
(2015) 07 JH CK 0005

In the Jharkhand High Court

Case No : Writ Petition (S) No. 1059 of 2007

Vinod Kumar Tiwary

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 06-07-2015

Acts Referred:

Citation : (2015) 4 AJR 450 : (2015) 3 JLJR 329

Hon'ble Judges : Rongon Mukhopadhyay, J

Bench : Single Bench

Advocate : S.N. Pathak, Senior Advocate, for the Appellant; Dhananjay Kumar Dubey, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Rongon Mukhopadhyay, J.—In this application, the petitioner has prayed for quashing the order as contained in Memo No. 1789/Confidential dated 16.08.2005, passed by respondent No. 5, whereby and whereunder an order of dismissal in departmental proceeding has been passed against the petitioner. The petitioner has further prayed for quashing the order dated 30.03.2006, passed by respondent No. 4, whereby and whereunder the appeal preferred by the petitioner has also been dismissed.

2. The petitioner was appointed on the post of constable in the police department in the year 1996. After bifurcation of the State of Bihar, the petitioner was finally allocated Jharkhand cadre. Vide Memo No. 649 dated 20.07.2005, the chargesheet was submitted upon the petitioner and he was asked to file a preliminary show cause, to which he replied by denying the allegation levelled against him. Thereafter, the petitioner was issued Memo No. 1380 dated 7.8.2005, by which the petitioner was directed to file his explanation against the proposed punishment of dismissal from service. Subsequently, vide Memo No. 1789 dated 16.08.2005 issued by respondent No. 5, the petitioner after having been found guilty in the departmental proceeding was dismissed from service with effect from 16.08.2005. The appeal, which was preferred by the petitioner

before respondent No. 4 was also rejected by order dated 30.03.2006.

3. Heard Dr. S.N. Pathak, learned senior counsel for the petitioner and Mr. Dhananjay Kumar Dubey, learned Senior Standing Counsel No. 1 for the respondents.

4. Dr. S.N. Pathak, learned senior counsel for the petitioner, has submitted that the disciplinary proceeding initiated against the petitioner is vitiated on account of lapses of the disciplinary authority. He has further submitted that the inquiry report, in which the petitioner was found guilty of the charges levelled against him, was never served upon the petitioner. He has also submitted that the charges itself are vague as there is no specific allegation against the petitioner in the said charges. Learned senior counsel has also assailed the order of dismissal by submitting that the disciplinary authority has not applied his mind to the vague charges levelled against the petitioner as well as the fact that the inquiry report was never served upon the petitioner. He has also submitted that the show cause, which was submitted by the petitioner although was not served within time and which has been indicated by the disciplinary authority of having never been submitted upon the petitioner the appellate authority on the other hand has taken into consideration the purported show cause while deciding the appeal against the petitioner. Learned senior counsel has also submitted that the punishment of dismissal, which has been inflicted upon the petitioner, is harsh and is not in commensuration with the charges levelled against him.

5. Mr. Dhananjay Kumar Dubey, learned Senior Standing Counsel No. 1 for the respondents, on the other hand, has submitted that the charges, which were levelled against the petitioner, were grave in nature inasmuch as the petitioner was charged with drunken behaviour and use of obscene language, which was further confirmed in medical examination, wherein the petitioner was tested to be under the influence of liquor. He has further submitted that after the preliminary explanation was submitted by the petitioner, the Inquiry Officer had fixed dates for examination of the witnesses but petitioner never chose to appear on any of the dates. However, taking a considerate view, application filed by the petitioner for examination of the witnesses was allowed by the Inquiry Officer and all the witnesses were cross-examined by the petitioner on 29.07.2005. It has, thus, been submitted that the procedural irregularity, which the petitioner claims to have been committed during the course of departmental proceeding is without any basis, which is further fortified by the averments made in the counter affidavit.

6. Learned senior counsel for the petitioner has placed much reliance on the vagueness of the charges, which were levelled against the petitioner.

7. On perusal of the five charges against the petitioner, wherein it has been specifically stated that on 17.07.2005 at around 6 P.M., the petitioner in a drunken stage had come to the residential premises of the Superintendent of Police and on protest had used unparliamentary language and had also tried to

take the rifle kept in the guard room, which however was prevented. The charge Nos. 4 and 5 relates to the incident when the petitioner was sent for medical examination for determination of the presence of alcohol and in Sadar Hospital, Sahebganj also, the petitioner had continued with his drunken behaviour and ultimately on medical examination, it was confirmed that the petitioner was under the influence of alcohol. Thus, perusal of the charges levelled against the petitioner clearly specifies the date and time as well as the place where the indecent behavior of the petitioner had taken place and in such circumstances the contention of learned senior counsel for the petitioner with respect to vagueness of the charges is rejected being devoid of any substantial material in its support. However, so far as non supply of inquiry report is concerned, the respondents have kept silent and such silence impliedly leads to the conclusion that the inquiry report was indeed not supplied upon the petitioner.

