

(2009) 12 CHH CK 0060
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 1860 of 2005

Harishankar Manjhi

APPELLANT

Vs

State of M.P. (Now C.G.) and Others

RESPONDENT

Date of Decision : 01-12-2009

Acts Referred:

Citation : (2009) 4 CGLJ 356

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : H.B. Agarwal and Meera Jayaswal, for the Appellant; M.P.S. Bhatia, Deputy Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Satish K. Agnihotri, J.—Being aggrieved by the order dated 28.4.1998 (Annexure A/8), passed by the Superintendent of Police, Raipur, whereby in the departmental enquiry, on finding the charges as proved, the Petitioner was retired compulsorily and the order dated 22.7.1998 (Annexure A/10), passed in appeal affirming the order dated 28.4.1998, the Petitioner has filed this petition.

2. The indisputable brief facts, in nutshell, are that the Petitioner was working as Constable in the Police Department. Vide order dated 10.2.1992 (Annexure R/I) the Petitioner was sent on deputation to the Transport Department. On completion of three years period, by order dated 25.3.1996 the services of the Petitioner was repatriated back to the Police Department, with immediate effect.

3. According to Shri H.B. Agarwal, learned senior counsel with Ms. Meera Jayaswal, learned Counsel, appearing for the Petitioner, the Petitioner was not relieved to join the new place of posting in the Police Department, thus, he could not join the place of posting and even he could not participate in the departmental enquiry conducted against him. Thus, the impugned order passed by the Superintendent of Police, affirmed by the appellate authority, are bad in law and deserve to be quashed. The enquiry was ex-parte, without affording an

opportunity of hearing to the Petitioner.

4. Per contra, Shri M.P.S. Bhatia, learned Counsel appearing for the Respondents would submit that by order dated 25.3.1996 the Petitioner was repatriated to the parent department with immediate effect. There was no question of relieving. The Petitioner thereafter remained absent unauthorized. The notice dated 23.5.1996 was sent to the Petitioner, the Petitioner although received the same on 11.10.1996, but made a remark that he was taking medical treatment, after recovery he would attend his duties. Thereafter, a charge sheet dated 15.4.1997, containing three serious charges to the effect that (i) the Petitioner having been repatriated on 25.3.1996 did not join the parent department and remained unauthorized absent; (ii) after service of notice on 11.10.1996 the Petitioner failed to comply with the order and (iii) the Petitioner did not submit any response showing his defiance.

5. Thereafter, proper departmental enquiry was held and the enquiry report was submitted on 9.3.1998, wherein all the three charges were found proved. The enquiry report was sent to the Petitioner on 10.4.1998. The Petitioner declined to accept the same therefore the notice was pasted on the official residence of the Petitioner, as is evident from the documents Annexure R/6 to R/8. Thus, all the steps were taken to intimate the Petitioner for participating in the departmental enquiry. The Petitioner deliberately kept away in the enquiry. Thus, the impugned order, on the basis of the enquiry report is just and legal and may not warrant interference by this Court.

6. Having heard learned Counsel appearing for the parties and having perused the documents appended thereto, it is evident that the Petitioner was sent on deputation to the Transport Department on 10.2.1992. Thereafter on completion of three years of deputation the Petitioner was repatriated from the Transport Department on 25.3.1996 (Annexure R/2) from where he was relieved on 30.3.1996. In the enquiry report (Annexure R/5) the facts have been stated. The order, repatriating the Petitioner to the Police Department was passed on 25.3.1996. The relieving order was sent to the check post Pate Kohra, where the Petitioner was posted. Since the Petitioner remained absent, the relieving order was sent by registered post to the official residence of the Petitioner. Thus, the contention of the Petitioner that he could not respond to the notice because he was not relieved, is without any basis, as the Petitioner was relieved on 30.3.1996, pursuant to the order dated 25.3.1996. A notice (Annexure R/3) was sent to the Petitioner through police station Saraipali for joining the parent department, which was received by the Petitioner on 11.10.1996. Thereafter, one order dated 14.1.1997 was issued to the Petitioner to join at Raipur but even after receipt of the same, the Petitioner did not join the duties. Thereafter, the charge sheet along with list of witnesses and list of documents was issued for conducting a departmental enquiry. As the Petitioner was not found in the house, the charge sheet was pasted on the residence of the Petitioner in presence of witnesses (Panchas). After conducting a detailed departmental enquiry, by the

impugned order dated 28.4.1998 (Annexure A/8) the Petitioner was ordered to be retired from service compulsorily.

