
(2009) 12 JH CK 0063
In the Jharkhand High Court

Nawal Kishore

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 02-12-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 325, 34, 341, 379

Citation : (2010) 6 SLR 167

Hon'ble Judges : D.G.R. Patnaik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.G.R. Patnaik, J.—Heard the learned Counsel for the parties.

2. Challenge, in this writ application, is to the order dated 15.08.2001 (Annexure-1), passed by the Superintendent of Police, Hazaribagh (Respondent No. 4), whereby the petitioner was placed under suspension in contemplation of a departmental proceeding. Challenge also is to the order dated-04.05.2003 (Annexure-13), passed by the D.I.G., North Chhotanagpur (Respondent No. 3), which is the order of dismissal of the petitioner from service. The petitioner has also challenged the order dated 12.06.2004 (Annexure-16), passed by the Appellate Authority, dismissing the appeal, filed by the petitioner against the impugned order of his dismissal. While challenging the aforesaid impugned orders, the petitioner has prayed for quashing the same and for issuing a direction to the Respondents to reinstate him in service with all consequential benefits.

3. Facts of the petitioner's case are as follows:

The petitioner, Nawal Kishore, was posted as In-charge of Ramgarh Police Town Hall Post. On 11.08.2001, a written report was submitted at the Ramgarh Police Project Town Hall by one Santosh Vishwakarma, containing certain allegations against one Priya Ranjan Pandey.

Being in-charge of the Police Project Town Hall Post (T.O.P.) the petitioner forwarded the written report to the Ramgarh Police Station for registration of a case and assumed charge of investigation of the case.

The case was registered at the Police Station vide Ramgarh P.S. Case No. 227 of 2001, dated-12.08.2001 for the offences u/s 341, 323 and 379/34 of the I.P.C. The Officer in-charge of Ramgarh Police Station, endorsed the investigation of the case to the petitioner.

In course of investigation, the petitioner proceeded to the alleged place of occurrence, arrested the accused, recorded the statements of witnesses and after completing the Investigation, submitted chargesheet, which was received in the Court of the Chief Judicial Magistrate, Hazaribagh on 17.08.2001. On the same day, on the basis of the chargesheet, the C.J.M. took cognizance of the offences against the accused Priya Ranjan Pandey. and transferred the case to the trial court for trial.

The trial court recorded the statements of the informant, Santosh Vishwakarma and another witness, namely, Sudhir Kumar.

Subsequently, on 21.09.2001, the Superintendent of Police, Hazaribagh directed for further investigation and a further Police Report was submitted in the said case on 31.01.2002, declaring that the case was false.

A prayer was made by the accused of the case for acceptance of the final report but the trial court refused to accept the same by taking an objection that the final report was submitted by conducting a further investigation into the case without obtaining prior permission of the Court.

Aggrieved by the order of the C.J.M., the accused Priya Ranjan Pandey filed a criminal Revision before the Sessions Judge, Hazaribagh against the order of the C.J.M., vide Cr. Revision No. 69 of 2002.

The Criminal Revision was dismissed by the Sessions Judge by his order dated-28.09.2002.

While this was so, the accused Priya Ranjan Pandey filed a case against the petitioner, which was registered at the Sadar Police Station as Sadar P.S. Case No. 402 of 2002 for the offences under Sections 323, 325, 341 and 379/34 of the I.P.C.

Upon investigation, the case was found to be false and a Police Report was submitted accordingly.

The accused Priya Ranjan Pandey, thereafter filed several cases against the petitioner. All such cases were investigated under the supervision of the Superintendent of Police, Hazaribagh, who found that the cases filed by Priya Ranjan Pandey was only to harass the petitioner and to implicate him falsely and accordingly, all such cases filed by Priya Ranjan Pandey were dropped.

4. In the meanwhile, soon after the petitioner had submitted the chargesheet in the case Registered on the basis of the F.I.R. lodged by Santosh Vishwakarma, the then Superintendent of Police, Hazaribagh by his impugned order dated-15.08.2001, recorded and served upon the petitioner a composite charge and in contemplation of a departmental proceeding on the basis of the charge, had placed the petitioner under suspension.

