
(2007) 05 JH CK 0042
In the Jharkhand High Court

Dr. Kashi Nath Ram

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 18-05-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 311

Citation : (2007) 4 JCR 24

Hon'ble Judges : N.N. Tiwari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

N.N. Tiwari, J.—In this writ petition the petitioner has prayed for quashing the Letter No. 1160 dated 5.6.2006 issued by the respondent No. 3 whereby the decision has been taken to dismiss the petitioner from service and to recover certain amounts from him. The petitioner has further sought for revocation of his suspension and also for payment of salary and other allowances.

2. The short facts of the petitioner's case are that the petitioner was appointed on Class-II post in Animal Husbandry and Fisheries Department in the year 1972. In the year 1981 he was promoted to Class-I post. The petitioner was transferred and posted at several places between the years 1972 and 1996 without any blemish and adverse remark. In the year 1997, while he was working as the Regional Director, Animal Husbandry and Fisheries Department, Saran Division, the petitioner was put under suspension by the department by letter dated 1.2.1997. Thereafter, the memorandum of charges was also served on him initiating the departmental proceeding against him. The petitioner challenged the same in a writ petition being CWJC No. 2316/97 filed in the Patna High Court. The said writ petition was disposed of directing the respondents to conclude the enquiry by 31.12.1997, failing which it was directed that the charge-sheet as well as the suspension order shall stand quashed w.e.J. 1.1.1998. The enquiry could not be concluded by 31.12.1997 and the department then filed a petition for extension of time for concluding the enquiry, but the same was rejected. The

petitioner, thus, resumed his work w.e.f. 1.1.1998 as the Regional Director of the said department. In the year 1999 the petitioner was transferred and posted as Regional Director, North Chotanagpur Range, Hazaribagh. Which he was working as the Regional Director, North Chotanagpur Range, Hazaribagh, some dispute arose between him and the Deputy Commissioner North Chotanagpur Division, Hazaribagh. The said dispute was brought to the notice of the Chief Secretary, Government of Jharkhand as also the Chairman, Human Rights Commission, Government of India. Out of the said dispute and mala fide, the Divisional Commissioner, North Chotanagpur Division, Hazaribagh alleged as many as 27 more charges against the petitioner by his letter No. 236 dated 13.8.2001 (Annexure-5) including the charge-sheet which already stood quashed by virtue of the order of the Patna High Court dated 5.8.1997 (Annexure-4). The subsequent charge-sheet was issued on 1.1.1998 in which the charges which already stood quashed were also incorporated among the 27 charges. The said memo of charges containing 27 numbers of charges was inquired into by a Joint Secretary, who after enquiry found all the charges false, fabricated and baseless (Annexure-6). The Secretary forwarded the said charges to the Cabinet Vigilance by Letter No. 1349 dated 24.8.2001 for further enquiry. In the meanwhile, the petitioner filed a writ petition being WP(S) No. 4111/01 in this Court. The said writ petition is still pending in this Court. However, Secretary of the department by Letter No. 1158 dated 7.5.2004 suddenly asked of an explanation on some other charges which the petitioner replied by Memo No. 732 dated 9.8.2004 denying the said charges. The secretary by Memo No. 380 dated 25.2.2005 again put the petitioner under suspension in contemplation of a departmental proceeding. A charge-sheet was then followed by Memo No. 534 dated 17.3.2005 containing as many as 19 charges against the petitioner regarding unauthorised absence, indiscipline and illegal appointment made by him. An enquiry officer and presenting officer were also appointed and the petitioner was asked to file his defence. The petitioner challenged the same in a writ petition being WP(S) No. 1310/05, but the same was dismissed by order dated 21.3.2005 directing the respondents to conclude the departmental proceeding as soon as possible. An appeal being LPA No. 347/05 was also filed against the said order dated 21.3.2005, but the same was also dismissed by order dated 4.1.2006. In the mean time, the Cabinet Vigilance Department concluded the enquiry on 27 charges and submitted the enquiry report by Letter No. 690 dated 16.5.2005 wherein the charge of illegal appointment was only proved and the remaining charges were not proved against the petitioner. According to the petitioner, no illegal appointment was ever made by him and only the services of two persons were confirmed by him in the year 1988. The respondents thereafter submitted a supplementary charge-sheet containing three articles of charges vide Memo No. 1688 dated 25.7.2005. One Mr. Bakshi Narendra Prasad Sinha was appointed as enquiry officer and a copy of which was also given to the petitioner (Annexure-12). The petitioner filed his defence denying all the charges and praying to drop the proceeding and exonerate him. However, the enquiry officer proceeded further with the enquiry. The petitioner appeared and

