

(2015) 07 PAT CK 0161

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 15762 of 2006

Dinesh Rajak

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 14-07-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 3 BBCJ 482 : (2015) 4 BLJud 1 : (2017) 1 PLJR 329

Hon'ble Judges : Mr. Birendra Prasad Verma, J.

Bench : Single Bench

Advocate : Mr. Shyama Prasad Mukherjee, Sr. Adv., Mr. Shanti Pratap, Advocate, for the Petitioners; Mr. Lalit Kishore, PAAG and Mr. Ranjeet Kumar, AC to PAAG, for the Respondents

Final Decision : Allowed

Judgement

Mr. Birendra Prasad Verma, J. (CAV) - The petitioner has approached this Court in the present proceeding filed under Article 226 of the Constitution of India assailing the validity and correctness of the order contained in Memo no. 3037 Rohtas, Dehri dated 02.09.2005 (Annexure-1) passed by the Superintendent of Police, Rohtas, the Disciplinary Authority, whereby in view of the findings of guilt recorded in the departmental proceeding against the petitioner, he has been dismissed from service with immediate effect. The petitioner has also assailed the validity and correctness of the order dated 16.01.2006 (Annexure-2) passed by the respondent no.6, being the appellate authority, as also the order dated 08.11.2006 (Annexure- 3) passed by the respondent?Director General and Inspector General of Police, Bihar, Patna, whereby the appeal and the appeal memorial respectively filed by the petitioner against the order of punishment awarded by the disciplinary authority have been rejected and the order of punishment, as contained in Annexure-1, has been affirmed.

2. Shorn of unnecessary details, it is suffice to note that while the petitioner was deputed as a police constable in the reserved force at Rohtas P.S. in the district

of Rohtas, a report dated 20th March, 2003 was forwarded by the Officer-in-charge of Rohtas P.S. to the Superintendent of Police, Rohtas alleging therein about the misconduct and indiscipline of the petitioner, his disobedience to join sentry duty on 17.03.2003 at 8 P.M. as also about his alleged hurling of abuses and assault made by him to his immediate superior i.e. Guard-in-charge, Havildar Hira Prasad on 17.03.2003 in the evening hours. In view of the aforesaid report dated 20th March, 2003, the petitioner was placed under suspension by order dated 25.03.2003 passed by the respondent Superintendent of Police, Rohtas and his headquarter was fixed at police line, Dehri. By an order contained in Memo No. 1002 dated 03.04.2003 passed by the respondent Superintendent of Police, Rohtas, a departmental proceeding was initiated against the petitioner for his alleged misconduct and indiscipline committed by him on 17.03.2003. However, order of suspension passed against the petitioner on 25.03.2003 was revoked only after two weeks by a district order No. 814 dated 08.04.2003.

3. It appears that in the light of the order dated 20th February, 2003 of the respondent Director General of Police, Bihar, Patna as also the order dated 23.3.2003 of the Inspector General, Muzaffarpur/Patna Zone, about inter zonal transfer of several police constables including that of the petitioner, the respondent Superintendent of Police, Rohtas passed an order dated 13.04.2003 transferring the petitioner from the district of Rohtas with a direction to give his joining in the district of Muzaffarpur. Accordingly, he was relieved on 13.04.2003 itself by the respondent Superintendent of Police, Rohtas and he proceeded for Muzaffarpur on 14.04.2003 for joining his duty there in that district. It is not in dispute that the petitioner gave his joining in the office of Superintendent of Police, Muzaffarpur, where after he was posted as a police constable at Brahmpura police station in the district of Muzaffarpur.

4. From the pleadings of the parties and the materials available on record, it is apparent that the departmental proceeding initiated against the petitioner in the district of Rohtas for charges of misconduct allegedly committed by him on 17.03.2003 in the district of Rohtas, continued there even after his transfer to the district of Muzaffarpur vide order dated 13.04.2003. However, the aforesaid departmental proceeding proceeded ex parte as the petitioner is alleged to have not appeared on the dates fixed, and did not cross examine any witness produced on behalf of the department. He also failed to produce any witness in support of his defence version and finally the conducting officer submitted his report holding the petitioner guilty for the charges.

