
(2015) 11 JH CK 0042
In the Jharkhand High Court
Case No : W.P.(S) No. 2749 of 2014

Naresh Kumar Yadav

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 04-11-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 11 JH CK 0042

Hon'ble Judges : Prashant Kumar, J.

Bench : Single Bench

Advocate : Rupesh Singh, Advocate, for the Appellant; Ram Nivas Roy, G.P. III, for the Respondent

Final Decision : Allowed

Judgement

Prashant Kumar, J.—This application has been filed for quashing the order of punishment dated 19.8.2013, issued by respondent No. 2, whereby and whereunder the petitioner has been held guilty of the charges levelled against him and a punishment of one "Black Spot" has been imposed upon him. It is also held that the period of suspension from 26.2.2013 to 03.3.2013 be treated as extra ordinary leave, but during the said period, petitioner is not entitled for payment save and except subsistence allowance already paid to him. Petitioner further prayed for quashing the appellate order as contained in memo No. 339, dated 01.2.2014, communicated to the petitioner vide memo No. 688, dated 26.2.2014, whereby the departmental appeal filed by the petitioner has been dismissed.

2. It appears that at the relevant time, petitioner was working as officer-in-charge of Ramkanda police station, Garhwa. On 25.2.2013, the Superintendent of Police, Garhwa conducted an inspection in the aforesaid police station and found that the petitioner was absent from the headquarters without any permission. He further found that the petitioner went to Ranchi on S.R.E. vehicle, which was kept in the police station specially for patrolling in the extremist area.

The Superintendent of Police, Garhwa further found that the petitioner not upto dated the records of the concerned police station in spite of directions given to him on several occasions.

3. Accordingly, the Superintendent of Police, Garhwa (respondent No. 2) issued charge sheet against the petitioner vide Memo No. 1082, dated 05.3.2013 (Annexure-5) and appointed Deputy Superintendent of Police, Garhwa as enquiry officer. It further appears that the petitioner has been suspended during the period of enquiry vide office order No. 236/2013, dated 26.02.2013. It also reveals from the record that petitioner filed a written statement before the enquiry officer. The enquiry officer held an enquiry and during the said enquiry, the department produced oral and documentary evidences. It also appears from the enquiry report that during the enquiry, petitioner was given opportunity to cross-examine the witnesses. It also appears that in course of the enquiry, petitioner adduced evidence in his defence. It then appears that the enquiry officer, after conclusion of the enquiry, submitted a detailed enquiry report, wherein he concluded that the petitioner was partially guilty of the charges levelled against him. It appears that after receiving the aforesaid enquiry report, the Superintendent of Police, Garhwa (respondent No. 2) by the impugned order dated 19.08.2013, inflicted the aforesaid punishment against the petitioner. Being aggrieved with the impugned order dated 19.08.2013, the petitioner filed an appeal before the Deputy Inspector General of Police, Palamau, but the said appeal was also dismissed on 01.2.2014. The aforesaid orders are impugned in this writ application.

4. It is submitted by Sri Rupesh Singh, learned counsel appearing for the petitioner, that on the date of inspection, the petitioner had gone to Ranchi for deposing in a court on the basis of information received from the office of Superintendent of Police, Garhwa. Therefore, Superintendent of Police, Garhwa was knowing that the petitioner is not present in the police station on 25.2.2013. Under the said circumstance, the first charge against the petitioner that he left the headquarters without taking permission from the Superintendent of Police, Garhwa cannot be sustained.

He further submits that on 25.2.2013, the petitioner had gone to Ranchi on a private vehicle, but he has been wrongly charged that he used S.R.E. vehicle for the said purpose. He further submits that on 24.2.2013, the S.R.E. vehicle of the police station had been sent to Daltonganj for minor repair work, therefore, on 25.2.2013, the vehicle in question was not available in the campus of police station. Under the said circumstance, the question of going to Ranchi on S..R.E. vehicle does not arise. Sri Singh, further submits that petitioner has already updated the records of the police station as per the direction of the Superintendent of Police, Garhwa. Under the said circumstance, the third charge levelled against him is also not made out. Thus, the petitioner is entitled to be exonerated from the charges levelled against him.

5. Sri Rupesh Singh, learned counsel for the petitioner further submits that after

the enquiry, the enquiry report has not been served upon the petitioner, therefore, petitioner was not given adequate opportunity to file second show cause before the disciplinary authority and in that view of the matter also, the findings of the disciplinary authority cannot be sustained being violative of principle of natural justice.

For this purpose, learned counsel for the petitioner relied upon a judgment of Hon''ble Supreme Court, in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., .

6. On the other hand, Sri Ram Nivas Roy, G.P.III submits that charges against the petitioner is of insubordination, because he left the headquarters without taking permission of the competent authority. Sri Roy further submits that petitioner took away the Government vehicle, without any permission from the competent authority. Sri Roy then submits that on several occasions, the Superintendent of Police, Garhwa gave directions to the petitioner for updating the records of the police station, but in spite of that petitioner had not taken any interest in updating the records. Sri Roy also submits that during the enquiry, petitioner was given adequate opportunity to defend himself. He cross-examined all the witnesses as well as to adduce evidence in his defence. Sri Roy, then submits that from bare perusal of the enquiry report, it is clear that the contentions raised by the petitioner had been considered by the enquiry officer and after considering the same, the enquiry officer has concluded that the petitioner was partially guilty of the charges levelled against him. Thus, this court, while making the judicial review of the enquiry report, cannot alter the same because this court is not sitting in the appeal. In this connection, Sri Roy placed his reliance on J.M.D. Alloys Ltd. Vs. Bihar State Electricity Board and Others, .