requested for supply of several documents on the basis of which the charges were levelled against him, but all the required documents were not supplied to him. No witness was examined in presence of the petitioner and there was no question of cross-examining the witnesses as the required documents were not ever brought and exhibited. The enquiry was thus proceeded and concluded in perfunctory manner and till date even the enquiry report has not been given to the petitioner. Though the charges were not proved against the petitioner, yet the second show-cause notice has been issued proposing dismissal of the petitioner's service and recovery of some Government amounts from him as mentioned in the said order.

3. The petitioner has assailed the said order of his proposed dismissal on the ground of mala fide, personnel grudge, arbitrariness and illegality. Parallel enquiry was also held by the Cabinet Vigilance Department which submitted its report by Letter No. 690 dated 18.6.2005 wherein almost all the charges were not found proved against the petitioner except one i.e. regarding illegal appointment made by him. It has been stated that the said order as also the petitioner's suspension from the month of March 2006 are wholly arbitrary and highly unjust and there has been gross violation of the principles of natural justice and also the Articles 14, 16, 21, 311(2) of the Constitution of India.

4. A counter affidavit has been filed on behalf of the respondents stating, inter alia, that the allegation of arbitrariness and mala fide are wholly baseless and that the petitioner was even proceeded against earlier in the undivided State of Bihar. However, the charge-sheet was quashed on the ground of delay in CWJC No. 2316/97 by the Patna High Court. There was complain against the petitioner while he was posted as the Regional Director, Animal Husbandry and Fisheries Department, North Chotanagpur Region, Hazaribagh that the petitioner did not cooperate with the enquiry. Subsequently, the Secretary, Animal Husbandry and Fisheries Department, Government of Jharkhand, namely Mr. P.K. Jajoria and the then Divisional Commissioner, North Chotanagpur Division, Hazaribagh had made available the relevant documents including the list of 27 grave charges to the department. After consideration of the records and the explanation submitted by the petitioner, the department with approval of the Chief Minister took a decision to suspend the petitioner and to initiate a departmental proceeding against him. The petitioner was thus put under suspension by a departmental Memo No. 380 dated 25.2.2005 fixing his Head Quarter at the Office of the Regional Director, Animal Husbandry and Fisheries Department, Santhal Pargana Region, Dumka. A departmental proceeding was also initiated against the petitioner by Memo No. 534 dated 17.3.2005 containing 19 charges. Mr. Bakshi Narendra Kumar Sinha, Under Secretary, Animal Husbandry and Fisheries Department, Jharkhand, Ranchi was appointed as the Enquiry Officer. The Cabinet (Vigilance) Department submitted the enquiry report by its Letter No. 690 dated 18.6.2005 and in view of the said report, a supplementary charge-sheet was served containing three more charges by Letter No. 1688 dated 25.7.2005. Then the petitioner had preferred a writ petition being WP(S) No. 1310/05 against his suspension, but by

