

(2022) 11 OHC CK 0186
In the Orissa High Court
Case No : Writ Appeal No. 337 Of 2019

Union Of India And Others

APPELLANT

Vs

Janardan Mohanty

RESPONDENT

Date of Decision : 23-11-2022

Acts Referred:

Indian Penal Code, 1860 — Section 34, 409

Citation : (2022) 11 OHC CK 0186

Hon'ble Judges : Dr. S. Muralidhar, CJ; M.S. Raman, J

Bench : Division Bench

Advocate : P.K. Parhi, Babita Sahu, Niranjana Biswal

Final Decision : Dismissed

Judgement

Dr. S. Muralidhar, CJ.

1. The present appeal by the Union of India is directed against the judgment dated 17th January, 2019 passed by the learned Single Judge allowing O.J.C. No.6319 of 1999 filed by the Respondent. By the said judgment, the learned Single Judge held that the major penalty of removal from service awarded to the Respondent by the Disciplinary Authority (DA) by the order dated 29th August, 1998 and its confirmation thereof by the Appellate Authority (AA) by order dated 19th April, 1999 were bad in law and were accordingly quashed. A direction was issued that the Respondent should be reinstated in service with all consequential benefits.

2. It appears that the Appellant did not comply with the above directions and instantly filed the present appeal. In the meanwhile, contempt proceedings were initiated by the Respondent. On 7th October, 2021 while adjourning the appeal, this Court noted the submission of learned counsel for the parties that they would seek adjournment in the contempt proceedings.

3. This Court had heard the submissions of Mr. P.K. Parhi, learned Deputy Solicitor General of India (DSGI) appearing for the Appellant and Mr. Niranjana

Biswal, learned counsel appearing for the Respondent. Both of them have filed their respective written notes of submissions as well.

Background facts

4. The background facts are that the Respondent was appointed as a Constable in the CISF First Reserve Battalion, Barwaha, Madhya Pradesh on 2nd April, 1989. After successful completion of training at the RTC, Bhilai, he joined on 10th January, 1990. After completion of training for ASI/Clerk, he joined the CISF Unit HEC Ranchi on 4th July, 1995. While he was working at Ranchi, disciplinary proceedings were initiated against him on two charges. The first was that "he had connived and abetted with other CISF Personnel in preparation of forged/fraudulent TA/DA bills and false acquittance rolls." The second was that he had been sent on temporary duty with effect from 26th December, 1995 for participation in a police investigation against him in connection with embezzlement of Government funds. He was arrested by the Police on 31st March, 1996 and released on bail on the same day with a direction to remain present at Barwaha till further orders. However, on 10th April, 1996 he left CISF First Reserve Battalion, Barwaha and reported at the CISF Unit, Ranchi on 13th April, 1996 and submitted an application dated 15th April, 1996 in which he misrepresented that the enquiry against him had been completed and that he had obtained anticipatory bail in order to protect himself from the case and police arrest.

5. On completion of the departmental inquiry, the Inquiry Officer (IO) submitted a report on 17th June, 1998 holding that Charge-I had been proved and Charge-II had not been proved. After considering the Respondent's written representation dated 8th July, 1998 against the said enquiry report, the DA awarded him the penalty of removal from service by an order dated 29th August, 1998. The appeal filed by the Respondent was rejected by the AA on 9th April, 1999. Thereupon, the Respondent filed O.J.C. No.6319 of 1999 in this Court.

Impugned order of the Single Judge

6. The learned Single Judge in the impugned order arrived at the following findings:

(i) A preliminary enquiry was conducted on the basis of allegations against the Respondent and a preliminary report was submitted on 15th September, 1995 on the basis of which regular disciplinary proceedings were initiated against the Respondent on 28th April, 1996.

(ii) During the disciplinary proceedings, 3 persons were examined: S.I./Min. P.K. Nath, Inspector- Gokul Chand (PW-1) and Inspector- A.K. Mishra (PW-2). However, S.I./Min. P.K. Nath turned hostile. Inspector- A.K. Mishra (PW-2) produced the statements of S.I./Min. M.K. Bhandari and S.I./Min. P.K. Nath, recorded in the preliminary enquiry. It was on the basis of the aforementioned statements that the IO found Charge-I proved.

