

(2009) 08 JH CK 0026
In the Jharkhand High Court

Satyabrat Narayan Choudhary

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 19-08-2009

Acts Referred:

Prevention of Corruption Act, 1988 — Section 13, 7

Citation : (2009) 08 JH CK 0026

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Amareshwar Sahay, J.—Heard the parties.

2. The prayer of the petitioner in this writ petition is to quash the order as contained in Annexure-22 dated 28.06.2003 passed by the respondent No. 2 - Commandant General, Home Guards, Jharkhand, Ranchi, dismissing the petitioner from service.

3. The facts in short are that a criminal case under Sections 7/13(2) and 13(1) (d) of the Prevention of Corruption Act was registered against the petitioner while he was posted as Inspector of Guards in Home Guards, Koderma on the allegation that he committed criminal misconduct by obtaining bribe to the tune of Rs. 2,500/- from one Bahadur Bharti on the ground that his services would be regularized. The petitioner was taken into custody on 26.11.2002 in connection with the said case in which chargesheet was submitted on 22.01.2003. The petitioner was however released after grant on bail on 17.05.2003.

4. According to the petitioner, while he was in service, a departmental proceeding was also initiated against him and he was asked to show-cause within 15 days by issue of letter dated 29.01.2003 as contained in Annexure-3. This letter was served to the petitioner through the Superintendent of Jail where the petitioner was lodged. The chargesheet was also served on the petitioner while he was in custody. According to the petitioner, the authorities wanted to proceed against

him depart/mentally keeping the petitioner in custody. The petitioner submitted his reply on 13.02.2003 as contained in Annexure-4 stating therein that before initiating departmental proceeding proper inquiry should be made.

5. It appears that again letter dated 15/17.02.2003 was issued to the petitioner and was served to him in custody (Annexure-5) informing him that in spite of the expiry of period of 15 days for submission of show-cause, no show-cause has been received and therefore, he was asked to submit his show cause within three days. The petitioner replied to the said letter also on 18.02.2003 i.e. on the next day itself.

6. Further case of the petitioner is that the department wanted to continue the proceeding keeping the petitioner in custody and, therefore, they sought permission from the Trial Court to conduct departmental proceeding against the petitioner in the Jail itself, which was allowed by the Trial Court. The petitioner, challenged the said order of the Trial Court before this Court in Cr.M.P. No. 411 of 2003 and this Court, by Order dated 24.04.2003, as contained in Annexure-7, set aside the order dated 03.04.2003 passed by the Trial Court granting permission for conducting departmental proceedings against the petitioner in the Central Jail.

7. The Inquiry Officer, by issue of Annexure-9 dated 26.05.2003, informed the petitioner that the next date fixed in the proceeding was 10.06.2003 and on that date, he should appear and record his statement. On receipt of letter as contained in Annexure-9 dated 26.05.2003, the petitioner made an application on 02.06.2003 to the Deputy Inspector General (Home Guards) that the inquiry officer was biased against him because of some untoward incident which took place, while he was in custody and as such, he requested the Deputy Inspector General to change the Inquiry Officer.

8. The petitioner alleges that no sooner the Inquiry Officer come to know about filing of such application by the petitioner for change of Inquiry Officer, he immediately issued another order as contained in Annexure-11 on 02.06.2003 preponing the date to 05.06.2003 which was earlier fixed on 10.06.2003.

9. It appears that after three days, again a letter dated 05.06.2003 was issued by the Inquiry Officer to the petitioner fixing 09.06.2003 as the next date and the petitioner was directed to be present and record his statement.

10. On 09.06.2003, the petitioner made an application that he was not in a position to make his statement since he was lying ill. Thereafter, a letter was issued to the petitioner as contained in Annexure-14 on 12.06.2003, informing the petitioner that the prosecution has already examined its witnesses and, therefore, he should appear on 14.06.2003 to cross examine those witnesses and also to produce witnesses in defence and if he does not appear then it would be deemed that he does not want to cross examine the witnesses and also that he does not want to give his evidence in his defence. The petitioner could not appear before the Committee as directed and then the inquiry officer submitted

his ex-parte report on 17.06.2003 to the disciplinary authority who, by his order as contained in Annexure-22 dated 28.06.2003, on the basis of the enquiry report, passed the order for dismissal of the petitioner from service.

11. Mr. Ananda Sen, learned Counsel appearing for the petitioner submitted firstly that the inquiry conducted against the petitioner was most unfair and illegal. No sufficient and reasonable opportunity was given to the petitioner either to submit his show-cause or to cross examine the witnesses examined against him nor he was allowed to produce evidence in his defence. Secondly, he submitted that on the basis of the said inquiry report, the disciplinary authority, without application of his own mind and without assigning any reason, has passed a cryptic order for dismissal of the petitioner by only saying that after perusing the records of the inquiry proceeding and the evidence adduced in the proceeding as well as findings of the Inquiry Officer, the charges against the petitioner has been found to be established. Mr. Ananda Sen submitted that in such a situation, the impugned order is not sustainable.

12. On the other hand, by filing a counter affidavit, it is stated that the petitioner made all his efforts and he adopted every possible tactics to delay the departmental proceedings since he has to retire on 30.06.2003. The date fixed in the proceeding was preponed only to expedite the departmental proceedings enquiry but the petitioner did not appear before the Committee and the Inquiry Officer and the Inquiry Officer had no option but to proceed in accordance with law in absence of the petitioner.

13. From the facts as noticed above, I find that certain dates are very relevant to be taken note of i.e. the petitioner was released from custody on bail on 17.05.2003 and for the first time, he was served with a letter dated 26.05.2003 as contained in Annexure-9 on 28.05.2003 informing him to appear on the next date fixed i.e. 10.06.2003 for giving his statement. On 02.06.2003, the petitioner made an application before the Deputy Inspector General, Home Guards to change the Enquiry Officer on the ground that he was biased against him. On that day itself, i.e. 02.06.2003, the Enquiry Officer served another letter to the petitioner informing him that the date of the proceeding was preponed from 10.06.2003 to 05.06.2003 and, therefore, he should appear and to get his statements recorded. Again on 05.06.2003, i.e. after two days, another letter was served to the petitioner informing him that the date of inquiry has been fixed on 09.06.2003 for recording his statement.

14. The petitioner has annexed copies of the statements made by four witnesses who were examined in the proceedings on behalf of the Department as Annexure-14 Series which was served on him along with letter dated 12.06.2003, from which, it appears that their statements were recorded on 05.06.2003 and 09.06.2003 and ultimately, the enquiry report was submitted on 17.06.2003. From the facts noticed above, it appears that the inquiry was concluded within a period of ten days only.

15. On consideration of the facts stated above, I feel the inquiry officer was conducting the inquiry in a great haste and the facts establishes that he did not afford sufficient and reasonable opportunity to the petitioner to defend himself and, therefore, the inquiry so conducted cannot be said to be fair in any manner.

16. From perusal of the impugned order of the disciplinary authority also, it appears that he has also not applied his own independent mind while considering the enquiry report and passing order for dismissal from service of the petitioner. The order is absolutely cryptic and no reason has been assigned for accepting the inquiry report.

17. Accordingly, I hold that the order of the disciplinary authority passed on the basis of said inquiry report is wholly illegal and unsustainable.

18. Accordingly, this application is allowed. The order as contained in Annexure-22 dismissing the petitioner from the service is hereby quashed. Consequently, the petitioner shall be entitled to all consequential benefits. However, there shall be no order as to costs.