7. Before passing the impugned order, the enquiry report was sent to the Petitioner, as is evident from the documents Annexure R/6 to R/8. The Petitioner declined to accept the notice and as such the same was pasted on the residence of the Petitioner. The Petitioner thereafter raised an objection before the appellate authority that since he was not served the notice and he could not appear before the enquiring authority, the impugned order imposing punishment of compulsory retirement is bad in law. The Petitioner took a stand that he could not join the place of posting on account of the fact that he was not relieved from the Transport Department to join the new place of posting in the Police Department and the Petitioner, in the meantime, sustained serious injury which prevented the Petitioner from joining the office.

8. There is no much dispute on the facts, except whether the notice was received by the Petitioner or not. On perusal of the enquiry report it is further found that a charge-sheet with list of witnesses and documents was issued to the Petitioner, receipt of the same was avoided by the Petitioner. Accordingly, the same was pasted on the official residence of the Petitioner in presence of witnesses (panchas). Thus, the contention of the Petitioner that no notice was received is also without any basis. It is stated by the Station House Officer that the Petitioner declined to accept the notice which was sent to him along with the enquiry report and as such the same was pasted at the residence of the Petitioner. It is well settled that this amounts to proper notice. The enquiry was held after examination of witnesses. The Petitioner deliberately remained absent from the enquiry and as such the Petitioner cannot be permitted to raise objection at this stage that he was not afforded an opportunity of hearing before the enquiry officer. Contention of the Petitioner that he was not relieved from the transport department to join the parent department is noticed to be rejected for the simple reason that the order dated 25.3.1996 (Annexure R/2) is very clear that the Petitioner was to be relieved on the same day. In fact the Petitioner was relieved on 30.3.1996. The Respondents authorities having examined all the aspects of the matter, particularly the service in the Police Department, wherein commitment, sincerity and discipline are the basic features, have passed the impugned orders. The Petitioner has miserably failed to establish his case.

9. Hon'ble Supreme Court in Syndicate Bank Vs. The General Secretary, Syndicate Bank Staff Association and Another, held that the requirements of principles of natural justice, which are required to be observed are (1) a workman should know the nature of the complaint or accusation; (2) an opportunity to state his case; and (3) the management should act in good faith which means that the action of the management should be fair, reasonable and just. It was observed in para 16 that "When evidence was led before the Tribunal, the Bank produced the registered covers, which had been received back with the endorsement "refused" and the addressee "not found during delivery

time". Dayananda said that he never refused to receive the notice. In these circumstances the Tribunal thought it necessary to hold that notice was not served on Dayananda as the Bank did not examine the postman. The notice was sent on the correct address of Dayananda and it was received back with the postal endorsement "refused". A clear presumption arose in favour of the Bank and against Dayananda. Yet the Tribunal held that no notice was given to Dayananda as the postman was not produced by the Bank. This appears to us to be rather an incongruous finding by the Tribunal."

10. Hon"ble Supreme Court in *Indra Bhanu Gaur Vs. Committee, Management of M.M. Degree College and Others*, , in para 7 held that "It is only a person who is ready and willing to avail of the opportunity given, who can make a grievance about denial of any opportunity and not a person like the Appellant who despite repeated opportunities given and indulgence shown exhibited defiance and total indifference to extending cooperation. Therefore, on that score the Appellant cannot have any grievance."

11. Hon"ble Supreme Court in *D. Vinod Shivappa Vs. Nanda Belliappa*, , held as under:

14. If a notice is issued and served upon the drawer of the cheque, no controversy arises. Similarly if the notice is refused by the addressee, it may be presumed to have been served. This is also not disputed. This leaves us with the third situation where the notice could not be served on the addressee for one or the other reason, such as his non availability at the time of delivery, or premises remaining locked on account of his having gone elsewhere etc. etc. If in each such case the law is understood to mean that there has been no service of notice, it would completely defeat the very purpose of the Act. It would then be very easy for an unscrupulous and dishonest drawer of a cheque to make himself scarce for something after issuing the cheque so that the requisite statutory notice can never be served upon him and consequently he can never be prosecuted.

12. The further contention of the Petitioner is that he had filed Original Application No. 1345/1996 before the State Administrative Tribunal, which was disposed of by order dated 5.4.1997, directing that if the Petitioner is a similarly placed employee as Shri Surendra Kumar Mishra, Constable No. 149 (Sidhi), Shri Krishna Sharma, Constable No. 1273 (Bhopal) and Shri Virendra Singh, Constable No. 238 (Raisen), then he be extended the same advantage, as have been extended to those constables, but the Respondents have not granted the same benefit to the Petitioner. It is not clear as to how this order extends benefit to the Petitioner, firstly, he has not produced the order passed in other cases and secondly, what was the issue in the Original Application No. 1345/1996 is also not available, despite opportunities granted to the Petitioner. Thus, the Petitioner cannot derive any benefit of the order dated 5.4.1997, passed in O.A. No. 1345/1996.

13. For the reasons afore-stated, the petition is dismissed. No order asto costs.