
(2016) 08 JH CK 0088
In the Jharkhand High Court
Case No : Writ Petition (S) No. 4772 of 2015

Xavier Herenz

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 24-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 2 JBCJ 75 : (2016) 4 JLJR 59

Hon'ble Judges : Mr. Pramath Patnaik, J.

Bench : Single Bench

Advocate : Mr. Anoop Kumar Mehta, Advocate, for the Petitioner; Mr. Rajesh Kumar, G.P. V, for the Respondents

Final Decision : Allowed

Judgement

Mr. Pramath Patnaik, J. - In the accompanied writ application, the petitioner has sought for quashing the Memo of Charge, issued by the Deputy Commissioner, Bokaro vide letter dated 01.10.2010 (Annexure-10) and for quashing of the entire proceeding as well as the order of dismissal vide memo dated 16.09.2015 (Annexure-16), issued under signature of the Respondent No. 4 and further prayer has been made for reinstatement to the post with all consequential service benefits.

2. The brief facts, as disclosed in the writ application, is that the petitioner was initially appointed on State Civil Service on 01.03.1993 by the erstwhile Government of Bihar on the recommendation of Bihar Public Service Commission. In course of time, the petitioner was given the Junior Selection Grade during 2005. The petitioner was posted as SDO, Chas, which is in the district of Bokaro for the period from 08.03.2006 to 27.08.2007. In the year 1984, during Sikh Riot, the State Government provided relief fund to the Riot victims and the amount was to be distributed by the State Nazarat. The then Additional Collector on 08.07.1988 directed the then S.D.O., Chas to provide interim relief to the Riot victims including three persons, namely, 1. Sardar

Sardul Singh Kalsi, 2. Smt. Gurucharan Kour and 3.Sardar Sarbjeet Singh Kalsi for the injury sustained on account of Riot to the tune of Rs. 1,000/-. In compliance of the order of the Additional Collector, Bokaro, the then S.D.O. Chas vide memo dated 01.08.1988 disbursed the amount of Rs. 1,000/- each to the said persons. Subsequently, the Deputy Commissioner, Bokaro, issued order dated 31.08.1993 directing the then Dy. Collector, Nazarat, Bokaro for payment of Rs. 48,000/- in favour of Sardar Sardul Singh Kalsi for the loss suffered on account of Riot to his business premises Hotel Allora in Bokaro Steel City and it was directed that payment shall be paid to the victim by 01.09.1993 and the victim Sardar Sardul Singh Kalsi received amount of Rs. 48,000/- on 01.09.1993 from Dy. Collector, District Nazarat, Bokaro, as is evident from Annexure-2 and 2/ A of the writ petition. The Deputy Collector, Land Reforms before making payment of Rs. 48,000/- in favour of Sardar Sardul Singh Kalsi, has made an assessment of Rs. 5,50,000/- as a loss to the industry vide his letter dated 04.07.1988. A further assessment of Rs. 1,63,000/- was estimated for payment on account of loss suffered by his son businessman Sardar Sarbjeet Singh Kalsi by the Deputy Collector, Land Reforms, Bokaro. It is clarified that an amount of Rs. 5,50,000/- and Rs. 1,63,000/- was assessed by the then D.C.L.R. for Sarabjit industries, while Rs. 48,000/- was paid out of the loss of Allora Hotel owned by the Sardar Sardul Singh Kalsi. Subsequently, Government of India, Ministry of Home Affairs, issued a Circular dated 16.01.2006, sanctioning the rehabilitation package to provide reliefs to the victims of 1984 Riots and accordingly, modalities for payment and the quantum of payment was specified. In pursuance to the said Circular, the Government of Jharkhand, Ministry of Home Affairs, issued a notification dated 07.03.2006, directing all the Deputy Commissioner, Superintendent of Police and the Additional Collector of the District to constitute a Committee of four members to scrutinise the "Rehabilitation package" consisting of Deputy Commissioner as President and S.P., A.C. and representative from minority Commission as the members of the Committee. In the said letter, it has been specifically directed that the Dy. Commissioner shall be the Drawing and Disbursing authority of the relief package and a cut off date was also mentioned on each letter. The meeting was held on 29.03.2007 in which the claims of six persons including Sarabjit Singh Kalasi and Sardul Singh Kalasi were also to be considered. The meeting was presided over by the Dy. Commissioner, Bokaro and claim in favour of five persons was accepted and the claim amount was considered on the basis of the assessment made by D.C.L.R., Bokaro dated 04.07.1988 and the petitioner attended the meeting in the capacity of the S.D.O., Chas. The minutes of the meeting was circulated by the Dy. Commissioner, Bokaro vide Memo dated 31.03.2007, as per Annexure-6 to the writ petition. The then Dy. Commissioner, Bokaro appointed the petitioner as the Drawing and Disbursing authority vide memo dated 16.03.2007 for an amount of Rs. 1,90,000,00/- for the Rehabilitation package. In pursuance to the order issued by the Additional Collector vide his letter dated 31.03.2007 opened the file bearing No. 107/06-07 for Sarabjit Singh Kalasi and 109/06-07 for Sardul Singh Kalasi for payment. Accordingly, payment was made to the said Sarabjit

