
(2006) 07 JH CK 0135
In the Jharkhand High Court

Havaladar Deonarayan Tamoli

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 27-07-2006

Acts Referred:

Constitution of India, 1950 — Article 21

Penal Code, 1860 (IPC) — Section 193, 194, 195, 196, 196

Citation : (2007) 2 JCR 155

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Permod Kohli, J.—Vide Memo No. 49 dated 05.02.2001, petitioner has been served with a chargesheet, whereby, he has been accused of giving the statement on 05.01.2001 in the Court of Shri P.N. Maurya, Judicial Magistrate, 1st Class against the Prosecution which is allegedly, likely to adversely affect the prosecution case. He has been further charged of giving such a statement despite a warning by the Additional Public Prosecutor. Petitioner was suspended on 19th of January, 2001 and on the basis of aforesaid allegations, he was accused of undutiful, doubtful integrity and indiscipline. As per the chargesheet against him, he was on duty in the court premises, where one accused, namely, Santu Singh S/o Mahadeo Singh was brought on 29th of November, 1999 in the court of Sadar Court, Daltonganj. It is alleged that the said accused fled away because of the negligence on the part of the petitioner. Accordingly, on the basis of the aforementioned charges a departmental proceeding was initiated against the petitioner. The Enquiry officer found that petitioner was in another Court when the accused fled away. However, the disciplinary authority imposed the punishment of stoppage of increments of salary for two years with three black marks in his service record vide Order dated 12th of April, 2002. An Appeal was preferred by the petitioner before the D.I.G. cum-Appellate authority which resulted in dismissal vide his order dated 17.10.2002 contained in Memo No. 950. Petitioner preferred another Appeal before the Director General of Police,

Jharkhand, Ranchi. This Appeal also came to be rejected by the D.G.P. vide his order dated 09th of December, 2003 being not maintainable on the ground that as per Rule 853 of Bihar Police Manual, he was competent to hear Appeals only against dismissal and compulsory retirement. Petitioner has challenged the orders passed by the Disciplinary authority and the Appellate authorities as contained in Annexures-4, 5 and 7 respectively.

2. In the counter affidavit filed, petitioner has been accused of making a statement in the Court against the interest of the Prosecution, which is likely to affect the prosecution case.

3. I have heard the learned counsel appearing for the parties and perused the orders passed by the Disciplinary Authority, the D.I.G. and the D.G.P. as contained in Annexure-4, 5 and 7 respectively. From the order of the disciplinary authority, it appears that the Enquiry officer had returned a finding that the petitioner was in another court when the accused fled away. Despite this finding, which has been taken note of by the disciplinary authority, he has held that still petitioner should not have made statement against the prosecution. The appellate authority has dismissed the appeal without recording any reasons by simply observing that the Disciplinary authority has passed the order after consideration and the order is thus valid. He simply concurred with the order. The Director General of Police has dismissed the further Appeal on the ground that he is entitled to hear Appeals only against the order of dismissal and compulsory retirement under Rule 853 of the Bihar Police Manual and the punishment imposed upon the petitioner is only withholding of increments and thus the Appeal is not maintainable. As far the order of D.G.P. is concerned, it appears to be strictly in accordance with law.

4. I have heard the learned counsel appearing for the parties. The charge against the petitioner is that he has made statement against the prosecution in the Court, which is likely to adversely affect the Prosecution case. It is not in dispute that when the departmental proceedings were initiated against the petitioner, the trial in which the petitioner had appeared as a witness was still pending. The Enquiry officer as also the Disciplinary Authority have categorically observed that petitioner was in another Court at the time of occurrence. After returning such a finding, there was no occasion for the Disciplinary Authority to have found the petitioner guilty of making a statement against the prosecution. It is also not the case of the Respondents that the petitioner made any false statement deliberately. Merely because the statement of the petitioner did not favour the Prosecution is no ground to hold him guilty of Service misconduct. Petitioner has specifically stated in the writ petition and also pleaded that he made an honest and truthful statement. He also pleaded that he was in another Court, which fact has been accepted by the Enquiry Officer as also by the Disciplinary Authority. Then there was no occasion for the Disciplinary authority to have imposed any kind of punishment upon the petitioner. As a matter of fact petitioner's statement has to be evaluated by the competent court of law in the Criminal

Proceedings in Daltonganj City P.S. Case No. 409 of 1999. When the petitioner was charge sheeted and Disciplinary Proceedings were initiated against him and concluded, there was no finding of the Competent Criminal Court about the falsity of the statement of the petitioner. Giving false evidence/statement in a Court of law is a criminal offence punishable under Sections 193 to 196 of I.P.C. Whenever such an offence is committed in relation to any proceeding in any Court, a person is liable to be tried in accordance with the provisions of Section 195 of the Code of Criminal Procedure and an Enquiry is required to be conducted in accordance with the Procedure prescribed u/s 340 of the Code of Criminal Procedure. Relevant extracts of Sections 195 and Section 340 are reproduced hereunder:

195. Prosecution for contempt of lawful, authority of public servants, for offences against public justice and for offences relating to documents given in evidence. - (1) No Court shall take cognizance.

