
(2016) 04 JH CK 0045
In the Jharkhand High Court
Case No : W.P.(S) No. 753 of 2007

Sanjay Kumar Singh

APPELLANT

Vs

State of Jharkhand, The Director General-cum-Inspector
General of Police, The Deputy Inspector General of Police,
The Commandant

RESPONDENT

Date of Decision : 05-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 4 AIRJharR 47 : (2016) 149 FLR 846 : (2016) 3 JBCJ 178 :
(2016) 2 JCR 650 : (2016) 2 JLJR 661

Hon'ble Judges : Pramath Patnaik, J.

Bench : Single Bench

Advocate : Prashant Pallav, Advocate, for the Appellant; Chandra Prabha, S.C.
IV. and Rohit, J.C to S.C. IV, for the Respondent

Final Decision : Disposed Off

Judgement

Pramath Patnaik, J.—In the instant writ application, the petitioner being aggrieved by revisional order dated 19.10.2006 passed by respondent no. 2, appellate order dated 10.03.2006 passed by respondent no. 3 and order dated 30.09.2005 passed by respondent no. 4, whereby the petitioner has been dismissed from services, has approached this Court invoking extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

2. The brief facts, as averred in the writ application, is that the petitioner was appointed as constable in Jharkhand Armed Police and while continuing as such a charge-sheet was served upon him vide memo dated 11.09.2004 alleging that on 30.07.2004 the petitioner was not found on duty and rather he assaulted and abused the manager and staff of Hindalco Company in an inebriated condition. Accordingly, a show cause was issued to which the petitioner replied denying the allegations levelled against him. Thereafter, the matter was enquired into by the enquiry officer, who found petitioner guilty of charges and accordingly the

petitioner was slapped with the impugned order of dismissal dated 30.09.2005 by the disciplinary authority, which was affirmed by the appellate as well by the revisional authority.

3. Mr. Prashant Pallav, learned counsel for the petitioner vehemently submitted that the entire proceeding has been vitiated due to non-supply of the enquiry report to the petitioner and the entire finding of fact is perverse as the petitioner has not been medically examined to ascertain as to whether the petitioner was in drunken condition or not. Learned counsel further submitted that since the enquiry officer recorded the evidence of witnesses behind the back of the petitioner and without giving any opportunity to the petitioner to cross-examine the said witnesses, the entire enquiry proceeding is vitiated in law. Learned counsel further submits that so far as allegation of assault is concerned, no injury has been found on the person of Manager of Hindalco, hence, the allegation of assault is vague and baseless. Learned counsel further submits that the petitioner has got a very unblemished service career and there is no previous misconduct committed by the petitioner.

4. During course of argument, learned counsel for the petitioner referred to the rejoinder to the counter affidavit, wherein it has been submitted that the entire action taken by the disciplinary authority, appellate authority and revisional authority are based on the report of Hawaldar dated 31.07.2004 and further the order of removal from services is harsh, disproportionate and not commensurate with the allegations.

5. Per contra, counter affidavit has been filed on behalf of respondent nos. 2 and 3 repelling the averments made in the writ application. It has been submitted that Hawaldar-Jai Ram Singh had filed report against the delinquent-petitioner, to which, the petitioner explained, which was not found satisfactory and for that reason, departmental proceeding was initiated. Moreover, the Hawaldar in his statement has referred to the statement of Hindalco's Manager that the delinquent can commit any offence under influence of liquor and from this statement, it is evident that the petitioner was in inebriated condition. It has further been submitted that enquiry officer had given full opportunity to the petitioner to cross-examine the witnesses during continuance of the proceeding and delinquent had also cross-examined and took part in cross examination of the witnesses. It has further been submitted that the petitioner was supplied with the copy of the findings of enquiry officer along with the findings of disciplinary authority.

6. Mr. Rohit, J.C to learned S.C.IV submitted that basing on the findings of the enquiry report the disciplinary authority passed the order of removal from services, which has been confirmed by the appellate as well as by the revisional authority considering all the points raised in memo of appeal and revision petition.