5. In the aforesaid departmental proceeding only two witnesses, namely, Tapeshwar Verma of Police Line, Dehri and Havildar Hira Prasad, who was allegedly abused and assaulted by the petitioner on 17.03.2003, as both of them were deputed at Rohtas P.S. in the district of Rohtas, were examined and are said to have supported the case of the department about misconduct committed by the petitioner. However, they were admittedly not cross-examined on behalf of

the delinquent as he was not present there on the dates fixed when the aforesaid two witnesses were examined. On the basis of the findings recorded in the aforesaid departmental proceeding, final order dated 02.09.2005, as contained in Annexure-1, was passed by the respondent Superintendent of Police inflicting a punishment of dismissal of the petitioner from service with immediate effect. The appeal and appeal memorial filed by the petitioner against the order of punishment were rejected by the orders as contained in Annexure-2 and 3 respectively affirming the order of punishment passed by the disciplinary authority. Hence, the present writ petition.

6. Mr. Shyama Prasad Mukherjee, learned Senior counsel appearing on behalf of the petitioner submits that the impugned orders as contained in Annexure-1, 2 and 3 are not sustainable in law as neither reasonable opportunity to defend himself was given to the petitioner nor rules of natural justice was followed before passing the impugned final order of punishment. Hence, according to him, impugned original order of punishment, as contained in Annexure-1, as also the appellate and revisional orders, as contained in Annexure-2 and 3 respectively, are liable to be set aside by this Court and the petitioner is entitled to be reinstated in service with all consequential benefits. He contended that though the petitioner was put under suspension by order dated 25.03.2003 in view of the alleged incident dated 17.03.2003 having taken place at Rohtas P.S. in the district of Rohtas, but the aforesaid order of suspension was revoked only after about two weeks by order dated 08.04.2003 and thereafter the petitioner was transferred from the district of Rohtas to the district of Muzaffarpur. It is specifically pleaded that the memorandum of charges was never served upon the petitioner, he was not given an opportunity to file his show cause with respect to alleged charges, he did not receive any notice about the date(s) fixed in the departmental proceeding for examination of witnesses, he was not given an opportunity to cross-examine the witnesses produced on behalf of the department, as also to produce his witnesses in support of his defence version, and the entire proceeding was carried out in violation of the rules of natural justice. According to him, the departmental proceeding having been ex parte one, is liable to be set aside on that ground alone by this Court. It is further contended that copy of enquiry report submitted by the conducting officer was not supplied to the petitioner. Hence, the impugned order of punishment has been passed in violation of the principles of natural justice as also Article 311(2) of the constitution of India. On these grounds, besides others, it is pleaded that after setting aside the impugned orders, as contained in Annexure-1, 2 and 3, the petitioner is entitled to be reinstated in service with all arrears of salary and admissible allowance from the date of his dismissal from service. In support of his above contention he has placed reliance on the judgment of the Hon'ble Apex Court in the cases of *Union of India v. Mohd. Ramzan Khan* [(1991) 1 SCC 588 : AIR 1991 SC 471], *Managing Director, ECIL, Hyderabad v. B. Karunakar* ((1993)4 SCC 727 : AIR 1994 SC 1074] & *Union of India v. Dinanath Shantaram Karekar* (AIR 1998 SC 2722).

7. Au-contraires, Mr. Lalit Kishore, learned Principal Additional Advocate General appearing on behalf of the respondents submitted that there are serious charges of misconduct against the petitioner. He did not join the sentry duty on 17.03.2003 at 8 P.M. On asking by the Guard-in-charge, Havildar Hira Prasad as to why the petitioner has not joined the sentry duty, he was abused and assaulted by the petitioner by a "danda", as a result of which Havildar Hira Prasad sustained injury on his person and was taken to the hospital for his treatment. According to him, in view of the aforesaid grave nature of misconduct committed and indiscipline shown by the petitioner, he was put under suspension by order dated 25.03.2003 and a departmental proceeding was initiated against him by an order passed by the respondent - Superintendent of Police, Rohtas. However, he fairly conceded that the order of suspension was revoked by order dated 08.04.2003 since the petitioner was required to be transferred from the district of Rohtas to the district of Muzaffarpur in the light of the orders passed by the higher authorities including the respondent-Director General of Police for intra zonal transfer of several police constables including the petitioner. It is contended by him that though the petitioner was transferred from the district of Rohtas to the district of Muzaffarpur on 13.4.2003, but before the order of transfer could be effected, a departmental proceeding was already initiated against him by the respondent - Superintendent of Police, Rohtas by order dated 03.04.2003, yet despite knowledge and information about initiation of the aforesaid departmental proceeding, the petitioner did not participate in the departmental proceeding, as a result of which it proceeded ex parte and finally ex parte enquiry report was submitted by the conducting officer holding the petitioner guilty for the charges framed against him. Accordingly, notice dated 24.06.2005, as contained in Annexure-4 to the writ petition, was served upon the petitioner calling upon him to file explanation as to why he be not dismissed from service. Thereafter, the petitioner filed his explanation dated 30.6.2005, as contained in Annexure-5 to the writ petition, which was not found satisfactory, as a result of which the final order of punishment was passed on 02.09.2005 (Annexure-1) by the disciplinary authority dismissing the petitioner from service with immediate effect.