8. In the case of the Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., AIR 1994 SC 1074 : (1993) 6 JT 1 : (1994) 1 LLJ 162 : (1993) 3 SCALE 952 : (1993) 4 SCC 727 : (1993) 2 SCR 576 Supp : (1993) 3 SLJ 193 , wherein with respect to non supply of inquiry report, it was held as follows:-

"30(i) Since the denial of the report of the enquiry officer is a denial of reasonable opportunity and a breach of the principles of natural justice, it follows that the statutory rules, if any, which deny the report to the employee are against the principles of natural justice and, therefore, invalid. The delinquent employee will, therefore, be entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject.

(iii) Since it is the right of the employee to have the report to defend himself effectively and he would not know in advance whether the report is in his favour or against him, it will not be proper to construe his failure to ask for the report, as the waiver of his right. Whether, therefore, the employee asks for the report or not, the report has to be furnished to him."

9. Learned senior counsel for the petitioner has also relied upon the judgment in the case of Narinder Mohan Arya Vs. United India Insurance Co. Ltd. and Others, AIR 2006 SC 1748 : (2006) 109 FLR 705 : (2006) 4 JT 404 : (2006) 2 LLJ 806 : (2006) 4 SCALE 181 : (2006) 4 SCC 713 : (2006) SCC(L&S) 840 : (2006) 3 SLJ 211 : (2006) 1 UJ 541 : (2006) AIRSCW 1969 : (2006) 3 Supreme 459 to drive home the point that the appellate authority did not apply his mind either to the order of disciplinary authority or the procedural irregularity, which is manifest on the face of the record and for the purpose of this case, it is necessary to extract the relevant portion of the said judgment.

"36. The order of the Appellate Authority demonstrates total non-application of mind. The Appellate Authority, when the Rules require application of mind on several factors and serious contentions have been raised, was bound to assign reasons so as to enable the writ court to ascertain as to whether he had applied his mind to the relevant factors which the statute requires him to do. The

expression "consider" is of some significance. In the context of the Rules, the Appellate Authority was required to see as to whether (i) the procedure laid down in the Rules was complied with; (ii) the enquiry officer was justified in arriving at the finding that the delinquent officer was guilty of the misconduct alleged against him; and (iii) whether penalty imposed by the disciplinary authority was excessive"

10. In the case of B.C. Chaturvedi Vs. Union of India and others, AIR 1996 SC 484 : (1995) 8 JT 65 : (1996) LabIC 462 : (1996) 1 LLJ 1231 : (1995) 6 SCALE 188 : (1995) 6 SCC 749 : (1995) 4 SCR 644 Supp : (1996) 1 UJ 80 , while considering the excess and harsh punishment awarded to the delinquent, it had been held that if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

11. Since admittedly the inquiry report was not submitted to the petitioner, nor the discussion with respect to findings in the inquiry report have been dealt with in details by the disciplinary authority that itself has prejudiced the petitioner in countering the findings of the Inquiry Officer with respect to the charges levelled against him. Moreover, since a major punishment of dismissal has been imposed upon the petitioner, non supply of the inquiry report has left the petitioner with no opportunity to give an appropriate reply to the show cause notice. Since this Court is of the view that the principles of natural justice has not been followed on account of non supply of the inquiry report to the petitioner, the question of disproportionate punishment as has been contended by the learned senior counsel for the petitioner is left open. The appellate authority while deciding the appeal has merely discussed the charges, which have been levelled against the petitioner and has concluded that since the charges are grave in nature, which have tarnished the image of the police, the appeal preferred by the petitioner was also rejected. The appellate authority, however, neither did consider the fact that the inquiry report was never submitted to the petitioner nor has he made a discussion on the findings of the inquiry report and has merely agreed with the disciplinary authority while dismissing the appeal. Moreover, consideration of the appellate authority with respect to the alleged show cause submitted by the petitioner is contrary to the finding of the disciplinary authority, which shows total non application of mind on the part of the appellate authority. Either the disciplinary authority did not receive the show cause reply of the petitioner or on receipt of it either did not consider it or had discarded it. The aforesaid position with respect to submission of the show cause reply by the petitioner also creates a peculiar situation with respect to consideration/non consideration of the show cause reply by the disciplinary authority and the appellate authority.

12. Be that as it may, the fact remains that the petitioner was never served with

an inquiry report. This fact coupled with the reasonings shown by the disciplinary authority as well as the appellate authority leads the Court to conclude that the said orders are not in accordance with law and liable to be set aside.

13. Accordingly, in view of the reasonings afforded above, the order as contained in Memo No. 1789/Confidential dated 16.08.2005 passed by the respondent No. 5 and the order dated 30.03.2006 passed by the respondent No. 4 are hereby quashed and set aside and the matter is remanded back to the disciplinary authority (respondent No. 5), who shall continue with the inquiry from the stage of furnishing the petitioner with the inquiry report.

14. This application is disposed of with the aforementioned direction.