
(2013) 09 JH CK 0097
In the Jharkhand High Court
Case No : WP (S) No. 7999 of 2012

Fuli Singh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 26-09-2013

Acts Referred:

Citation : (2013) 4 JLJR 589

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : A.K. Sahani, for the Appellant; Shivani Verma for the State, for the Respondent

Judgement

S. Chandrashekhar, J.—The petitioner has approached this Court challenging the penalty order dated 12.4.2012 and the appellate order dated 25.6.2012. The brief facts of the case are that, the petitioner was appointed as Constable in the year, 2005. On 16.1.2012, the petitioner was suspended on the allegation that during his examination in the criminal case, he turned hostile. A charge-memo was served upon the petitioner and an enquiry was initiated. During the enquiry, the department examined three witnesses and the petitioner examined himself in his defence. The enquiry report dated 28.2.2012 was submitted, finding the charge proved. A second show-cause notice was given to the petitioner on 12.3.2012 and the petitioner submitted his reply on 20.3.2012. After considering the materials on record, the disciplinary authority passed the order of dismissal from service on 12.4.2012. The appeal preferred by the petitioner has been dismissed by order dated 25.6.2012 and therefore, in these facts, the petitioner has approached this Court by filing the present writ petition.

2. A counter-affidavit has been filed in which it is stated:--

9. That it is humbly stated and submitted that the matter pertains to a notice issued by the public prosecutor to the petitioner who was earlier posted at Balumath Police Station and was part of a raiding party which seized narcotics

and arrested accused persons in connection with Balumath P.S. Case No. 11/2011 dated 23.2.2011 (NDPS Case No. 5/2011). The petitioner was presently posted in Garu Police Station and was required to come to the Court of the learned District and Sessions Judge, Latehar as a witness to record his deposition in the case.

10. That it is humbly stated and submitted that the petitioner on receipt of such notice from the office of the Public Prosecutor was relieved to go to the Court for his evidence and contacted the Public Prosecutor on 11.1.2012 in his office. The petitioner has himself stated that he reached the office of the Public Prosecutor on 11.1.2012 at 10:30 a.m. and remained in his office till about 2 p.m. after which he was taken to court to record his statements.

11. That it is humbly stated and submitted that the Public Prosecutor explained to the petitioner the details and background of the case and also informed him about the statements of the other witnesses. The petitioner was also narrated the First Information Report of Balumath P.S. Case No. 11/2011 and he read the same as well. Thereafter the petitioner was taken to court to depose in the said case.

12. That it is humbly stated and submitted that the petitioner on being questioned by the Public Prosecutor refused to co-operate and inspite of being briefed about the case well in advance, stated before the learned court that he does not remember the incident at all. It is pertinent to mention herein that the role of the petitioner is highly objectionable and he purposely stated that he does not remember the incident which ultimately led to him being declared "hostile" by the prosecution.

13. That it is humbly stated and submitted that the evidence of the petitioner was crucial for the fate of Balumath P.S. Case No. 11/2011 as the petitioner was one of the members in the raiding party and was present on the spot when the contraband substances were seized and the accused persons arrested on the spot.

....

15. That it is humbly stated and submitted that despite being present on the spot on the date of the occurrence, the complete denial of the incident by the petitioner will give undue advantage to the case of the accused in connection with Balumath P.S. Case No. 11/2011.

....

16. That it is humbly stated and submitted that the action of the petitioner being a policeman and having raided and seized narcotics as stated hereinabove, it is not possible that he will forget the incident within one year. The same was also narrated to him and documents were made available to him to go through before this deposition in court by the public prosecutor, which clearly indicate that the statement of the petitioner was given only to provide undue advantage to favour

the accused in the Balumath P.S. Case No. 11/2011.

3. Heard the learned counsel appearing for the parties and perused the documents on record.

4. The learned counsel appearing for the petitioner has submitted that the charge framed against the petitioner is that, he turned hostile during his examination in the court although, the Public Prosecutor In-charge had explained the case to him. However, neither the statement of the petitioner recorded in the criminal case nor the seizure-memo on which the appellate authority has placed reliance, were brought on record during the departmental enquiry. He has further submitted that the disciplinary authority as well as the appellate authority have recorded a finding against the petitioner only on the basis of charge and such finding is not supported by the documents produced before the enquiry officer.

5. As against the above, the learned counsel appearing for the respondents has submitted that since the petitioner has not denied his presence in the raiding team, it is not possible that he would forget the incident and he has intentionally turned hostile. She has further stated that a copy of the F.I.R. was produced during the departmental enquiry and witnesses have been examined in support of the charge framed against the petitioner and therefore, the order of penalty as well as the appellate order are not liable to be interfered with by this Court.

6. The learned counsel appearing for the petitioner would next contend that the charge as framed against the petitioner suggests that the petitioner has been proceeded against because he did not follow the suggestions of the Public Prosecutor which appears to be improper, particularly in view of the impartial role which a Public Prosecutor is supposed to play.

7. A perusal of the charge-memo dated 7.2.2012 would disclose that the petitioner was made a witness in Balumath P.S. Case No. 11/2011 and the specific charge against the petitioner is that he was declared hostile even though the Public Prosecutor In-charge had briefed him and explained him the occurrence.

