
(2006) 11 JH CK 0091
In the Jharkhand High Court
Case No : Writ Petition (S) No. 576 of 2005

Shambhu Kumar

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 13-11-2006

Acts Referred:

Bihar Reorganisation Act, 2000 — Section 72

Citation : (2007) 2 BLJR 1043 : (2007) 2 JCR 237

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Advocate : S.N. Pathak, for the Appellant; Jalisur Rahman, JC to GP-II, for the Respondent

Final Decision : Allowed

Judgement

Permod Kohli, J.—Petitioner has been dismissed from service vide order dated 3rd March, 2001, passed by the Superintendent of Police, Gumla, accepting the report of the enquiring officer, whereby, charge of misconduct against the petitioner was held to be proved. An appeal preferred against the order of dismissal before the Deputy Inspector General of Police, Ranchi, also resulted in dismissal vide order dated 23rd June, 2003. A further appeal in the shape of memorial before the Director General of Police, Jharkhand, Ranchi, also came to be dismissed vide order dated 7th July, 2004.

2. Petitioner has challenged the enquiry proceedings, the order passed by the disciplinary authority, dismissing the petitioner from service, and the orders passed by the appellate authorities, referred to hereinabove, on variety of grounds. The main thrust of the argument is that the departmental proceedings held against the petitioner were conducted in violation of the principles of natural justice inasmuch as the petitioner was not provided any opportunity to cross-examine the witnesses and to lead evidence. It is further contended that the enquiry officer has relied upon the hearsay evidence and, thus, the findings of the enquiry officer are perverse, warranting interference of this Court. Apart from

the above, it has been contended that the appellate authorities have not dealt with the points, raised by the petitioner in the memos of appeal. Though no specific ground has been urged in the writ application regarding the lack of jurisdiction of the disciplinary authority In passing the impugned order, however, it has been vehemently argued on behalf of the petitioner that at the time of passing of the order of dismissal on 3rd March, 2001, the petitioner was posted at Patna within the State of Bihar, having been transferred to Patna in April, 1999.

3. I have heard learned counsel for the parties. Perusal of the charge-sheet reveals that there were allegations against the petitioner of attempting to enter the house of one Lalan Singh In his absence and also abusing the officials on duty under the influence of liquor. From the report of the enquiry officer dated 30th April, 2000 it is evident that the enquiry officer has recorded the statement of Lalan Singh in respect to the incident at his residence where the petitioner is alleged to have attempted to break open the door when the family members of Lalan Singh i.e. wife and daughters were inside the house. It is also alleged that when the petitioner was prevented from entering the house by the wife of Lalan Singh, he abused them, Lalan Singh has appeared as a witness in respect to the occurrence at his residence in" his absence. This evidence is totally hearsay as except. Lalan Singh no other witness has appeared either from his family or the neighbourhood, who could have witnessed the occurrence. Similarly the report filed with the Palkot Police Station was made part of the enquiry and was relied upon without the author of the report being produced as a witness. Except this, there was no other evidence. Though the enquiry officer is not bound by the strict rules of evidence in domestic enquiry, however, inadmissible evidence cannot be made basis for a penal action. Petitioner has specifically averred in paragraphs 19 to 22 that he was not provided any opportunity to cross-examine the witnesses or to lead his own evidence during the course of enquiry. It has also been specifically alleged that the enquiry officer has relied upon the report of the, Officer-in-charge, Palkot Police Station, without the said officer being a witness during the proceedings. The enquiry officer in its enquiry report has stated that the delinquent officer appeared before him on 25th January, 1999 to receive the charge-sheet and also on 20" February, 1999 when the statement of Lalan Singh was recorded, but did not produce any evidence in his defence. The enquiry report does not suggest that the petitioner was afforded opportunity to cross-examine the witnesses produced or to lead his own evidence and the details of such opportunity. It is not in dispute that in domestic enquiry, the enquiry officer is entitled to evolve its own procedure but such procedure has to be fair and in consonance with the principles of natural justice and not in derogation thereof. Hearsay evidence is inadmissible. Admittedly Lalan Singh was not a witness to the occurrence and his entire statement in respect to the occurrence at his residence in his absence is nothing but a hearsay evidence. Similarly the report of the Officer-in-charge, Palkot Police Station, without the same being proved by the officer recording the report, cannot be said to be a valid evidence, to be made basis for action against the petitioner, particularly the

penal action, which has resulted in his dismissal.