(iii) In his representation dated 8th July, 1998 the Respondent submitted that since S.I./Min. M.K. Bhandari was not examined in the disciplinary proceedings, his statement recorded in the preliminary enquiry could not be utilized as per the CISF Circular No.1 of 1992. Further, after March, 1993 the Respondent was posted at the Non-Government Fund Section, which had no nexus with the Accounts Section. The alleged incident took place after March, 1993 and as such the Respondent was in no way connected with the incident after he was relieved from the Accounts Section.

(iv) Relying on the statement of S.I./Min. M.K. Bhandari and S.I./Min. P.K. Nath recorded in the preliminary enquiry produced by PW-2, the IO found the Respondent guilty of Charge-I. Though the Respondent wanted to examine S.I./Min. M.K. Bhandari, no opportunity was given to him to do so. Discounting the fact that S.I./Min. P.K. Nath turned hostile, the DA imposed on the Respondent, the punishment of removal from service by relying on the statements of P.K. Nath and S.I./Min. M.K. Bhandari recorded in the preliminary enquiry.

(v) The preliminary fact-finding enquiry was not a regular enquiry and statements made therein, if relied upon in the formal enquiry without observing the principles of natural justice, would result in vitiating the disciplinary enquiry itself. Reference was made to the decision in *Kendriya Vidyalaya Sangathan v. Arunkumar Madhavrao Sinddhaye* (2007) 1 SCC 283. Reference was also made to the decisions in *Rash Lal Yadav (Dr) v. State of Bihar* (1994) 5 SCC 267, *Narayan Dattatraya Ramteerthakhar v State of Maharashtra* AIR 1997 SC 2148 and *Nirmala J. Jhala v. State of Gujarat* AIR 2013 SC 1513.

(vi) Towards the end of the judgment, the learned Single Judge noted that during the pendency of the writ petition, in the criminal case registered against the Respondent under Section 409/34 of IPC, the Respondent had been acquitted. This was an additional ground, according to the learned Single Judge, on which the impugned order of removal from service could not be sustained in law.

Submissions of counsel

7. Mr. P.K. Parhi, learned DSGI submitted that acquittal by a criminal Court, which requires proof beyond reasonable doubt, cannot be the basis for absolving the Respondent in the departmental enquiry from a grave misconduct like embezzlement which requires a different standard of proof of preponderance of probabilities. Reliance was placed on the decisions in *State of Haryana v. Rattan Singh* AIR 1977 SC 1512, *State of Rajasthan v. Heem Singh* AIR 2020 SC 5455, *Union of India v. Dalbir Singh* (judgment dated 21st September 2021 of the Supreme Court in C.A. No. 5848 of 2021), *State of Karnataka v. Umesh* (Judgment dated 22nd March, 2022 of the Supreme Court in Civil Appeal Nos.1763-1764 of 2022) and *North West Karnataka Road Transport Corporation v. H.H. Pujar* AIR 2008 SC 3060.

8. Mr. Niranjana Biswal, learned counsel appearing for the Respondent, on the other hand, relied on the decisions in *Narayan Dattatraya Ramteerthakhar*

(supra), *Nirmala J. Jhala* (supra), *Roop Singh Negi v. Punjab National Bank* (2009) 2 SCC 570, *Moni Shankar v. Union of India* (2008) 3 SCC 484 and *Sher Bahadur v. Union of India* (2002) 7 SCC 142.

Analysis and Reasons

9. Having considered the above submissions, the Court would like to begin by observing that it is a well settled proposition of law that mere acquittal in a criminal case would not ipso facto exonerate a delinquent employee facing the same charges in a disciplinary enquiry. The aforementioned decisions relied upon by Mr. Parhi, viz., *State of Haryana v. Rattan Singh* (supra), *North West Karnataka Road Transport Corporation v. H.H. Pujar* (supra) and the recent judgments in *State of Karnataka v. Umesh* (supra), *Union of India v. Dalbir Singh* (supra) and *State of Rajasthan v. Heem Singh* (supra) reiterate the settled position. Consequently, this Court is of the view that the learned Single Judge could not have based the judgment regarding untenability of the order of the DA imposing the punishment of removal from service on the basis of such acquittal of the Respondent in the criminal case.