The substance of charge was that despite the fact that there was a longstanding feud between the petitioner's son and a neighbouring resident, namely, Bajrang Kumar son of late Banwari Pandey, both residents of Suresh Colony, Hazaribagh, the petitioner proceeded to Suresh Colony accompanied by the Police Force of the Police Town Hall Post and arrested the accused Priya Ranjan Pandey in connection with Ramgarh P.S. Case No. 227 of 2001. Before proceeding to arrest the accused, the petitioner did not give any prior information to the officer in-charge of the concerned Police Station nor had taken assistance of any Police Force of the concerned Police Station and neither had he informed his superior Police Officers. On the inference that the aforesaid acts and conduct of the petitioner was impelled by revengeful and malicious motives by way of personal vendetta, and considering such acts to be acts of misconduct under the Police Service Code, a Departmental proceeding was initiated against the petitioner. Though he was called upon to appear and face the proceedings, the petitioner did not appear. Consequently, the Enquiry Officer proceeded with the enquiry ex parte and at the conclusion, had recorded his finding that the charge was proved against the petitioner.

However, the Disciplinary Authority, namely, the D.I.G., Police, by his order dated-28.01.2002, set aside the enquiry and directed for conducting a de novo enquiry. Subsequently, a show-cause notice was served upon the petitioner, referred to as the second show cause notice, asking him to explain as to why he should not be punished with dismissal from service.

The petitioner submitted his show-cause replies.

The Disciplinary Authority, namely, the D.I.G. of Police, by his impugned order dated-04.05.2003, dismissed the petitioner from service.

The petitioner thereafter filed an appeal before the Appellate Authority against the order of his dismissal but his appeal was dismissed by the impugned order of the Appellate Authority.

5. Assailing the impugned orders, learned Counsel for the petitioner has advanced the following grounds:

(i) The charge is vague and no proceeding could have been initiated on such vague charges.

Learned Counsel for the petitioner explains that the charge of misconduct has been framed on the basis of the inferences, drawn upon certain acts on the part of the petitioner, that he had acted with revengeful motives and had exceeded

his authority. Learned Counsel submits that the specific acts from which the inferences were drawn is that the petitioner had assumed the investigation of the case despite the fact that his son was in inimical terms with the accused and had proceeded to arrest the accused within an area falling beyond the jurisdiction of his Police Station and in doing so, he did not bother to inform the Officer in-charge of the concerned Police Station within whose jurisdiction, the house of the accused was located and further, the petitioner had submitted chargesheet within 24 hours. Learned Counsel explains that the investigation of the case was entrusted to him by the Officer in-charge of the concerned Police Station and there is no illegality or irregularity. The mere fact that the petitioner took the assistance of the Police Constables of his Town hall Post and had not informed the Officer of the concerned Police Station, where the house of the accused was located and had submitted the chargesheet within 24 hours, does not constitute any illegality or irregularity or acts in excess of the petitioner's authority. Learned Counsel adds that the term 'misconduct' as has been explained by the Supreme Court in the case of Union of India (UOI) and Others Vs. J. Ahmed, , does not mean, misconduct arising from ill motive, acts of negligence, errors of judgment, or innocent mistake, do not constitute misconduct under the Service Code. The inference that the petitioner had acted out of revengeful motives is a misconceived inference, based upon conjectures and surmises. The charge, as such, is totally vague and no disciplinary proceeding could have been initiated against the petitioner.

(ii) The order of dismissal is biased, prejudiced and mala fide and the petitioner was not afforded opportunity to cross-examine the witnesses and to defend his case and this being violative of the principles of natural justice, the entire departmental proceeding stood vitiated.