order dated 21.3.2005 his writ petition was dismissed and the State Government was directed to conclude the departmental proceeding expeditiously. The petitioner then preferred appeal against the said order being LPA No. 349/2005 which was also dismissed by order dated 14.1.2006. The petitioner had requested to supply the documents and most of the documents were made available to the petitioner. Some documents quoted by him were not found relevant. The petitioner did not pray for examining or cross-examining any witness. A photo copy of the enquiry report dated 30.3.2003 submitted by Dr. P.N. Vidyarthi, the then Joint Secretary, Animal Husbandry and Fisheries Department, Jharkhand was sent to the petitioner by departmental Letter No. 2240 dated 5.10.2005 by Registered Post (Annexure-Q). A photo copy of the complaint received from the MLAs was also supplied to the petitioner. In view of the Letter No. 290 (Personal) dated 7.12.2005 of the petitioner, Dr. Kameshwar Prasad, Regional Director, Animal Husbandry and Fisheries Department, Santhal Pargana Division, Dumka was directed to supply the photo copies of the essential documents to the petitioner by departmental letter No. 3788 dated 19.12.2005. The department, however, refused to supply the photo copies of some of the documents on the ground that the final order passed by the then Chief Minister for initiating a departmental proceeding was only relevant and the official notings on the basis of which the said decision was taken by the Chief Minister have no relevance. Considering the grave charges against the petitioner, the then Chief Minister had approved both the decisions i.e. for putting the petitioner under suspension and for initiating a departmental proceeding against him. On the basis of the enquiry report dated 15.4.2006 submitted in the departmental proceeding, the comments of the Principal Secretary to the Government on each charge, written explanations submitted by the petitioner and other relevant records/evidences available in the files in the department, the charge Nos. 1, 2, 5, 8, 10 and 11 (Partial), 12, 13, 15, 16, 17, 18 and 19 and the charge Nos. 1, 2, 3 of the supplementary charge-sheet were found proved and on the basis thereof, the State Government has taken a decision to dismiss the petitioner from the services and to recover the amounts of loss caused to the Government by virtue of the wrong conduct/decision of the petitioner which was also approved by the Chief Minister in the capacity of the present departmental Minister. However, before issuing a final order of dismissal or for recovery of any amount, copies of the relevant paragraphs of the enquiry report and second show-cause were served on the petitioner and he was directed to file his reply within 15 days from the date of receiving of the order dated 5.6.2006. The petitioner received the said letter and requested to supply the attested copies of the complete enquiry report submitted on 15.4.2006 and requested to give him further two months' time for submitting his reply. On his request, attested copy of the enquiry report was sent by Registered Post to the petitioner directing him to submit his show-cause within a period of 15 days from the date of receiving the letter. However, the Postal Departmental returned the letter showing the petitioner absent. An extra copy thereof was made available to Dr. Kameshwar Prasad, Regional Director, Animal Husbandry, Santhal Pargana Region, Dumka on

10.7.2006 to serve on the petitioner at Dumka, but it was informed that the petitioner was absent from the Head Quarter. The said letter was returned to the department. A notice was also published in the newspapers, namely, the "Prabhat Khabar" and the "Hindustan Times" on 1.8.2006. It has been further stated that on 15.4.2006 while the petitioner was posted as Project Officer, Lager Ship Breeding Farm, Chatra, he illegally appointed three persons and illegally promoted one person without following the prescribed norms and procedures. The petitioner has also committed several irregularities. The petitioner was also made an accused in a criminal case and he was not given Senior Selection Grade by the Departmental Promotion Committee by its decision dated 11.12.2003. There was, thus, no illegality or mala fide as alleged by the petitioner in taking the impugned decisions against him. The petitioner has not given particulars to explain the personal grudge or enmity of the Secretary, Mr. P.K. Jajoria against him.

