
(2014) 01 JH CK 0118

In the Jharkhand High Court

Case No : Writ Petition (S) No. 1224 of 2013

Ram Babu @ Ram Babu Prasad

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 06-01-2014

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : (2014) 7 AJR 189 : (2014) 1 JLJR 411

Hon'ble Judges : Chandrashekhar, J

Bench : Single Bench

Advocate : S.N. Pathak and Rakesh Kr. Roy, for the Appellant; Vaibhav Kumar, J.C. to A.G., for the Respondent

Judgement

Chandrashekhar, J.

I.A. No. 9009 of 2013

1. This interlocutory application has been filed seeking amendment in the writ petition challenging the appellate order dated 21.02.2013.

Since the appellate order dated 21.02.2013 has been passed during the pendency, of the writ petition, I find sufficient ground to permit the petitioner to amend, the writ petition challenging the appellate order dated 21.02.2013.

Accordingly, the I.A. No. 9009 of 2013 is allowed.

W.P.(S) No. 1224 of 2013

Heard the learned counsel for the parties and perused the documents on record.

The brief facts of the case are that, a Charge-Memo dated 15.02.2010 was served upon the petitioner. A regular departmental enquiry was conducted for the allegation levelled in the Charge-Memo dated 15.02.2010. An enquiry report was submitted on 08.11.2011 in which both the charges framed against the petitioner have been found not proved however, the disciplinary authority

disagreeing with the finding recorded by the enquiry officer, inflicted penalty of forfeiture of one annual increment which would be equivalent to two black marks. The appeal preferred by the petitioner has been dismissed by order dated 21.02.2013.

2. The learned Senior counsel appearing for the petitioner has submitted that in terms of Rule 824(e) the punishment of forfeiture of one annual increment itself has been made equivalent to major punishment and since a regular departmental enquiry was conducted into the matter, the disciplinary authority without issuing any second show-cause notice could not have passed the punishment order dated 02.08.2012.

3. The learned counsel appearing for the respondents has submitted that in terms of the provision under Rule 828(c) of the Jharkhand Police Manual, in cases in which a penalty of forfeiture of annual increment is decided to be inflicted on a delinquent employee, there is no necessity of conducting regular departmental enquiry. He further submits that a perusal of enquiry report would indicate that the enquiry officer has indicated lack of supervision by the petitioner in the concerned police station and therefore, the disciplinary authority passed the penalty order taking into consideration overall facts and circumstances of the case.

4. Having appreciated the contentions raised by the learned counsel for the parties, I am of the opinion that though under Rule 828(c), a regular departmental enquiry can be dispensed with however, in the case of the petitioner, since a regular departmental enquiry was conducted into the matter and an enquiry report has been submitted in which enquiry officer has found both the charges framed against the petitioner not proved, the disciplinary authority was required to indicate the grounds of disagreement and the petitioner was entitled to have an opportunity to represent his case before the disciplinary authority before an order of penalty could have been passed.

5. In *Yoginath D. Bagde Vs. State of Maharashtra and Another*, the provision of Rule 9(2) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 which requires the disciplinary authority to record its reasoning for disagreement with the findings of the enquiry authority, was considered by the Hon'ble Supreme Court and it has been held that even though, Rule does not specifically provide that the disciplinary authority will give an opportunity of hearing to the delinquent officer, the requirement of hearing has to be read into Rule 9(2) so as to be in consonance with the principles of natural justice. It has been held thus.

31.... If the findings recorded by the enquiry officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which

the disciplinary authority has proposed to disagree with the findings of the enquiry, officer This is in consonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the disciplinary authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the disciplinary authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent upto the final stage....

6. In Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, the Hon''ble Supreme Court has held as under.

17.... The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the enquiring officer holds the charges to be proved, then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the enquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings, what is of ultimate importance is the finding of the disciplinary authority.

7. Since, the procedure which has not been adopted by the disciplinary authority is contrary to the law laid down in the judgments of the Hon''ble Supreme court, I am of the view that the matter requires a fresh consideration by the disciplinary authority and accordingly, the impugned orders dated 02.08,2012 and 21.02.2013 are hereby quashed. The matter is remitted back to the disciplinary authority for taking a decision afresh after issuing a second show-cause notice to the petitioner indicating the grounds of disagreement with the finding recorded by the enquiry officer. The writ petition is allowed in the aforesaid terms.