Learned Counsel explains that the petitioner being of the rank of Sub-Inspector of Police, his appointing authority is the D.I.G., Police. The order of charge and suspension (Annexure-1), was passed by the Superintendent of Police, who had also recommended for the petitioner's dismissal from service on the ground that the investigation conducted by a competent officer at the instance of the Superintendent of Police, in the case filed by the informant Santosh Vishwakarma, had revealed that the case was false and yet, the petitioner had proceeded to submit chargesheet recommending trial of the accused in the said case. The disciplinary authority instead of applying his independent and unbiased mind, had merely accepted the recommendations of the Superintendent of Police in passing the impugned order of dismissal. Learned Counsel explains that on considering the Enquiry Report, submitted by the Enquiry Officer, the petitioner's disciplinary authority, namely, H.K. Mishra, D.I.G., Police, had earlier, by his order dated-22.08.2002, set aside the Enquiry Report and had directed for conducting a de novo enquiry. These facts have been categorically mentioned by the petitioner in Para 24 of the writ application but the same have remained uncontroverted by the Respondents in their counter affidavit and, as such, the same is deemed to be admitted. Learned Counsel explains that the first enquiry

was declared to be materially defective, as per the order of the D.G., Police, who had directed for conducting a fresh de novo enquiry. By the failure of the Enquiry Officer to conduct a fresh enquiry, the petitioner has been denied the opportunity to defend himself and to cross-examine the witnesses. In support of this ground, learned Counsel refers to and relies upon the judgment of the Supreme Court in the case of *State of Madhya Pradesh v. Chintaman Sadashiva Waishampayan*, reported in AIR 1961 SC 1623.

(iii) Before considering the memorandum of appeal filed by the petitioner, the appellate authority got the entire matter freshly enquired and examined through Mr. K. B. Singh, D.I.G., Police (Wireless). The Report of the D.I.G., Police (Wireless) as submitted by him, was in favour of the petitioner. Yet, the Additional D.G., Police, who had no authority, to assume, differed with the report of the D.I.G., Police (Wireless) and recommended for the petitioner's dismissal.

The appellate authority proceeded to rely upon the Report of the Additional D.G., Police and to dismiss the appeal. Such order of dismissal has been passed without hearing the petitioner and without assigning any reasons as to why the appeal should not be dismissed. Furthermore, though the appellate authority had himself referred the matter for enquiry to Mr. K.B. Singh, D.I.G. Police, (Wireless), yet no reason was recorded as to why the Report submitted by Mr. K.B. Singh, D.G., Police (Wireless), was not accepted and the Report submitted by the Additional D.G., Police was accepted.

6. Counter affidavit has been filed on behalf of the Respondents.

7. A preliminary objection to the maintainability of this writ application has been taken by the Respondents on the ground that the instant writ application has been filed for quashing the order dated-15.08.2001, which is the order of the petitioner's suspension and not of his dismissal, whereas the order of dismissal as contained in Annexure-13 of the writ petition is dated-04.05.2003. As such, since the order dated-04.05.2003 has not been challenged, this writ application is liable to be rejected.

This stand of the Respondents is not acceptable in view of the fact that this writ application has been filed essentially for quashing the order of the petitioner's dismissal from service, and in his prayer, as made in the writ application, the petitioner has sought for quashing the order of his dismissal from service. Merely by referring the order by a wrong date in itself, does not alter the essence of the petitioner's prayer.

8. In reply to the first ground that the charge is vague, learned Counsel for the Respondents submits that there is no vagueness in the charge, as because the charge essentially is based upon the petitioner's acts of assuming charge of the investigation of the case under reference and arresting the accused person of that case, and in filing the chargesheet within 24 hours, each of which reflected that the petitioner had acted with revengeful and mala fide motives, since he had failed to obtain prior permission from his superiors in office before undertaking

any of these acts.

9. On perusal of the F.I.R., registered on the basis of the complaint filed by the informant-Santosh Vishwakarma, it does appear that the case was instituted at the Police Post of which the petitioner was the In charge Officer. The petitioner took up investigation of the case and the Officer in-charge of the concerned Police Officer to which the T.O.P. was attached, had endorsed his approval by way of allowing the petitioner to assume the investigation of the case.