5. Mr. Rajendra Prasad Singh, learned Sr. counsel appearing on behalf of the petitioner, submitted that after re-organisation of the State of Jharkhand the petitioner became the senior most officer in his cadre and was entitled to be posted as the Director, Animal Husbandry Department, but the then Secretary for the department attempted to bring some junior officer of his choice on the said post. The petitioner had challenged the said appointment in WP(S) No. 4111/01. The said appointment was stayed by order dated 5.9.2001. The petitioner had also challenged the illegal promotion of the junior persons by filing a writ petition being WP(S) No. 5664/02. This Court vide order dated 31.10.2002 had stayed the said promotion. The attempt of the then Secretary to appoint the person of his choice as the Director was thus aborted. Prejudiced by the said legal steps of the petitioner, he was transferred to Dumka on the post of Regional Director, Animal Husbandry and Fisheries Department, Santhal Pargana. The Secretary, thereafter, mounted pressure on the petitioner to withdraw this writ petition, but the petitioner did not succumb to the said pressure and did not withdraw the writ petition. The petitioner in retaliation, was put under suspension on the alleged charge of unauthorised absence on 25.2.2005 (Annexure-2). The charge-sheet was also subsequently served containing 19 articles of vague and stale charges (Annexure-9) which related to the events of past 15-20 years. In course of the departmental proceeding there more charges were added by serving a supplementary charge-sheet. Neither any witness was examined nor any document used against the petitioner in support of the said charges was exhibited. The petitioner had no opportunity to cross-examine witness or rebut the evidence used against him. The departmental enquiry was concluded and the enquiry report was submitted behind the back of the petitioner allegedly on the basis of the documents. However, even in the said ex-parte enquiry, the petitioner was not found guilty of the 18 charges. The petitioner was, however, found to have appointed four persons illegally by the enquiry officer and the charge relating to the same was said to have been proved. The Secretary did not accept the report of the enquiry officer whereby the petitioner was not found

guilty of the 18 charges. He differed with the enquiry report and took decision to dismiss the petitioner and recover certain amounts from him. The second show-cause notice was then issued to the petitioner by the impugned order dated 5.6.2006 (Annexure-1). It has been submitted that the issuance of the said second show-cause is an empty formality and the same would not meet the requirements of the principles of natural justice. The petitioner was not given any opportunity, at the enquiry stage, of hearing or adducing evidence nor any reason was assigned or notice was served on the point of difference and the decision was taken to dismiss the petitioner arbitrarily and in utter violation of the principle of natural justice during the pendency of the present writ petition. The final order of dismissal dated 23.12.2006 (Annexure-14) was brought on record by way of amendment in the writ petition and the same has been also challenged. Learned Counsel submitted that the respondents have already taken decision to dismiss the petitioner and the second show-cause is mere eyewash and is violative of the principles of natural justice. Learned Counsel referred to and relied on a decision of the Supreme Court in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, . It has been submitted that when the disciplinary authority differs from the report of the enquiry officer, the petitioner is entitled to an opportunity of hearing on the point of difference and denial of the opportunity of hearing violates the principles of natural justice. Learned Counsel further referred to a decision of *Punjab National Bank and Others Vs. Sh. Kunj Behari Misra*, as also a decision of Patna High Court in *Jitendra Kumar v. Central Bank of India* reported in 2000 (4) PLJR 216. It has been submitted that the enquiry officer did not find the petitioner guilty of other charges except one charge. The said (one) charge also could not be proved by any legal evidence. Two persons out of the four were appointed by the predecessor of the petitioner as casual workers long ago. The said casual workers were regularized on the recommendation of the Establishment Committee. The third was the widow of an employee who was appointed as peon on compassionate ground on the basis of the decision taken by the District Compassionate Appointment Committee. The fourth one though appointed as "Bakra Charwaha, his services were taken as Tractor Driver since long and as such he was converted to that post. Learned Counsel submitted that the said allegations relate back to the remote past of 15.20 years and the same were well within the knowledge of the department. The same cannot be made basis for framing the charges after long lapse of time. He relied on a decision of the Apex Court in *The State of Madhya Pradesh Vs. Bani Singh and another*, . Learned Counsel contended that the entire disciplinary proceeding is actuated with mala fide and bias and the same is nonest. The petitioner has been victimized with ulterior motive to deprive him of the opportunity of consideration for the promotion to the post of Director and the proceeding and the charges against the petitioner are vitiated in law and are liable to be quashed by this Court.

