
(2009) 01 PAT CK 0052
In the Patna High Court

Rama Kant Rai

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 16-01-2009

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2009) 2 PLJR 219

Hon'ble Judges : Shailesh Kumar Sinha, J

Bench : Single Bench

Judgement

Shailesh Kumar Sinha, J.—The petitioner is aggrieved by order No. 1780/93 dated 6th of March, 1993, passed by the Senior Superintendent of Police, Patna (respondent No. 6), as contained in Memo No. 2697 dated 7th of March, 1993. vide Annexure 1 to the writ application, whereby the petitioner, who was a Constable in the Police Force, was dismissed from service. The petitioner was dismissed for the serious misconduct on account of committing rape on the minor daughter of another Constable after forcibly dragging her from her house and confined her in his own room and committing the rape several times despite serious protest made by her. The girl was rescued in the evening by her father when he forcibly opened the door of the petitioner. The victim as well as the petitioner was medically examined by the doctor, who confirmed the commission of the rape, on account of which there was a huge resentment amongst the other Constables and the employees of the Police Force. The statement of the girl was recorded by Digha Police Station as well as the statement of the father of the victim. The petitioner denied the allegation of rape against him. A Sahna was registered in the Police Station regarding the above incident and a report was submitted by the Officer-in-Charge of Digha Police Station to the Senior Superintendent of Police (respondent No. 6), who upon consideration of the same dismissed the petitioner from the service by the aforesaid order, as contained in Annexure 1, by exercising the power under Article 311(2)(b) of the Constitution of India dispensing with the regular departmental enquiry.

2. The petitioner against the aforesaid order (Annexure 1) preferred an appeal before the Deputy Inspector General of Police, Central Range, Patna (respondent No. 5) which was rejected, a copy of the said order has been annexed as Annexure 8 to the Interlocutory Application No. 7436 of 2008. Thereafter the petitioner filed a writ application in this Court vide CWJC No. 7462 of 1993. The same was, however, permitted to be withdrawn vide order dated 15.2.1995, as contained in Annexure 5 to the writ application, to enable the petitioner to approach the Director General of Police for disposal of his memorial, which, according to him, was already filed. The memorial filed by the petitioner, on consideration, was rejected by the Director General and Inspector General of Police, Bihar, Patna (respondent No. 2) by order contained in Memo No. 1374 P-2 dated 14th of March, 1996 (Annexure 6). The petitioner has also prayed for quashing of the aforesaid order dated 14th March, 1996 passed by respondent No. 2.

3. It is primarily submitted on behalf of the petitioner that respondent No. 6 while passing the impugned order has committed serious illegality in not recording the reason for passing the order under Article 311(2)(b) of the Constitution of India dispensing with the enquiry without assigning any reason for the same. Besides the above, the petitioner did not receive the reasons for dismissing him from the service as mentioned in the order of dismissal, vide Annexure 1. While dismissing the appeal, the appellate authority, who was the Deputy Inspector General of Police, Central Range, Patna (respondent No. 5), has held to the effect that the allegation of rape over the victim was established on the basis of the statement of the victim and her father. The allegation of committing rape with the victim several times forcibly, which resulted in her to become unconscious, was found proved on the basis of the above statements as well as the medical opinion given by the doctor on examination of the victim girl as also the petitioner immediately after the incident. The Doctor found the age of the girl below 18 years on the basis of the X-ray report. The Deputy Inspector General of Police (respondent No. 5) affirmed the order passed by the Senior Superintendent of Police (respondent No. 6) by observing that on account of the commission of rape over the victim a great resentment had prevailed amongst the other Constables and employees against the petitioner. The learned Counsel further submitted that the memorial filed before respondent No. 2 was disposed of without considering the grievance of the petitioner that there was no justification for dispensing with the regular departmental enquiry against the petitioner for the alleged commission of rape said to have been committed by the petitioner upon the victim, which resulted in serious prejudice to him as he could not place his case in his defence. The learned Counsel submits that for dispensing with the regular departmental enquiry, it was incumbent upon the authority to pass a reasoned order justifying the dispensing with the regular departmental enquiry as envisaged under Article 311(2)(b) of the Constitution of India in order to show the circumstances under which it was not practicable to hold the enquiry. Respondents No. 2 and 5, both, have committed serious

illegality in not considering this aspect of the matter. In other words, the appeal filed by the petitioner as well as the memorial filed by the petitioner before respondent No. 5 as well as respondent No. 2 respectively was disposed of without due application of mind. As such, the order, contained in Annexure 6, disposing of the memorial as well as the order, contained in Annexure 8, dismissing the appeal of the petitioner also deserve to be quashed.