8. At this place it would be relevant to mention here that by an order dated 06.01.2014 passed by a Bench of this Court, learned State counsel was directed to obtain entire records of the departmental proceeding conducted against the petitioner for perusal of the Court. Accordingly, original record of the departmental proceeding was obtained by the learned State counsel, which was directed to be retained by him by order dated 16.01.2014 for perusal of the Court, if so required. In view of assertions made by the petitioner that he did not receive any notice about the dates fixed in the departmental proceeding and it proceeded ex parte in the district of Rohtas though the petitioner was posted in the district of Muzaffarpur, learned State counsel was directed to take further instructions by order dated 05.05.2014 and finally by the order dated 17.06.2014 learned State counsel was directed to file supplementary counter

affidavit. In the light of the aforesaid order, supplementary counter affidavit as also 2nd supplementary counter affidavit were filed on behalf of the respondent no.7 bringing on record various orders/communications with respect to the departmental proceeding in question initiated and concluded against the petitioner. However, learned Principal Additional Advocate General, appearing on behalf of the respondents, after looking into the original records of the departmental proceeding as also in reference to the averments made in the counter-affidavit or the supplementary counter-affidavits filed on behalf of the respondent no.7 could not demonstrate before this Court that notices were actually served upon the petitioner about the dates fixed in the departmental proceeding, though it was claimed that notices were issued by the conducting officer and were received in the office of the Superintendent of Police, Muzaffarpur about such dates fixed in the departmental proceeding. He has also not been able to show that the enquiry report submitted by the conducting officer was ever served upon the petitioner before passing the impugned final order of punishment. However, it was contended by him that even if there was any defect in service of memo of charge or about the service of notices about the dates fixed in the departmental proceeding, then in that case also the whole departmental proceeding initiated against the petitioner is not liable to be quashed, but the matter may be remitted back to the disciplinary authority for proceeding in the aforesaid departmental proceeding from the stage from where it is held that either reasonable opportunity was not given or there has been violation of the principles of natural justice before passing the impugned order of punishment. It was lastly contended that in view of the allegation of grave nature of misconduct and indiscipline against the petitioner, he cannot be allowed to go scot-free for certain defects in conclusion of the departmental proceeding against the petitioner. In support of his above contention he has placed reliance on the judgments of the Hon'ble Apex Court in the case of Managing Director, ECIL, Hyderabad v. B. Karunakar (supra) (Paragraph-31 of the SCC), the cases of Chairman, Life Insurance Corporation of India v. A. Masilamani [(2013)6 SCC 530] (Paragraphs 16 to 18) and Anant R. Kulkarni v. Y.P. Education Society [2013(3) PLJR SC 106 : (2013)6 SCC 515] (Paragraph 7 of PLJR).

9. After having heard learned counsel appearing on behalf of the parties at great length and on examination of the entire materials available on the record, this Court finds that there are serious and grave nature of charges of indiscipline and misconduct against the petitioner for not joining the sentry duty on 17.03.2003 at 8 P.M. in the evening hours, for hurling abuses to the Guard-in-charge, Havildar Hira Prasad as also for assaulting him by "danda", as a result of which he had to undergo treatment in the hospital and, accordingly, the matter was reported to the Superintendent of Police by the Officer-in-charge of Rohtas P.S., though belatedly on 20.03.2003. The petitioner was put under suspension on 25.03.2003, but the order of suspension was revoked only after two weeks by an order dated 08.04.2003. In the meantime, a departmental proceeding was initiated against the petitioner by an order dated 03.04.2003 in the district of