4. The Apex Court in the case of Union of India (UOI) Vs. Sardar Bahadur, held as follows:

11. We do not think that the statements should have been received in evidence as the appellant had taken no step to produce the persons who made the statements for cross-examination of the respondent. It was the duty of the appellant to have produced these persons whose statements were sought to be proved for the cross-examination of the respondent. In *State of Mysore v. S.S. Makapur*, this Court said that the purpose of an examination in the presence of a part against whom an enquiry is made, is sufficiently achieved, when a witness who has given a prior statement is recalled that statement is put to him, and made known to the opposite party, and the witness is tendered for cross-examination by that party. As the persons whose statements were sought to be relied on were in Delhi and as they were not produced and tendered for cross-examination by the respondent, we think that the Inquiring Officer was right in refusing to act upon the statements relied on by the appellant. As there was no material before the Inquiring Officer to show that P.S. Sundaram mentioned in the cheque is P.S. Sundaram, the Deputy Secretary, we think the High Court was justified in holding that these charges had not been proved.

5. It would also be appropriate to notice the relevant paragraph of the judgment, rendered by the Supreme Court in the case of *Central Bank of India Ltd. Vs. Prakash Chand Jain*, which is quoted hereinbelow:

8. It is true that, in numerous cases, it has been held that domestic tribunals, like an Enquiry Officer, are not bound by the technical rules about evidence contained in the Indian Evidence Act; but it has nowhere been laid down that even substantive rules, which would form part of principles of natural justice, also can be ignored by the domestic tribunals. The principle that a fact sought to be proved must be supported by statements made in the presence of the person against whom the enquiry is held and that statements made behind the back of the person charged are not to be treated as substantive evidence, is one of the basic principles which cannot be ignored on the mere ground that domestic tribunals are not bound by the technical rules of procedure contained in the Evidence Act. In fact, learned counsel for the appellant Bank was unable to point out any case at all where it may have been held by this court or by any other Court that a domestic tribunal will be justified in recording its findings on the basis of hearsay evidence without having any direct or circumstantial evidence in support of those findings.

6. In view of the law laid down by the Apex Court in the aforesaid judgments, it is apparent that there has been gross violation of the principles of natural justice during the course of enquiry inasmuch as the inadmissible evidence has been relied upon to punish the petitioner. This itself is sufficient to vitiate the enquiry report.

7. Petitioner's specific allegation is that at the time of passing of the impugned order, he was posted at Patna in the State of Bihar and, thus, the order passed by the Superintendent of Police, Gumla within the State of Jharkhand, is without jurisdiction. This allegation has not been disputed in the reply filed. Petitioner was serving in the State of Bihar and has been punished by an authority in the State of Jharkhand. This Issue is squarely covered by a judgment rendered by this Court in W.P. (S) No. 1557 of 2006, disposed of on 20th September, 2006 along with W.P. (S) No. 6869 of 2004 (Umesh Kumar Singh v. The State of Jharkhand and Ors.)

8. In this case the employee, Ranger was posted in the State of Bihar after bifurcation of the State when disciplinary proceedings were initiated against him by issuance Of charge sheet. On allocation of the State, he was transferred to the State of Jharkhand where he joined. However, the State of Bihar continued with the disciplinary proceedings, which culminated in the final enquiry report. On the basis of this enquiry the disciplinary action was taken against him. The disciplinary proceedings came to be challenged before this Court in the aforesaid writ petition. On consideration of the provisions of Section 72 of the Bihar Re-organization Act, 2000, this Court observed as under:

...All proceedings Initiated after the service of chargesheet by the State of Bihar when the petitioner ceased to be its employee cannot be held to be legal and valid. One State cannot try an employee of another State departmentally when that State has no administrative and territorial control over such an employee. Therefore, all departmental proceedings initiated by the State of Bihar after 09th of June, 2004 against the petitioner pursuant to the chargesheet dated 16th of April, 2004 are totally without jurisdiction and without any sanction of law, thus are non est.

9. In view of the above circumstances, the enquiry report dated 30th April, 2000, order of dismissal dated 3rd April, 2001 and that of the appellate authorities dated 23rd June, 2003 and 7th July, 2004 are hereby quashed. As a consequence of the quashment of the above said orders, petitioner is directed to be reinstated in service with immediate effect. He will be entitled to all consequential benefits. The writ application is, accordingly, allowed. However in the facts and circumstances, there shall be no order as to costs.