4. On the other hand, the learned Counsel appearing for the State opposes the writ application and submits that heinous act was committed by the petitioner by committing the rape on his colleague's daughter by forcibly dragging her from her house when she was alone in her house and took her to his room and bolted the door from inside and committed rape several times despite serious protest made by her which ultimately made her unconscious. The fact of committing the rape by the petitioner was found correct on the statement given by the victim soon thereafter and also after the medical report of the doctor submitted on examination of the victim girl as well as the petitioner. According to the medical reports, the girl was found to be a minor. It is further submitted that the situation had become such that a great resentment had prevailed amongst the other Constables and employees of the Police Force and as such it was not practicable in the given situation to hold a regular departmental enquiry. With regard to the aforesaid occurrence a Sahna was recorded in the Police Station as contained in Annexure A series, and the medical reports submitted by the Doctor, as contained in Annexure C, which proved the commission of rape. The medical reports of the victim girl as well as of the petitioner amply proved the commission of rape over the minor victim and as such the learned Counsel for the State has justified the impugned orders.

5. Considering the submissions of the parties and the pleadings on record, it is not in dispute that the regular departmental enquiry was dispensed with and the petitioner was inflicted with the punishment of dismissal from service, as contained in Annexure 1, for the commission of rape by him upon the victim. The order of dismissal has been sought to be passed on the basis of the statement of the victim and her father, which was given by other Constables as also the medical reports upon examination of the victim girl as well as the petitioner.

6. The learned Counsel for the petitioner has vehemently submitted that notwithstanding the order on merits, which is not correct, the authorities have exercised the power of dispensing with the regular departmental enquiry under Article 311(2)(b) of the Constitution of India. However, neither separate order has been passed nor the order, which has been passed by the authority, discloses the justification for dispensing with the enquiry. The appeal filed by the petitioner before the Deputy Inspector General of Police was not considered properly, although the memo of appeal said to have been filed before the appellate authority is not on record. The memorial, however, filed by the petitioner is on the record as Annexure 4 to the writ application. From the said memorial it would appear that the petitioner had seriously challenged the order of dismissal passed

against him after dispensing with the enquiry and in absence of the same, the authority could not have passed such order and accordingly the petitioner has prayed for quashing of the original order as well as the appellate order. Respondent No. 2 while disposing of the memorial has passed the order dated 14th of March, 1996, as contained in Annexure 6, whereby he disposed of the memorial and justified the order of dismissal passed against the petitioner. However, while passing the said order (Annexure 6), he justified the order of dismissal passed against the petitioner dispensing with the enquiry under the provisions of Article 311(2)(b) of the Constitution of India by observing that the occurrence in question was very sensitive in which a Constable had committed rape with the daughter of another Constable in broad daylight and on account of such occurrence great resentment had prevailed in the Police Force.

7. In my opinion, while passing the order on the memorial, respondent No. 2 does not appear to have properly considered the memorial of the petitioner with regard to dispensing with the enquiry under Article 311(2)(b) of the Constitution of India. The same having not been done in its correct perspective, the impugned order dated 14.3.1996 (Annexure 6) cannot be sustained in law.

8. Accordingly, the order dated 14th of March, 1996 passed by respondent No. 2, as contained in Annexure 6, is hereby quashed. The respondent No. 2 is directed to dispose of the memorial filed by the petitioner afresh in accordance with law by a reasoned order dealing with the points raised by the petitioner in his memorial within a period of four months on receipt/production of the certified copy of the order/judgment.

9. The writ application is disposed of with the above observations/directions. However, in the facts and circumstances of the case, there shall be no order as to costs.