8. The role of the Public Prosecutor in a criminal trial has been emphasised time and again by the Courts all over the world. In "R. v. Boucher" reported in (1954) 110 CCC 263, the Supreme Court of Canada has observed as under,

14. It cannot be over emphasised that the purpose of a criminal prosecution is not to obtain a conviction; it is to lay before a jury what the Crown considers to be credible evidence relevant to what is alleged to be a crime. Counsel has a duty to see that all available legal proof of the facts is presented; it should be done firmly and pressed to its legitimate strength, but it must also be done fairly. The role of Prosecutor excludes any notion of winning or losing; her/his function is a matter of public duty than which in civil life there can be none charged with greater responsibility. It is to be efficiently performed with an ingrained sense of dignity, the seriousness and the justness of judicial proceedings.

9. In *Giles v. Maryland* reported in 386 US 66 (1967) the US Supreme Court has held that State's obligation under the "due process clause" is not to convict, but to see that so far as possible, truth emerges.

10. The role of the Public Prosecutor has also been emphasised by the Hon''ble Supreme Court in various decisions. In *Deepak Aggarwal Vs. Keshav Kaushik and Others*, the Hon''ble Supreme Court has held as under,

70. In India, role of Public Prosecutor is no different. He has at all times to ensure that an accused is tried fairly. He should consider the views, legitimate interests and possible concern of witnesses and victims. He is supposed to refuse to use evidence reasonably believed to have been obtained through recourse to unlawful methods. His acts should always serve and protect the public interest. The State being a Prosecutor, the Public Prosecutor carries a primary position. He is not a mouthpiece of the investigating agency. In Chapter II of the BCI Rules, it is stated that an advocate appearing for the prosecution of a criminal trial shall so conduct the prosecution that it does not lead to conviction of the innocent; he should scrupulously avoid suppression of material capable of establishing the innocence of the accused.

11. In *Ritesh Tewari and Another Vs. State of U.P. and Others*, the Hon''ble Supreme Court has made the following observation,

37. ...Every trial is voyage of discovery in which truth is the quest.

12. Now, coming to the facts of the case, I find that the statement given by the petitioner in the criminal court has not been brought on record during the departmental enquiry. A copy of the seizure-memo was also not brought on record, on which the appellate authority has placed a reliance. Nonetheless, the disciplinary authority as well as the appellate authority, have not been recorded a finding of guilt against the petitioner. Thus, I find that the documents which would have revealed the truth have not been brought on record. The deposition of the petitioner given in the criminal court was not produced during the departmental enquiry. Except the first information report, no other document was produced by the department during the departmental enquiry.

13. In *Roop Singh Negi Vs. Punjab National Bank and Others*, a case in which though the documents were produced during the departmental enquiry, those were not formally proved by examining witnesses, the Hon''ble Supreme Court has held thus,

14. Indisputedly a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial functions. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was

examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia was placed by the enquiry officer on the FIR which could not have been treated as evidence.

14. I further find that the enquiry officer as well as the departmental authorities have considered the materials which were not part of the departmental enquiry, conducted against the petitioner and therefore, those materials could not have been taken into consideration. Definitely, the truth has not been brought on record and since suspicion cannot take the place of legal proof, on mere conjecture a finding of guilt could not have been recorded against the petitioner.

15. In *Surath Chandra Chakrabarty Vs. State of West Bengal*, the Hon''ble Supreme Court has held as under:--

5. ...The grounds on which it is proposed to take action have to be reduced to the form of a definite charge or charges which have to be communicated to the person charged together with a statement of the allegations on which each charge is based and any other circumstance which it is proposed to be taken into consideration in passing orders has also to be stated. This rule embodies a principle which is one of the basic contents of a reasonable or adequate opportunity for defending oneself. If a person is not told clearly and definitely what the allegations are on which the charges preferred against him are founded he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him.

(emphasis added)

16. In *"Union of India & Ors. v. Gyan Chandra Chattar*, reported in (2009)12 SCC 78, the Hon''ble Supreme Court has held as under:--

35. In view of the above, law can be summarised that an enquiry is to be conducted against any person giving strict adherence to the statutory provisions and principles of natural justice. The charges should be specific, definite and giving details of the incident which formed the basis of charges. No enquiry can be sustained on vague charges. Enquiry has to be conducted fairly, objectively and not subjectively. Finding should not be perverse or unreasonable, nor the same should be based on conjectures and surmises. There is a distinction in proof and suspicion. Every act or omission on the part of the delinquent cannot be a misconduct. The authority must record reasons for arriving at the finding of fact in the context of the statute defining the misconduct.

17. Now, adverting to the contention raised by the learned counsel for the respondents, I am of the opinion that mere fact that the petitioner was a party in the raiding, team, would not bring home the charge and the circumstance which has been taken against the petitioner, that is, his turning hostile during his examination in the court, cannot be taken against him in the absence of the vital

documentary evidence. The witnesses, who have been examined during the departmental enquiry, have also not stated anything except the fact that the petitioner turned hostile. In view of the aforesaid, I do not find any substance in the contention raised by the learned counsel for the respondents. The impugned orders dated 12.4.2012 and 25.6.2012 are quashed. At this stage, the learned counsel appearing for the respondents submits that in such event, the proper recourse would be to remand the matter before the disciplinary authority for considering the case of the petitioner afresh. I find substance in the contention raised by the learned counsel for the respondents and accordingly the matter is remanded to the disciplinary authority for a fresh consideration. The writ petition is disposed of accordingly.