10. Nevertheless, the fact remains that this was not the only ground on which the learned Single Judge based his opinion. If this was indeed the sole ground, then there would have been merit in the contention of the Respondent that the impugned judgment of the learned Single Judge was unsustainable in law. However, it is seen that the main ground on which the learned Single Judge based his conclusion about untenability in law of the order of the DA and the consequential order of the AA was the fact of denial of opportunity to the Respondent, in the disciplinary proceedings, to examine/cross-examine the witnesses on whose statements during the preliminary enquiry, the decision of the DA was based.

11. To recapitulate, in the disciplinary enquiry, the Respondent was found guilty of Charge-I which was held to be proved. It was held that Charge-II was not proved. There were two aspects to Charge-I. One was that the persons whose statements were recorded in the preliminary enquiry, and which statements formed the basis of the conclusion of the DA, had to be examined in the disciplinary enquiry. In particular, of the two statements, one was of S.I./Min. P.K. Nath whose statement did not support the Department and he was declared hostile. As far as the other person S.I./Min. M.K. Bhandari was concerned, his statement was relied upon but, admittedly, he was not allowed to be examined by the Respondent. In that view of the matter, the statements in the preliminary enquiry could not have been relied upon by the IO or for that matter the DA in the departmental enquiry.

12. In similar circumstances, in *Narayan Dattatraya Ramteerthakhar* (supra), it was held as under:

"3... The preliminary enquiry has nothing to do with the enquiry conducted after the issue of the charge-sheet. The former action would be to find whether

disciplinary enquiry should be initiated against the delinquent. After full-fledged enquiry was held, the preliminary enquiry had lost its importance.”

13. In *Nirmala J. Jhala* (supra), it was held as under:

“45....it is evident that the evidence recorded in preliminary inquiry cannot be used in regular inquiry as the delinquent is not associated with it, and opportunity to cross-examine the persons examined in such inquiry is not given. Using such evidence would be violation of the principles of natural justice.

46. In *Ayaubkhan Noorkhan Pathan v. State of Maharashtra* AIR 2013 SC 58, this Court while placing reliance upon a large number of earlier judgments held that cross-examination is an integral part of the principles of natural justice, and a statement recorded behind back of a person wherein the delinquent had no opportunity to cross-examine such persons, the same cannot be relied upon.

47. The preliminary enquiry may be useful only to take a prima facie view, as to whether there can be some substance in the allegation made against an employee which may warrant a regular enquiry.”

14. Further, in the same decision, it was observed as under:

“51... There is nothing on record to show that either the preliminary enquiry report or the statements recorded therein, particularly, by the complainant/accused or Shri C.B. Gajjar, advocate, had been exhibited in regular inquiry. In the absence of information in the charge sheet that such report/statements would be relied upon against the Appellant, it was not permissible for the Enquiry Officer or the High Court to rely upon the same. Natural justice is an inbuilt and inseparable ingredient of fairness and reasonableness. Strict adherence to the principle is required, whenever civil consequences follow up, as a result of the order passed. Natural justice is a universal justice. In certain factual circumstances even non-observance of the rule will itself result in prejudice. Thus, this principle is of supreme importance. (Vide: *S.L. Kapoor v. Jagmohan* AIR 1981 SC 136; *D.K. Yadav v. JMA Industries Ltd.* (1983) 3 SCC 259; and *Mohd Yunus Khan v. State of U.P. and Ors* (2010) 10 SCC 539.”

15. In the written submissions of the Appellant, reliance is placed on the very statement of S.I./Min. M.K. Bhandari to urge that the forged TA/DA bills were prepared by the Respondent and Constable P.K. Nayak without disputing that S.I./Min. P.K. Nath had turned hostile and S.I./Min. M.K. Bhandari was not produced as witness in the disciplinary proceedings. It is evident therefore that the order of the DA imposing the punishment of removal from service on the basis of such evidence, was in violation of the principles of natural justice. Since this is the principal ground on which the learned Single Judge has interfered with the said order of the DA, the Court is unable to find any legal error having been committed by the learned Single Judge.

16. Consequently, no ground is made out for interference with the impugned order of the learned Single Judge. The writ appeal is dismissed but in the

circumstances with no order as to costs.

.....