10. Furthermore, as it appears, the substance of charge as framed against the petitioner refers to some enmity between the petitioner's son and the neighbouring resident, Bajrang Kumar son of late Banwari Pandey, whereas, in the F.I.R., filed by the informant-Santosh Vishwakarma, the name of accused is Priya Ranjan Pandey. Apparently, the F.I.R. does not mention the names of either the petitioner's son or of Bajrang Kumar son of Banwari Pandey. At least the F.I.R. Does not indicate any reference o the petitioner's son. The assumption of the charge of investigation of the case by the petitioner, which was subsequently approved by the Officer in-charge of the concerned Police Station, in itself, could not be sufficient enough to draw any adverse inference against the petitioner of his acting with revengeful and mala fide motives. Furthermore, the conclusion of the investigation and submission of the chargesheet within 24 hours is neither prohibited by law nor does it indicate excess of authority. Likewise, since the offences for which the case was registered, was cognizable and non-bailable, it cannot be said that the petitioner had exceeded his authority by arresting the accused of the said case.

11. It is apparent from the above that the inferences that the petitioner was impelled by revengeful and mala fide motives is based on presumptions and drawn without objective assessment. In absence of any explanation as to how the individual acts on the part of the petitioner constitutes acts of misconduct, the petitioner's contention that the charge as framed against him suffers from vagueness, appears to be correct. It appears that the petitioner had submitted his show-cause replies explaining that the F.I.R. was promptly forwarded by him to the Officer in-charge of the concerned Police Station for registration of the case and also explaining therein, that the Officer in-charge of the concerned Police Station, having approved the petitioner as the Investigating Officer of the case, it is deemed that in assuming the investigation of the case, the petitioner has not committed any illegality or acted beyond his authority. It appears that ignoring the explanations offered by the petitioner, the departmental proceeding was initiated against him and conducted ex parte.

As regards the acts of the petitioner, proceeding to arrest the accused of the aforesaid case without obtaining permission of any superior authority or without the knowledge of the Sadar Police Station, Hazaribagh, such omission on the part of the petitioner, do not by itself suggest that he had lacked authority to arrest the accused even without prior information to the Sadar Police Station, Hazaribagh. Such acts cannot be termed as illegal and therefore, an act of

misconduct.

12. As regards the second ground that the impugned order of dismissal is a biased and prejudiced order, learned Counsel for the Respondents submits that such ground is totally misconceived. Learned Counsel explains that as per Rules, the Superintendent of Police was authorized to assess the findings of the Enquiry officer on the basis of the materials adduced in course of enquiry and thereafter to give his recommendations to the disciplinary authority. The Superintendent of Police, had submitted his Report, recommending for the petitioner's punishment after going through the entire materials available on record in the departmental proceedings. Before passing the order of punishment, the disciplinary authority served a second show cause notice to the petitioner asking him to explain as to why the punishment of dismissal from service should not be imposed and it was only after considering the show-cause replies filed by the petitioner, that the disciplinary authority had proceeded to record his order of punishment by way of dismissal of the petitioner's service. Learned Counsel explains that the petitioner therefore, cannot claim that the disciplinary authority had acted mala fide or with bias.

13. Although, learned Counsel for the Respondents would submit that as per the Rules, the Superintendent of Police has the authority to go through the enquiry Report of the Enquiry officer, but no such Rule has been placed by the learned Counsel for the Respondents. On the other hand, learned Counsel for the petitioner submits that since the D.I.G., Police is the appointing authority and also the disciplinary authority, it is exclusively for the disciplinary authority to take any decision on the basis of the Enquiry Report and there is no such Rules, which would permit the Superintendent of Police to intervene and to submit his own recommendations and suggestions to the disciplinary authority. Learned Counsel adds that in inflicting the punishment of dismissal, the D.I.G., Police was obviously influenced by the recommendations of the Superintendent of Police, Hazaribagh, as it would appear from the contents of the impugned order of dismissal.