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, Sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation, to any proceeding in any Court, or

340. Procedure in cases mentioned in Section 195. - (1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in Clause (b) of Sub-section (1) of Section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case maybe, in respect of a document produced or given in evidence in a proceeding in that Court, such Court, may, after such preliminary inquiry, if any, as it thinks necessary,-

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) sent it to a Magistrate of the first class having jurisdiction;

5. Admittedly, no enquiry contemplated u/s 340 of the Code of Criminal Procedure, 1973 was initiated or held and consequently no complaint was instituted by any competent Court as required u/s 195 of the Code of Criminal Procedure. Apart from above, Section 344 further empowers the Court trying a case to return a specific finding regarding the giving of a false evidence by any witness and after summarily trying for giving or fabricating a false statement. Sentence him to imprisonment for a term which may extend to three months. Section 344 reads as under:

344. Summary procedure for trial for giving false evidence. -(1) If, at the time of delivery of any judgment or final order disposing of any judicial proceeding, a Court of Session or Magistrate of the first class expresses an opinion to the effect that any witness appearing in such proceeding had knowingly or willfully given

false evidence or had fabricated false evidence with the intention that such evidence should be used in such proceeding, it or he may, if satisfied that it is necessary and expedient in the interest of justice that the witness should be tried summarily for giving or fabricating, as the case may be, false evidence, take cognizance of the offence and may, after giving the offender a reasonable opportunity of showing cause why he should not be punished for such offence try such offender summarily and sentence him to imprisonment for a term which may extend to three months, or to fine which may extend to five hundred rupees, or with both.

6. In the present case neither any complaint has been filed nor any finding has been returned by any competent Court of law that petitioner, has given a false statement. In absence of there being any findings regarding the conduct of the petitioner for making statement in judicial proceedings by the Court where the petitioner appeared as a witness, whole proceedings initiated against the petitioner for allegedly giving the statement against the prosecution are illegal and unwarranted in law. Statement not supporting the prosecution can be truthful and no person can be punished for making a truthful statement. The entire disciplinary proceedings against the petitioner are misconceived. Apart from above, the disciplinary authority has categorically observed that the petitioner was in another Court at the time of occurrence and it is possible that he could not have identified the accused. After making these observations, it was totally unwarranted on the part of the Disciplinary Authority to have still held the petitioner guilty of the charges of alleged misconduct of giving a statement against the interest of Prosecution. The orders impugned in this writ petition are thus liable to be quashed. There is another reason for allowing this writ petition that the appellate authority has passed the impugned order as contained in Memo No. 950 dated 17th of October, 2002 (Annexure-5) without recording any reasons and even without discussing the plea of the petitioner/appellant before him. The order of appellate authority without recording any reasons is also not sustainable in law.

7. In the case of Bindeshwari Prasad Shrivastava v. The State of Bihar and Ors. reported in 1997 (1) P.L.J.R. 198, the Patna High Court held as under:

Dismissal from service brings about serious consequences to an employee. It has been repeatedly held by the Apex Court that the procedure which brings about the dismissal must be fair, reasonable and just inasmuch as it touches the livelihood of the persons concerned which has been accepted to be apart of the right under Article 21 of the Constitution. So while dealing with Part III rights of a citizen, the appellate authority who has to decide whether his right has been infringed or not cannot, in my considered view, act in an administrative capacity. An authority deciding such question must act in a quasi judicial manner as has been held quite clearly by the Apex Court in Ram Chander (supra). In Bachhittar Singh Vs. The State of Punjab, , the Constitution Bench of the Apex Court affirmatively held "it is thus wholly erroneous to characterize the taking of action

against a person found guilty of any charge at a departmental enquiry as an administrative order". The Apex Court held that a departmental proceeding against a Government Servant is judicial in nature.

8. Relying upon a decision of the Constitution Bench of the Hon'ble Supreme Court in the case of Shivdev Singh Vs. The State of Punjab, similar view was expressed by this Court in W.P.(S) No. 2696 of 2004, wherein following was observed: -

In view of the opinion of the Supreme Court that the departmental enquiry are in the nature of judicial proceedings, it becomes obligatory upon the appellate authority to record reasons so as to enable the Court while exercising its power of judicial review to ascertain the thought process of the appellate authority. Whether an authority entrusted with judicial or even the quasi judicial functions has acted fairly, rationally, without any bias, arbitrarily and in accordance with Rules can only be determined if reasons are recorded.

9. In view of the above circumstances, this writ petition is allowed and the orders impugned as contained in Annexure 4, 5 and 7 are hereby quashed.