

(2013) 02 JH CK 0082
In the Jharkhand High Court
Case No : W.P.S. No. 3968 of 2011

Manju Kumari

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 26-02-2013

Acts Referred:

Prevention of Corruption Act, 1988 — Section 13(2), 7

Citation : (2013) 4 AJR 62 : (2013) 3 JLJR 13

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : A.K. Sahani, for the Appellant; S.K. Verma, S.C. Mines, for the Respondent

Final Decision : Allowed

Judgement

Narendra Nath Tiwari, J.—The petitioner had initially prayed for quashing the second show cause notice dated 12.07.2011 served on her in a departmental proceeding and enquiry report dated 5.7.2011. During pendency of the writ petition, the departmental enquiry was concluded holding the petitioner guilty and awarding punishment of dismissal by Memo No. 2752 dated 15.9.2011. The petitioner has challenged the said order by amending the writ petition. The petitioner at the relevant time was holding the post of Block Supply Officer, Kanke Block, Ranchi. A complaint was filed against her before the Superintendent of Police, Vigilance, by one Krishna Kumar Prasad, said to be a ration shop holder. It was alleged that the petitioner was demanding Rs. 30,000/- as illegal gratification in the form of commission per bag of the ration articles and per drum of kerosene oil. On the said allegation, a trap team was organized. The petitioner's house was raided and valuable articles and currency notes were recovered and seized in presence of two independent witnesses-Shri Deo Krishna Prasad and Bablu. On the basis of a written report. Vigilance P.S. Case No. 41/2010 was registered on 27.09.2010 under sections 7 and 13(2) of the Prevention of Corruption Act besides others. The petitioner was arrested and

remanded to jail custody on 29.09.2010. The respondents also initiated a departmental proceeding against the petitioner by serving memorandum of charges by Memo No. 05101 dated 11.12.2010. The petitioner filed written reply dated 24.06.2011 to the charge-sheet through her counsel, denying all the charges. The petitioner later on challenged the said departmental proceeding in W.P.S. No. 15 of 2011. However, the proceeding was not stayed and the order was not interfered with. In the meanwhile, second show cause notice was issued to the petitioner. The enquiry further proceeded. The Enquiry Officer submitted the report dated 5.7.2011 finding the petitioner guilty of the charges. The petitioner thereafter filed another writ petition being W.P.S. No. 3467 of 2011 seeking a direction on the respondents to supply the relevant document for filing the reply. The said writ petition was disposed of directing the respondents to supply the passbook. The petitioner thereafter filed the instant writ petition challenging the second show-cause notice for proposed major punishment as well as the enquiry report. During pendency of the writ petition, the order of punishment was passed by the Principal Secretary, Department of Food, Supply & Consumer Affairs, Government of Jharkhand (Respondent no. 2) dismissing the petitioner from service. The said order was communicated by Memo No. 2752 dated 15.09.2011. The petitioner brought the said order on record by amendment of the writ petition and prayed for quashing of the same.

2. The order of dismissal has been said to be vitiated on account of total non-application of mind, arbitrariness and non-observance of the principle of natural justice. The order is not supported by any legal material or evidence. It is mere paraphrasing of the allegation made in the criminal case. The petitioner had denied all the charges in his reply. No evidence was adduced to substantiate the charges. But the petitioner has been held guilty of all the charges.

3. Mr. A.K. Sahani, learned counsel for the petitioner, submitted that when the charges were specifically denied by the petitioner, the same were required to be proved by cogent evidence. But no evidence was brought on record in support of the charges. The departmental enquiry proceeded and concluded in a casual manner, violating the rule of natural justice. There is no legal basis for finding and holding the petitioner guilty of the charges. The order of punishment cannot be passed on mere allegation unless the allegation/charges are established by cogent evidence and material on record. Learned counsel emphatically submitted that not a single witness has been examined-neither any document has been brought on record by way of evidence. The findings are only based on the basis of the report filed by the Vigilance by casually referring the same, without examining the allegation maker and without giving opportunity to the petitioner to cross-examine such person and test his veracity. The petitioner had no opportunity to know as to what material/evidence were used against her. The entire process is wholly illegal, arbitrary and violative of principles of natural justice.

4. Learned counsel referred to and relied upon two decisions of the Supreme

Court " State of U.P. and Others Vs. Saroj Kumar Sinha, and " Roop Singh Negi Vs. Punjab National Bank and Others, .

5. Learned counsel submitted that no finding is based on any evidence and material and the conclusion has been recorded with the closed mind, only on the basis of the allegation in the Vigilance report and the FIR and the same is unsustainable in law.

6. Mr. S.K. Verma, learned senior S.C. 1., appearing for the respondents, opposed the writ petition by filing a counter affidavit.

7. It has been stated, inter alia, that the petitioner was apprehended red handed when she was taking bribe of Rs. 5,000/- from the complainant. In order to destroy the evidence, she had closed the door and burnt currency notes of Rs. 30,000/- by sprinkling kerosene oil. The raiding party vigilance bureau forcefully entered into the house and seized the part" burnt currency notes, cash to the tune of Rs. 3,86,250.00, eleven pass-books, ornaments, silver coins, Kisan Vikas Patra, L.I.C. Policy, 15 cheque books, 2 ATM Cards, papers of three storied house in new Sukhdeonagar, Hehal, Ranchi and a country made pistol. The conduct of the petitioner was unbecoming of a government servant. A departmental proceeding was initiated against the petitioner simultaneously with the criminal case instituted against her by the Vigilance. The petitioner was given full opportunity of defence. But she did not bring any evidence to support her defence. There was no violation of Principles of natural justice, as alleged. The order is based on consideration on the facts and material on record as well as the evidence collected by the Vigilance. There is no illegality in the order.