14. I find force in the submissions of the learned Counsel for the petitioner. As it appears, the Enquiry officer had submitted his Report, though with a finding that the charge was proved against the petitioner. Thereafter, it was for the disciplinary authority only to consider the Report and take an appropriate decision on the findings of the enquiry officer. From the perusal of the impugned order of dismissal, it appears that the disciplinary authority has elaborately adverted to the Reports submitted by the Superintendent of Police in addition to the findings of the Enquiry Officer and has apparently allowed himself to be influenced by such Report of the Superintendent of Police. It further appears that though the petitioner had raised several grounds in his replies to the second show-cause notice against the proposed punishment, including the ground that no fresh proceeding was initiated after the earlier report of the enquiry officer was set aside by the previous D.I.G., Police and no opportunity was given to the

petitioner even to cross-examine the witnesses earlier examined or furnishing copies of the depositions of the witnesses earlier examined, yet, the impugned order does not advert to any of these grounds raised by the petitioner.

15. As it appears from the facts of the case, the Enquiry Report, which was submitted initially by the Enquiry Officer, against the petitioner was duly considered by the previous D.I.G., Police, namely, Shri H.K. Mishra, who after considering the Enquiry Report, had set aside the Enquiry Report and had directed for conducting fresh enquiry against the petitioner. This fact has not been denied by the Respondents in their counter affidavit. Learned Counsel for the Respondents, however, would want to explain that the directions of the disciplinary authority for conducting a fresh enquiry, was not agreed to by the superior officer, namely, the Additional D.G., Police and, as such, there was no question of reconsideration by way of de novo enquiry. However, learned Counsel has not placed any such Rules, which would allow the superior officer, namely, the Additional D.G., Police to interfere uncalled for and to pass any directions or any comments even to approve or disapprove the decision taken by the disciplinary authority. If this was so, then after the remand of the matter to the Enquiry Officer for conducting a fresh enquiry, it was incumbent upon the Enquiry officer to conduct enquiry afresh and to allow opportunity to the petitioner to go through the various Reports, submitted by the Departmental Police Officer, and allow a reasonable opportunity to the petitioner to cross-examine the witnesses. Admittedly, no fresh enquiry was held and in absence of any fresh enquiry being conducted, it is manifest that the petitioner was not afforded a reasonable opportunity of defending his case in the departmental proceeding. This, in itself, is violative of the principles of natural justice and the findings of the Enquiry officer against the petitioner, has to be held as vitiated. Apparently, the disciplinary authority has not adverted to these circumstances as appearing in the records of the petitioner's case.

16. As regards the third ground raised by the petitioner, challenging the order of appeal as having been passed without giving opportunity to the petitioner of being heard and of it being a non-speaking order, learned Counsel for the Respondents controverts the grounds by submitting that in his memorandum of appeal, the petitioner did not raise any issue alleging non-supply of any documents or contending that there was any ambiguity in the charge and neither did he pray for grant of any personal hearing.

17. Before proceedings to discuss this issue, it would be interesting to note that upon receiving the appeal, preferred by the petitioner against the impugned order of the disciplinary authority, the appellate authority instead of considering the enquiry report and the order passed by the disciplinary authority and taking an independent decision on the grounds of the appeal, had directed the D.I.G., Police (Wireless) to enquire and Report. The D.I.G., Police (Wireless) submitted his report in favour of the petitioner. Despite such report, the appellate authority again entrusted a fresh enquiry into the matter to the Additional D.G., Police and

on the basis of the Report submitted by the Additional D.G., Police, the appellate authority passed the impugned order, dismissing the appeal.

From the perusal of the appellate order (Annexure-16), it appears that the appellate authority has merely noted down the charges framed against the petitioner but has not applied his mind as to whether the objectionable acts, which the petitioner had committed, did actually constitute any misconduct as defined under the Service Code. On the other hand, the appellate authority has allowed himself to be influenced by the supervision report of the Superintendent of Police, submitted in the case under reference that the allegations as contained in the F.I.R. of the said case were not found to be true and that the petitioner had mala fide proceeded to submit chargesheet against the accused of the said case, without getting the investigation supervised by the superior Police officers.

It further appears that the appellate authority has merely noted down the grounds pleaded by the petitioner, as appearing in the memorandum of appeal but has not made any discussion on any of the grounds advanced and has thereafter proceeded to dismiss the appeal without assigning reasons as to why the grounds of appeal have been rejected.

Apparently, the appellate authority did not grant any personal hearing to the petitioner, perhaps, as learned Counsel for the Respondents would point out, because the petitioner did not pray for any personal hearing.

