry report was also supplied to the appellants along with the punishment order, and the appellants have availed the opportunity of challenging the same before the Appellate Authority as well, and their appeals were dismissed by

a reasoned order. The memorials filed by them were also dismissed by the Reviewing Authority, again by a reasoned order. It is thus, submitted by learned Additional Advocate General that no prejudice has been caused to the appellants by non supply of copy of the enquiry report with the second show cause notice, and it is well settled law that unless the non supply of the report of the enquiry officer has resulted in prejudice or miscarriage of justice, the order of punishment cannot be held to be vitiated. It is further submitted that this Court cannot reappreciate and reappraise the evidence as a Court of appeal, and there is very limited scope for this Court to interfere with the findings and the punishment imposed in the disciplinary proceeding, in exercise of the power of judicial review. Learned Additional Advocate General accordingly, submitted that there is no illegality in the impugned Judgement passed by the Writ Court.

11. Having heard learned counsels for both the sides, we find that though learned counsels for the appellants have tried to impress upon us that the non supply of the enquiry report has vitiated the entire proceeding, but they have not been able to distinguish their case from the case of Manoj Kumar Sinha (supra), as referred above and relied upon by the Hon'ble Single Judge, in the impugned Judgement. It is now well settled principle of law that only due to the non supply of the enquiry report to the delinquent at the stage of punishment, the punishment order cannot be held to be illegal, if it is not shown by the delinquent that any prejudice had been caused to him thereby. Reliance in this connection may also be have to the decisions of the Hon'ble Apex Court in Chairman, Ganga Yamuna Gramin Bank & Ors. Vs. Devi Sahai, reported in (2009) 11 SCC 26,6 and in Burdwan Central Cooperative Bank Ltd. & Anr. Vs. Asim Chatterjee & Ors., reported in (2012) 2 SCC 64,1 apart from Manoj Kumar Sinha's case (supra), as referred above and relied upon by the Hon'ble Single Judge, in the impugned Judgement.

12. In view of the foregoing discussions, we find that no case is made for any interference in the order of punishment by the Writ Court in exercise of the power of judicial review, particularly taking into consideration the gravity of the charges, and the fact that the proved misconduct was committed by the members belonging to the disciplined force. In the facts of this case it cannot be said that the punishment of removal from service imposed

upon the appellants is shockingly disproportionate to their proved misconduct, rather this is a case where dismissal of the appellants from service was perfectly justified, in view of their proved misconduct. We are not at all impressed by the submission of learned counsels for the appellants that any prejudice was caused to the appellants due to the non supply of the enquiry report at the stage of second show cause notice. As the appellants were supplied the copy of the enquiry report along with the punishment order, they had all the opportunity to challenge the same before the Appellate Authority as well as the Reviewing Authority, which they did. As such the non supply of the enquiry report at the stage of second show cause notice had not caused any prejudice to the appellants at all.

13. In view of the foregoing reasons, we do not find any illegality in the impugned Judgment dated 19.05.2016, passed by the Honâ??ble Single Judge, in W.P.(S) No. 6070 of 2013 and the analogous matters, worth any interference in the exercise of the LPA jurisdiction.

14. There is no merit in all these Letters Patent Appeals and the same are accordingly, dismissed.