8. Learned counsel submitted that though the order is not properly worded, the same is based on strong materials. The entire proceeding cannot be said to be illegal only because of some infirmity in the impugned order of punishment.

9. I have heard learned counsel for the parties and considered the facts and material on record. On perusal of the order of punishment, I find that the same incorporates the charges, the defence and the conclusion. The finding of the disciplinary authority is only in one paragraph. He has observed that the petitioner has denied the allegation without, any evidence, that is not acceptable and all the charges are, therefore, proved against her.

10. On that finding, punishment of dismissal has been awarded to the petitioner.

11. Admittedly, the petitioner is a public servant and she is governed by the provisions of the Civil Services (Classification, Control and Appeal) Rules, 1930 (hereinafter referred to as the said Act). The proceeding was initiated against her under the provisions of Rule 55 of the said Rule.

12. Rule 55 prescribes clear procedure for awarding major punishment. It runs as follows:

Without prejudice to the provisions of the Public Servants Inquiries Act, 1850, no

order of dismissal, removal, compulsory retirement [or reduction] shall be passed on a member of a Service (other than an order based on facts which have led to his conviction in a criminal court or by a Court-Martial) unless he has been informed in writing of the grounds on which it is proposed to take action and has been afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges which shall be communicated to the person charged together with a statement of the allegations on which each charge is based and on any other circumstances, which it is proposed to take into consideration in passing orders on the case. He shall be required, within a reasonable time, to put in a written statement of his defence and to state whether he desirous to be heard in person. If he so desires or if the authority concerned so direct an oral inquiry shall be held. At that inquiry oral evidence shall be heard as to such of the allegations as are not admitted, and the person charged shall be entitled to cross-examine the witnesses, to give evidence in person and to have such witnesses called, as he may wish, provided that the officer, conducting the inquiry may, for special and sufficient reasons to be recorded in writing, refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and a statement of the findings and the grounds thereof.

This rule shall not apply where the person concerned has absconded or where at is for other reasons impracticable to communicate with him. All or any of the provisions of the rule may, in exceptional cases, for special and sufficient reasons to be recorded in writing be waived, where there is a difficulty in observing exactly the requirement of the rule and those requirements can be waived without Injustice to the person charged.

The full procedure prescribed in this rule not be followed in the case of a probationer discharged in the circumstances described in Explanation II to rule. 49. In such cases, it will be sufficient if the probationer is given an opportunity to show cause in writing against the discharge after being apprised of the grounds on which it is proposed to discharge him and his reply duly considered before orders are passed.

13. On a plain reading of the rule 55, it is clear that the order or punishment of dismissal, removal, compulsory retirement: etc. cannot be passed unless the delinquent is served with the charges and afforded reasonable opportunity of hearing, put in writing of his defence and to state whether he is desirous to be heard in person. Oral enquiry has to be held and evidences to be adduced to prove the charges and the person charged has to be given opportunity to cross-examine the witnesses and give evidence in person and to have such witnesses called as he may wish. It further provides that the proceeding shall contain a statement of the defence and the grounds thereof.

14. A comprehensive procedure, therefore, has been prescribed for holding an enquiry before awarding punishment of dismissal to a public servant.

15. In the instant case, the order is silent about any evidence oral or documentary, regarding giving opportunity to the petitioner for cross-examining the witnesses or affording opportunity to her to adduce evidence. The conclusion holding her guilty is not based on any evidence. All the charges have been said to be proved only on the basis of the alleged FIR and Vigilance report.

16. In the case of State of Uttar Pradesh Vs. Saroj Kumar Sinha (supra) it has been clearly held that a departmental enquiry against the government servant cannot be treated as a casual exercise and cannot be conducted with a closed mind. The Inquiry Officer has to be wholly unbiased and the rule of natural justice has to be observed. The government servant is to be treated fairly in the proceeding. Even in the case of ex parte enquiry, it is incumbent on Enquiry Officer to record statement of witnesses mentioned in the chargesheet and assess whether unrebutted evidence on record is sufficient to hold that charges are proved.

17. In the instant case, neither any oral evidence has been adduced in support of the charges, nor any document has been proved. In absence of any evidence, there was no basis to conclude that the charges are proved against the petitioner.

18. In Roop Singh Negi's case (supra), a departmental proceeding was held to be proved against the delinquent on the basis of an FIR. Deprecating the finding, the Hon'ble Supreme Court held that even the FIR and the other documents were not proved in departmental proceeding by examining and cross-examining the witnesses. The order of dismissal based on FIR was held to be bad and the appeal of delinquent-Roop Singh was allowed.

19. Considering the cases in hand in the light of the provision of Rule 55 of the said Rule, as well as the said decisions of the Supreme Court, I find that the impugned order neither fulfills the essential requirement of Rule 55, nor of the principles of natural justice. The impugned order of punishment against the petitioner is not supported by any legally acceptable oral or documentary evidence. No speaking reason has been recorded for accepting the charges as true and rejecting the petitioner's explanation out rightly. The disciplinary authority has indicated the material on the basis of which the charges were framed. Those materials or the evidences were required to be proved.

20. It is true that the provisions of Evidence Act are not strictly applicable in a departmental proceeding, the authority has to follow the principle of fair play and rule of natural justice.

21. No finding based on conjectures and surmises can be the basis for awarding punishment and that too major punishment of dismissal.

In view of the above discussion, the impugned order of the petitioner's punishment contained in Memo No. 2752 dated 15.9.2011 cannot sustain and is hereby quashed.

22. The writ petition is allowed. However, the respondents are at liberty to

proceed against the petitioner, if so warranted following due procedure laid down under Rule 55 and the principle of natural justice.