6. Mr. R.N. Sahay, learned Sr. SC-II, on the other hand, submitted that there is no infirmity, arbitrariness and illegality in the impugned proceeding/order and

that the writ application is not maintainable. It has been submitted that the Principal Secretary, Animal Husbandry and Fisheries Department, Jharkhand, Ranchi had given a notice to the second show-cause to the petitioner while differing with the findings of the enquiry officer with contemplated decision to award punishment of dismissal to the petitioner. It has been stated that the documents were annexed with the charge-sheet and the supplementary charge-sheet and a certified photo copy of the enquiry report was also enclosed with the letter dated 6.7.2006. The petitioner remained absent from the Office of the Regional Director, Animal Husbandry Department, Santhal Pargana Region, Dumka which was his Head Quarter during the period of suspension and due to that, the notice could not be served and was to be published in the newspaper, namely, "Prabhat Khabar" in its edition dated 1.8.2006. It has been stated that the second show-cause notice was given to the petitioner informing the reasons for differing with the findings of the enquiry officer and informing the proposed punishment of dismissal. In the said second show-cause the petitioner was given 15 days" time to file his reply against the said decision. The petitioner was, thus, given proper opportunity before imposing punishment and there is no violation of the principles of natural justice. Learned Counsel referred to and relied on the decision of the Supreme Court in the State of Assam and Another Vs. Bimal Kumar Pandit, and also a decision in Ram Kishan Vs. Union of India and others, and submitted that while disagreeing with the findings of the enquiry officer, it is necessary that the provisional conclusion should be specified by the disciplinary authority stating the reason for which he differs from the findings of the enquiry officer and then indicating the nature of the action proposed to be taken against the delinquent employee. Learned Counsel also relied on a decision of Patna High Court reported in 2002 (1) JCR 229 (Jhr) in support of his said contention and submitted that the petitioner's case is without any merit and is fit to be dismissed.

7. From the affidavits of the parties and other materials on record, certain admitted facts emerge as follows : (i) The petitioner was served with a charge-sheet with 19 articles of charges and most of the charges related to the period of past more than 15-20 years. During the pendency of the departmental proceeding a supplementary charge-sheet was served on the petitioner incorporating three additional articles of charges, (ii) There was no examination or cross-examination of any witness and no document was exhibited. The petitioner was also not afforded any opportunity of adducing defence witness, (iii) It was not disclosed to him as to what are the evidences to be used against the petitioner he could not get any opportunity to rebut the evidences used against him ; (iv) The enquiry officer did not find the petitioner guilty of the charges except one which was regarding the alleged four illegal appointments on the Class-IV posts in the year 1987-88 (v) Without giving any notice to the petitioner and without informing the reason of difference from the report of the enquiry officer the decision was taken to dismiss the petitioner and recover certain amounts from him and, then a notice was issued as purported second

show-cause dated 5.6.2006 (Annexure-1). (vi) During pendency of the writ petition, the petitioner has been awarded punishment of dismissal by letter dated 23.12.2006 (Annexure-14) on the same set of facts and evidences on the basis of which the second show-cause notice was issued to the petitioner, which was challenged in the instant writ petition.

