
(2014) 11 JH CK 0097
In the Jharkhand High Court
Case No : W.P.(S) No. 4597 of 2008

Manoj Rai

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 03-11-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 304, 337, 338

Citation : (2015) 1 JLJR 522

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : J. Nath, Advocates for the Appellant

Judgement

Sujit Narayan Prasad, J.—The petitioner has challenged the order dated 31.08.2007 and 31.03.2008 passed by the disciplinary authority and appellate authority whereby and whereunder the petitioner has been dismissed from service.

2. That brief facts of the case as per the submission made on behalf of petitioner is that petitioner was appointed as a constable in Jharkhand Armed Police Force No. 1 on 08.01.2002. On 26.08.2005 petitioner was assigned duty with police Jeep No. BR- 1J- 5319 and while going towards Lalpur Chowk, one pedestrian Kamal Kishore came in front of his jeep and was dashed slightly with the jeep. This pedestrian in turn dashed another pedestrian Vishwanath Verma. Vishwanath Verma became unconscious and ultimately died in the course of treatment for that a criminal case was instituted being Lalpur P.S. Case No. 102 of 2005 for the offence under Sections 279, 337 and 338 of the IRC and later on Section 304 I.P.C. Was added which is pending in the competent Court of jurisdiction.

3. On same ground departmental proceeding No. 03 of 2006 was initiated against the petitioner. Charges were framed for rash and negligent driving resulting into death of a person thereafter in a regular enquiry charge has been

proved.

4. On the basis of which the disciplinary authority has passed an order on 31.8.2007 dismissing the petitioner from service with immediate effect. The said order had been challenged before the appellate authority which was dismissed vide order contained in memo No. 715 dated 31.03.2008 and the order of the disciplinary authority has affirmed the same.

5. Learned counsel for the petitioner submitted that the enquiry officer has not come with the conclusive finding that for whose fault, the said pedestrian sustained injury and died. The petitioner was not provided a copy of the enquiry report which greatly prejudiced the petitioner. Learned counsel for the petitioner further submitted that the order of dismissal from service is too harsh.

6. On the other hand, learned counsel for the state submitted that the impugned order is without any infirmity. The same has been passed taking into consideration the gravity of charge which has been proved. The impugned order has been passed after giving opportunity of being heard.

7. Heard the parties and perused the record.

8. From perusal of the records, it appears that authorities have come to the conclusion that the petitioner was driving rashly and negligently due to that the incident took place resulting into death of one said pedestrian but the specific finding with respect to the mistake committed by the petitioner or the said pedestrian is absent in the order passed by the disciplinary authority. Further, the petitioner's contention that due to non-supply of enquiry report he has greatly been prejudiced, I find support in this contention of the petitioner because if copy of enquiry report would have been supplied to him then he would have known the finding of proof of his guilt, and could be able to respond accordingly.

9. Here reliance may be placed upon the judgment of Hon'ble Apex Court in the case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., wherein at para 26 Hon'ble Apex Court held as follows:--

26.... "The reason why the right to receive the report of the enquiry officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural Justice is that the findings recorded by the enquiry officer form, an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is negation of the tenets of justice

and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the enquiry officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the enquiry officer along with the evidence on record. In the circumstances, the findings of the enquiry officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the enquiry officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the enquiry officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusions. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the enquiry officer's findings. The disciplinary authority is then required to consider the evidence, the report of the enquiry officer and the representation of the employee against it.

10. Further any material, which is taken into the decision making process against the employee cannot be denied to him.

11. Reliance may be placed on the judgment delivered by Hon"ble Apex Court in the case of Oriental Bank of Commerce and Others Vs. S.S. Sheokand and Another, , wherein at para 20 it has been held as follows;

".....Any material, which goes into the decision-making process against an employee cannot be denied to him. In view of the judgment in Disciplinary authority-cum-Regl. Manager, the decision of the Bank could have been approved on merits, however, the two judgments in Nagaraj Shivarao Karjagi and SBI lay down the requisite procedure in such matters, and in the facts of this case, it will not be appropriate to depart from the dicta therein. On this yardstick alone, the part of the judgment of the High Court interfering with the punishment will have to be sustained."

12. Applying the aforesaid principle of Hon"ble Supreme Court, as indicated herein above, since the copy of enquiry report has not been supplied to the petitioner, which goes into the decision making process while imposing punishment of dismissal from service, the order of dismissal can not be said to be justified.

13. I find in entirety of facts that the punishment order has been passed, on the basis of enquiry report, but in entire enquiry report no finding has come that it is

the petitioner who has dashed and in absence of any specific finding in this regard and also since copy of enquiry report has also not been supplied causing prejudiced to the petitioner.

14. I find that the order of punishment needs reconsideration by the respondents.

15. Hence the impugned order is quashed. The matter is remanded to the respondents to pass a fresh order within reasonable period preferably within eight weeks from the date of production of copy of this order.