7. After hearing learned senior counsels for the respective parties at length and

on perusal of the records, it appears that non-supply of enquiry report has grossly prejudiced the case of the petitioner thereby it affected the outcome of the disciplinary proceeding for the following facts, reasons and judicial pronouncements:

(I). In the case at hand, the charge-sheet containing the imputation of charges is based on the complaint of the Hawaldar, who alleges that the petitioner being in an inebriated condition assaulted the Manager of Hindalco. The said allegation was though enquired into by the enquiry officer but the findings of the enquiry officer holding the petitioner guilty of the charges was never supplied to the petitioner, which caused gross prejudice to the petitioner and ultimately vitiated the whole proceeding. On that score, the impugned order of punishment though being confirmed by the appellate as well as by the revisional authority cannot be sustained in law. Normally, under Article 226 of the Constitution of India the Court does not exercise its power of judicial review but in the instant case because of non-supply of copy of enquiry report, the case of the petitioner can be dubbed as a case falling under the category of violation of principles of natural justice.

(ii). The Hon''ble Apex Court, in the case of Managing Director, ECIL, Hyderabad & Ors v. B. Karunakar & Ors as reported in (1993) 4 SCC 727 has elaborately dealt with the same issue. The relevant paragraphs are reproduced herein below:

31. Hence, in all cases where the enquiry officer''s report is not furnished to the delinquent-employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and given their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. ?....."

57. The findings or recommended punishment by the enquiry officer are likely to

affect the mind of the disciplinary authority in his concluding the guilt or penalty to be imposed. The delinquent is, therefore, entitled to meet the reasoning, controvert the conclusions reached by the enquiry officer or is entitled to explain the effect of the evidence recorded. Unless the copy of the report is supplied to him, he would be in the dark to know the findings, the reasons in support thereof or nature of the recommendation on penalty. He would point out all the factual or legal errors committed by the enquiry officer. He may also persuade the disciplinary authority that the finding is based on no evidence or the relevant material evidence was not considered or overlooked by the enquiry officer in coming to the conclusions, with a view to persuade the disciplinary authority to disagree with the enquiry officer and to consider his innocence of the charge, or even that the guilt as to the misconduct has not been established on the evidence on records or to disabuse the initial impression formed in the minds of the disciplinary authority on consideration of the enquiry report. Even if the disciplinary authority comes to the conclusion that the charge or charges is/are proved, the case may not warrant imposition of any penalty. He may plead mitigating or extenuating circumstances to impose no punishment or a lesser punishment. For this purpose the delinquent needs reasonable opportunity or fair play in action. The supply of the copy of the report is neither an empty formality, nor a ritual, but aims to digress the direction of the disciplinary authority from his derivative conclusions from the report to the palliative path of fair consideration. The denial of the supply of the copy, therefore, causes to the delinquent a grave prejudice and avoidable injustice which cannot be cured or mitigated in appeal or at a challenge under Article 226 of the Constitution or Section 19 of the Tribunal Act or other relevant provisions. Ex post facto opportunity does not efface the delinquent, however, professedly to be fair to the delinquent. The lurking suspicion always lingers in the mind of the delinquent that the disciplinary authority was not objective and he was treated unfairly. To alleviate such an impression and to prevent injustice or miscarriage of justice at the threshold, the disciplinary authority should supply the copy of the report, consider objectively the records, the evidence, the report and the explanation offered by the delinquent and make up his mind on proof of the charge or the nature of the penalty. The supply of the copy of the report is, thus, a sine qua non for a valid, fair, just and proper procedure to defend the delinquent himself effectively and efficaciously. The denial thereof is not only offending Article 311(2) but also violates Article 14 and 21 of the Constitution of India.

Applying the above case laws in hand, it would be apposite to set aside the impugned order of dismissal as also the order passed by appellate authority and revisional authority with liberty to the respondents-authorities to initiate the proceeding from the stage of serving copy of enquiry report to the petitioner.

8. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncements, the impugned order dated 30.09.2005 passed by respondent no. 4, appellate order dated 10.03.2006 passed by respondent no. 3 and revisional order dated 19.10.2006 passed by respondent no. 2 are hereby

quashed and set aside with liberty to the respondents-authorities to start the proceeding from the stage of serving copy of enquiry report to the petitioner and in the event, the authorities are desirous of putting the disciplinary proceeding into motion, the same must be concluded as expeditiously as possible preferably within a period of six months from the date of receipt/production of copy of this order, since more than a decade has lapsed from the initiation of the proceeding in the meantime.

9. With the aforesaid observations and directions, the writ petition stands disposed of.