8. In Punjab National Bank (supra), the Supreme Court has held that when the enquiry report is in favour of the delinquent officer and the disciplinary authority proposes to differ with such conclusions then that authority which is deciding against the delinquent officer must give him an opportunity of hearing, for otherwise he would be condemned unheard. In Jitendra Kumar. (supra) the Patna High Court relied on the said decision of the Supreme Court and held that inflicting punishment of dismissal by differing with the findings of the enquiry officer without giving opportunity to meet the ground on the point of difference is not justified and the order of dismissal is liable to be quashed. The Apex Court in the State of M.P. (supra) has held that in the case in which the charge-sheet is issued belatedly, there should be sufficient explanation for the inordinate delay and in absence of such explanation, the issuance of any charge memo after an inordinate delay would be unfair. In the said case the charge memo was issued after a delay of 12 years whereas in the instant case the memorandum of the charges has been issued after a delay of 15-20 years. "In the departmental proceeding no evidence was adduced in presence of the petitioner and he could not get any opportunity to cross-examine and/or examine his witnesses. The proceeding was concluded ex parte and the petitioner could not get any opportunity to know about the evidences used against him. Even in the said ex parte proceeding, the enquiry officer did not find the petitioner guilty of the charges except one charge of the alleged illegal appointment on Class-IV post in the year 1987-88 i.e. about more than 15 years ago, the inquiry report was also not served on the petitioner at the proper stage. The disciplinary authority then differed with the findings of the enquiry officer, but the point of difference was also not communicated to the petitioner and no opportunity was given to meet the same. The petitioner was, however, served with the impugned notice dated 5.6.2006 wherein the charge Nos. 1, 2, 5, 8, 10, 11 (part), 12, 13, 14, 16, 17, 18, 19 and charge Nos. 1, 2, 3 of the supplementary charge-sheet were held to be proved and on that basis, the decision was taken to dismiss the petitioner and to recover the amount of salary of certain period and the amounts paid to the four employees and other expenses. With the said second show cause, the finding of the enquiry officer and the finding of the disciplinary authority have been shown in a tabular form. The petitioner has complained that the said enquiry itself was wholly illegal and arbitrary and violative of the principles of natural justice as the petitioner was not afforded any opportunity of examining and cross-examining the witnesses and the copy of the enquiry report was also not served on him and on the said basis and during the pendency of this writ petition, the petitioner was awarded punishment of dismissal from service which was communicated to him by Memo No. 2850 dated 23.12.2006 (Annexure-14).

9. Mr. R.N. Sahay, learned Sr. SC-II, tried to meet the point of violation of the principle of natural justice contending that the impugned Annexure-1 is the second show-cause notice accompanied by the extract of the enquiry report and the reasons for differing from the finding(s) of the enquiry officer as also the proposed punishment of dismissal to be awarded to the petitioner. There has been, thus, due compliance of the requirements of the principle of natural justice. In my view, the said contention is without substance. The way in which the proceeding has been initiated against the petitioner in this case and the decision taken by the respondents do not conform to the requirements of the fair play, reasonableness and principles of natural justice. There is no reason on record to explain the inordinate delay in issuing the memorandum of charge against the petitioner on the alleged lapses and misconduct which relate back to past more than 15-20 years. There is no convincing reasons for not supplying the documents demanded by the petitioner which were the basis of the said charges. There is nothing on record to show that the petitioner was given opportunity to test the veracity of the evidences which have been used against him in taking the decision of the petitioner's dismissal. Admittedly, there is no examination and cross-examination of the witnesses by which the petitioner has been seriously prejudiced. The petitioner was also not given any opportunity to adduce his evidences. The enquiry officer did not find the petitioner guilty of the charges except one regarding illegal appointment made by him. The petitioner was not given copy of the enquiry report or opportunity to meet the findings of the enquiry officer against the alleged proved charge. The disciplinary authority did not also serve the point of difference with the findings of the enquiry officer and did not afford him any opportunity to meet the said points and without meeting the said requirements of the principles of natural justice and fair play, the respondents suddenly served the second show-cause notice (Annexure-1) on the petitioner proposing the petitioner's dismissal and on the said basis ultimately passed the impugned order dated 23.12.2006 awarding punishment of his dismissal from service. There has been, thus, gross violation of the principles of natural justice in conducting the proceeding and in awarding punishment of dismissal of the petitioner. The said actions of the respondents are wholly discriminatory and arbitrary and are violative of Articles 14, 21 and 311(2) of the Constitution of India. The second show-cause notice as contained in Annexure-1 as also the order of the petitioner's dismissal contained in Annexure-14 are vitiated for the said reasons and are hereby, quashed. The departmental proceeding on the stale charges is held to be bad. This writ petition is allowed. The petitioner stands reinstated without any break in service, and accordingly is entitled to get his salary and the admissible allowances of the intervening period.

There is no order as to costs.