18. Two significant aspects emerge from perusal of the impugned appellate order. The first being that instead of confining his attention to the enquiry report submitted by the enquiry officer and the findings of the disciplinary authority, the appellate authority, without there being any procedural provision, referred the matter for further enquiry initially to the D.I.G., Police (Wireless) and later to the Additional D.G. Police. The two reports submitted individually by the officers contradict each other in terms of the findings recorded therein. While the report of the D.I.G., Police (Wireless), is in favour of the petitioner, the report of the Additional D.G., Police is against the petitioner. Yet the appellate authority has accepted and endorsed the report of the Additional D.G., Police, without assigning any reasons as to why the earlier report submitted by the D.I.G., Police (Wireless) should be rejected.

19. As has been earlier observed, none of the alleged objectionable acts of the petitioner do either individually or collectively lead to any conclusive inference of acts of misconduct, punishable under the Service Code. Even if all such acts taken together suggest a strong suspicion but suspicion cannot be substituted for proof.

It may also be observed even on pain of repetition that the assumption of the investigation of the case under reference, by the petitioner in itself, could not be considered as an act of misconduct, since the offences involve non-bailable and cognizable offences of the Indian Penal Code and the Officer in-charge of the concerned Police Station had also endorsed the investigation to the petitioner.

The act of arresting the F.I.R. named accused without prior information to the Police station within whose jurisdiction, the house of the accused was located does not constitute an act of misconduct since the need to inform the concerned Police is only obligatory and not a mandatory rule of procedure.

The submission of chargesheet within 24 hours, even appears to be unusual for any Investigating officer but this, in itself, would not be sufficient to cast any aspersions against the petitioner, if the acts establish that the statements of witnesses recorded within 24 hours did confirm a prima facie case against the accused for recommending him for trial and other supporting evidence could be collected within 24 hours from the submission of the chargesheet.

The fact that the petitioner's son and the family of the accused were on inimical terms, does not appear to have any relevance in the context of the case filed by the informant, Santosh Vishwakarma and Sudhir Kumar, who apparently have no concern either with the petitioner or his son.

Whether the statements of the informant and his witness are true or false, the jurisdiction to decide on this issue is entirely and exclusively on the trial court, which had already taken cognizance of the offences against the accused persons. The mere fact that the accused Priya Ranjan Pandey was on inimical terms with the petitioner's son, could not be an impediment in the petitioner's performance of his duties by taking up the investigation of the case filed by a totally third person, namely, Santosh Vishwakarma.

20. As regards the grievance that the personal hearing was not granted to the petitioner by the appellate authority, one may refer to the observations made by the Supreme Court in the case of Ram Chander Vs. Union of India (UOI) and Others, , on the principles relating to the applications of audi alteram partem and the principles of natural justice. While considering the order of the appellate authority impugned by the writ petitioner before it, the Supreme Court had thus observed:

The appellate authority must not only give a hearing to the Government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal?

An objective consideration is possible only if the delinquent servant is heard and given a chance to satisfy the authority regarding the final orders that may be passed on his appeal. Considerations of fair play and justice also require that such a personal hearing should be given.

21. The procedure essentially involves, therefore, considerations of fair play and justice and to ensure that the delinquent servant is given a chance to satisfy the authority concerned, regarding the grounds raised in his defence. Thus, the grant of a personal hearing to the delinquent servant is equally essential and it cannot be refused merely on the ground the delinquent servant did not opt for any personal hearing before the appellate authority.

22. In the light of the above discussions, I find merit in this writ application. Accordingly, the same is allowed. The impugned order dated-04.05.2003 (Annexure-13) of the Disciplinary Authority and the appellate order dated-12.06.2004 (Annexure-16) of the Appellate Authority are hereby quashed. The Respondents are directed to reinstate the petitioner in service and to treat the period between the date of termination of his service and till the date of his reinstatement as period spent on duty. However, considering the facts and circumstances of the case and in absence of any pleading by the petitioner that he was not gainfully employed during this period, the petitioner would not be entitled to any back wages.