So far the second contention raised by the petitioner, he fairly submits that the second show cause notice has not been given to the petitioner, which is necessary as per the judgment of Hon''ble Supreme Court in Managing Director ECIL, Hyderabad case (supra). Accordingly, Sri Roy submits that the case may be remanded to the Superintendent of Police, Garhwa with a direction to pass fresh order after giving second show cause to the petitioner.

7. Having heard the submissions, I have gone through the record of the case. From perusal of the enquiry report(Annexure-8), I find that the enquiry officer has given adequate opportunity to the petitioner to defend himself. The petitioner was given opportunity to cross-examine the department witnesses. He was also given opportunity to adduce evidence in his defence. From perusal of enquiry report, I further find that the enquiry officer dealt with all the contentions raised by the petitioner as well as by the Department and come to the conclusion that petitioner is partially guilty of the charges levelled against him.

8. The Hon''ble Supreme Court in State of Uttar Pradesh and Others Vs. Maharaja

Dharmander Prasad Singh and Others, , at paragraph Nos. 60, 61 and 62 has held as under:

"60. However, judicial review under Article 226 cannot be converted into an appeal. Judicial review is directed, not against the decision, but is confined to the examination of the decision-making process. In *Chief Constable of the North Wales Police v. Evans* refers to the merits-legality distinction in judicial review. Lord Hailsham said:

The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised by law to decide for itself a conclusion which is correct in the eyes of the court.

61. Lord Brightman observed:

...Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made....

And held that it would be an error to think:

...that the court sits in judgment not only on the correctness of the decision-making process but also on the correctness of the decision itself.

62. When the issue raised in judicial review is whether a decision is vitiated by taking into account irrelevant, or neglecting to take into account of relevant, factors or is so manifestly unreasonable that no reasonable authority, entrusted with the power in question could reasonably have made such a decision, the judicial review of the decision-making process includes examination, as a matter of law, of the relevance of the factors. In the present case, it is, however, not necessary to go into the merits and relevance of the grounds having regard to the view we propose to take on the point on natural justice."

9. In *JMD Alloys Ltd. case* (Supra) the Hon"ble Supreme Court, after considering the aforesaid decision, at paragraph No. 16 has held as under:

"16. There is no dispute that the Chief Engineer issued notice to the petitioner mentioning all the relevant facts to which the petitioner gave a reply. The petitioner was also afforded an opportunity of hearing and it appeared through a counsel, who made submissions on two days and thereafter the Chief Engineer passed the order. As discussed earlier, the Chief Engineer has taken into consideration relevant factors and the findings recorded by him are clearly borne out from the material available before him. It cannot be said that the order passed by him is unreasonable or perverse in any manner. The High Court therefore rightly took the view that the order passed by the Chief Engineer that the compensatory bill is to be prepared in accordance with clause 16.9 of the tariff could not be interfered with in a writ petition under Article 226 of the Constitution."

10. Thus, in view of the aforesaid decisions of the Hon"ble Supreme Court, while

making judicial review of an order passed by a quasi judicial authority, this court is required to see as to whether the order is reasonable and fair. If the court comes to the conclusion that the order is reasonable and fair, then it is not open for this court to interfere with the findings of the quasi judicial authority. Under the aforesaid facts and circumstance of the case, the various contentions raised by the learned counsel for the petitioner in this connection, cannot be looked into by this court, because this court is not sitting in the appeal.

11. Sri Rupesh Singh, learned counsel for the petitioner made one of the contentions that the Superintendent of Police, Garhwa (respondent No. 2) has passed the order maliciously, but there is nothing on the record to show that the Superintendent of Police, Garhwa (respondent No. 2) has any personal grudge against the petitioner. Under the said circumstance, the question of malicious order does not arise.

12. Now, coming to the next contention raised by learned counsel for the petitioner in view of the judgment of the Hon'ble Supreme Court reported in Managing Director ECIL, Hyderabad case (supra), the petitioner is entitled to get an opportunity to file second show cause after receiving the enquiry report. In the instant case, at paragraph No. 16 of the writ application, the petitioner has specifically stated that he has not been served with the second show cause notice. The aforesaid statement of the petitioner has not been denied by the respondents in their counter affidavit. Under the aforesaid circumstance, I find that the impugned orders are bad and against the principle of natural justice, because before passing of the order of imposing punishment, the disciplinary authority not served second show cause notice on the petitioner, along with the enquiry report. Thus, the impugned orders cannot be sustained on that ground.

13. Accordingly, I allow this application and quash the impugned orders. I direct the Superintendent of Police, Garhwa (respondent No. 2) to serve a copy of the enquiry report upon the petitioner within four weeks from the date of receipt of this order and give an opportunity to the petitioner to file his response on the basis of findings of the enquiry officer and then pass the order in accordance with law.