Rohtas by the Superintendent of Police, Rohtas, but the petitioner was transferred just after about 10 days by order dated 13.04.2003 from the district of Rohtas to the district of Muzaffarpur in the light of the orders passed by the higher authorities. In spite of going through the original records of the departmental proceeding, learned Principal Additional Advocate General could not demonstrate before this Court that the memo of charges was ever served upon the petitioner and he was given any opportunity to file his explanation/show cause with respect to charges framed against him. No reliable material has been produced by the respondents before this Court that dates fixed for examination of witnesses in the departmental proceeding was actually communicated to the petitioner, while he was posted in the district of Muzaffarpur though the departmental proceeding was going on in the district of Rohtas. Resultantly, the petitioner could not cross-examine the witnesses produced on behalf of the department, could not produce his defence witness and departmental proceeding proceeded ex parte. Finally, the enquiry report was submitted by the conducting officer holding the petitioner guilty for charges framed against him. In the aforesaid enquiry report he has mentioned that only two witnesses, both government officials of the district of Rohtas, were examined in support of the charges framed against the petitioner. He has not mentioned that any witness of the district of Muzaffarpur was examined to prove that the notices issued by the conducting officer were actually served upon the petitioner. Apparently, neither the Officer-in-charge of Brahmpura P.S. in the district of Muzaffarpur, where the petitioner was posted, nor any official of the office of the Superintendent of Police, Muzaffarpur was examined in the aforesaid departmental proceeding to prove that despite knowledge and information about the dates fixed in the on going departmental proceeding, the petitioner did not appear to cross-examine the witnesses and did not produce his defence witness. Evidently, the departmental proceeding initiated against the petitioner proceeded and concluded ex parte. No material has either been produced by the learned State counsel to show that even the copy of the enquiry report was served upon the petitioner.

10. From the findings of facts recorded above, it is apparent that neither reasonable opportunity to defend himself was provided to the petitioner nor the rules of natural justice were followed by the disciplinary authority. The impugned order of punishment passed by the disciplinary authority is in teeth of the mandate of Article 311(2) 1st proviso of the Constitution of India. The appellate authority and the revisional authority have clearly failed to take into consideration the aforesaid aspect of the matter, while passing their final orders. Consequently, the impugned orders, as contained in Annexure-1, 2 and 3, cannot be sustained in law particularly in view of the judicial pronouncements made by the Hon''ble Apex Court in the case of Union of India v. Mohd. Ramzan Khan (Supra) and further clarified and affirmed by the constitution Bench of the Hon''ble Apex Court in the case of Managing Director, ECIL, Hyderabad v. B. Karunakar (supra).

11. For the reasons recorded above, the impugned order dated 02.09.2005 (Annexure-1) passed by the respondent-Superintendent of Police, Rohtas, the impugned appellate order dated 16.01.2006 (Annexure-2) passed by the respondent no.6- the appellate authority, as also the impugned order dated 08.11.2006 (Annexure-3) passed by the respondent? Director General and Inspector General of Police, Bihar, Patna in exercise of his powers of revision, are set aside and quashed, and the matter is remitted back to the respondent disciplinary authority to proceed in the aforesaid departmental proceeding against the petitioner from the stage of service of memorandum of charges. The petitioner shall be given an opportunity to file his show cause with respect to article of charges so framed against him. He shall be obliged to co-operate in early conclusion of the aforesaid departmental proceeding.

12. Since the order of punishment, as contained in Annexure-1, as also the appellate and revisional orders, as contained in Annexure-2 and 3 respectively, have been set aside by this Court, the petitioner shall be re-instated in service and he shall be entitled to receive current salary as also other admissible allowances. The arrears of salary and other admissible allowances of the petitioner from the date of his dismissal from service till his re-instatement pursuant to the present order, shall be subject to final outcome in the departmental proceeding to be concluded by the disciplinary authority in accordance with law in the light of the present order. It goes without saying that since the departmental proceeding against the petitioner has to be concluded after giving an opportunity of hearing to him and after following the principles of natural justice in the light of the present order, the competent authority, if so advised, shall be at liberty to pass an order of suspension of the petitioner during the pendency of the departmental proceeding, but before doing that the petitioner must be re-instated in service and till the departmental proceeding is concluded, he must be paid his current salary or subsistence allowance, as the case may be, strictly in accordance with law.

13. In the result, the writ petition stands allowed to the extent indicated as also with observations and directions made above, but there shall be no order as to costs.