
(2014) 03 JH CK 0068

In the Jharkhand High Court

Case No : Writ Petition (S) No. 3067 of 2011

Umesh Prasad Singh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 21-03-2014

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : (2014) 03 JH CK 0068

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Rajendra Krishna and Suresh Kumar, for the Appellant;

Final Decision : Allowed

Judgement

Aparesh Kumar Singh, J.—Heard counsel for the parties. The petitioner is an Officer of the Jharkhand Administrative Service was proceeded against under the charge sheet dated 25.1.2005 issued under the signature of the Commissioner, Palamau Division, Medninagar, Annexure-1 for certain alleged charges for the period of his posting as S.D.O., Medini Nagar namely (i) that he indulged in suspending a Fair Price Shop license without proper investigation and restoring it on his will; (ii) on being asked, he gave explanation to the higher authorities on misleading facts;(iii) indulged in manipulation of Rules and (iv) showing callous attitude towards the weaker sections of the society. He was punished by the impugned order contained at memo no. 1192 dated 5.3.2011 (Annexure-5) issued under the signature of respondent no. 3, the Deputy Secretary, Department of Personnel, Administrative Reforms and Rajbhasha, Government of Jharkhand imposing him with major punishment of withholding of 4 increments with cumulative effect and that for the next 4 years he would not be considered for promotion from when it is due.

2. The short point raised by learned counsel for the petitioner is that though the petitioner faced departmental proceeding and appeared in the same as would also be evident from the note sheets of the inquiry proceeding annexed to the

counter affidavit filed on behalf of respondent no. 2 dated 6.8.2012, but after submission of the inquiry report on 24.11.2010 the Disciplinary Authority, without serving any second show cause notice or copy of the inquiry report proceeded to impose the punishment, which are in teeth of the judgment rendered by the Hon"ble Supreme Court in the case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., as also in the case of Union of India and others Vs. Mohd. Ramzan Khan, . It is submitted that such statement has been made in para 12 of the writ application, which has not been denied by the respondents. It has further been stated that the prosecution did not provide any evidence to substantiate the charges despite time granted by the Enquiry Officer. On the other hand petitioner had categorically denied each and every allegation through his statement of defence. However the Enquiry Officer without considering his reply and in absence of any material to substantiate the charges held him guilty. Therefore, the petitioner has been prejudiced by non service of second show cause along with copy of the Enquiry report before the Disciplinary Authority passed the order of major punishment.

3. The respondent-State on the basis of two counter affidavit filed on behalf of the respondent No. 1 to 5 on 16.5.2012 and thereafter again on 6.8.2012 filed by respondent no. 2 submitted that petitioner was allowed enough opportunities even before initiation of the departmental proceeding and during the course of the departmental proceeding and the impugned order has been passed after considering the written statement of defence of the petitioner together with the inquiry report and material found during the course of the inquiry. However, the contention of the petitioner made in para 12 of the writ petition has not been denied in either of the two counter affidavits filed by the respondents. In the first counter affidavit, at para 15, the statement made in response to the para 12 of the writ petition states that "it was not demanded though he has seen the order under permission of the Inquiry Officer. In the second counter affidavit also the said statement has been responded to in para 14 by stating that petitioner was given ample opportunity to defend himself before and during the conduct of the inquiry. The respondents have sought to justify the punishment on the basis of findings of guilt arrived at in the inquiry report. The respondents have enclosed the notice dated 28.11.2005 said to have been issued upon the petitioner, which is at Annexure D to the second counter affidavit. However, the said notice had been issued after the issuance of charge sheet on 25.1.2005 and not after the submission of the inquiry report on 24.11.2010 and cannot be said in the nature of second show cause notice.

4. I have heard counsel for the parties. It is apparent that the aforesaid contention raised by the petitioner in para 12 of the writ petition has not been denied by the respondents, as aforesaid. The writ petition has to succeed on the limited question of non service of second show cause notice along with the copy of the inquiry report before passing of the impugned order of punishment dated 5.3.2011 in view of the ratio laid down by the Hon"ble Supreme Court in the judgment rendered in the case of Managing Director, ECIL Hyderabad and Ors.

Vrs. B. Karunakar & ors and Union of India & others Vrs. Mohd. Ramzan Khan (supra) and later on followed in other judgments also. Reference may be made to para 26, 28 and 29 of the judgment rendered in the case of Managing Director, ECIL Hyderabad and Ors. Vrs. B. Karunakar (supra) which are quoted herein below:-

Para 26:-The reason why the right to receive the report of the enquiry officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the enquiry officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the enquiry officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the enquiry officer along with the evidence on record. In the circumstances, the findings of the enquiry officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the enquiry officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the enquiry officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusions. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the enquiry officer's findings. The disciplinary authority is then required to consider the evidence, the report of the enquiry officer and the representation of the employee against it.

Para 28:-The position in law can also be looked at from a slightly different angle. Article 311(2) says that the employee shall be given a "reasonable opportunity of being heard in respect of the charges against him". The findings on the charges given by a third person like the enquiry officer, particularly when they are not

borne out by the evidence or are arrived at by overlooking the evidence or misconstruing it, could themselves constitute new unwarranted imputations. What is further, when the proviso to the said Article states that "where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed", it in effect accepts two successive stages of differing scope. Since the penalty is to be proposed after the inquiry, which inquiry in effect is to be carried out by the disciplinary authority (the enquiry officer being only his delegate appointed to hold the inquiry and to assist him), the employee's reply to the enquiry officer's report and consideration of such reply by the disciplinary authority also constitute an integral part of such inquiry. The second stage follows the inquiry so carried out and it consists of the issuance of the notice to show cause against the proposed penalty and of considering the reply to the notice and deciding upon the penalty. What is dispensed with is the opportunity of making representation on the penalty proposed and not of opportunity of making representation on the report of the enquiry officer. The latter right was always there. But before the Forty-second Amendment of the Constitution, the point of time at which it was to be exercised had stood deferred till the second stage viz., the stage of considering the penalty. Till that time, the conclusions that the disciplinary authority might have arrived at both with regard to the guilt of the employee and the penalty to be imposed were only tentative. All that has happened after the Forty-second Amendment of the Constitution is to advance the point of time at which the representation of the employee against the enquiry officer's report would be considered. Now, the disciplinary authority has to consider the representation of the employee against the report before it arrives at its conclusion with regard to his guilt or innocence of the charges.

Para 29:-Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.

Having regard to the aforesaid legal position, the impugned order of punishment of imposition of major punishment of withholding of 4 increments with cumulative effect along with the order directing that the petitioner would not be considered for promotion for a period of 4 years from when it is due to him is therefore unsustainable in law as well as on facts. Accordingly, the impugned order dated 5.3.2011 is quashed. However, the respondents are at liberty to proceed with the departmental proceeding from the stage of serving the copy of

inquiry report along with second show cause notice to the petitioner while taking a decision in the matter in accordance with law. The writ petition is allowed in the aforesaid manner.