Singh Kalasi and Sardul Singh Kalasi vide account payee Cheque and a receiving dated 13.04.2007 was sent along with the compliance report by the petitioner as per Annexure-9 to the writ application. Subsequently, the petitioner was transferred to Hazaribagh as a District Supply Officer on 27.08.2007 but to the utter surprise, the petitioner received letter dated 14.02.2011 along with the Memo of Charge dated 01.10.2010 issued under the signature of the Dy. Commissioner, Bokaro on the allegation that the victims Sarabjit Singh Kalasi and Sardul Singh Kalasi have been paid Rs. 71,30,000/- instead of Rs. 4,32,000/-, as he had received an amount of Rs. 48,000/- from District Nazarat, as is evident from Annexure-10 and 10/A to the writ petition and after receipt of the show cause notice dated 14.02.2011, issued by the Department of Personnel, Administrative Reforms and Rajbhasa, the petitioner submitted his reply on 23.07.2011, denying the allegations levelled against him. Being dissatisfied with the show cause reply, the Department of Personnel, Administrative Reforms and Rajbhasa, decided to initiate Departmental Proceeding against the petitioner vide memo dated 30.07.2011 and the Inquiry Officer was appointed. After commencement of the Departmental Proceeding, the petitioner asked for documents and evidence on the basis of which charge was framed. The demands were made on 19.08.2011, 27.08.2011 and 29.09.2011 but the petitioner was not provided with the documents, asked for, so as to deprive him to put forth his case and to prove his innocence. Thereafter, the petitioner was issued second show cause vide letter dated 12.01.2013, along with the punishment of dismissal from service as per Annexure-14 to the writ petition. Thereafter, the respondents issued dismissal order under the signature of the respondent no. 4 vide Memo dated 16.09.2015, as evident from Annexure-16 to the writ petition. Left with no other efficacious, alternative and speedy remedy, the petitioner has been constrained to approach this Court invoking the extraordinary jurisdiction of this Court under article 226 of the Constitution of India for redressal of his grievances.

3. Mr. Anoop Kumar Mehta, learned counsel for the petitioner has strenuously urged that the charges issued by the Dy. Commissioner, Bokaro vide letter dated 01.10.2010, was concocted, perverse and illegal in the eye of law. Learned counsel for the petitioner further submits that the petitioner has been singled out for the act of omissions and commissions, committed by the responsible persons, including respondent nos. 5 to 8 and the collective decisions, taken by the Committee constituted by the Government of Jharkhand was that the entire blame could not have been apportioned on the petitioner. Learned counsel for the petitioner further submits that the enquiry, which has commenced, after initiation of the departmental proceedings, was in fact, a sham and an eye-wash without complying the principles of natural justice, thereby violating Articles 311 of the Constitution of India. Learned counsel for the petitioner further submits that from the very initiation of the Departmental Proceeding, till its culmination, there has been gross violation of the principles of natural justice and the Departmental Proceeding got vitiated on account of non-supply of the necessary documents on the basis of which the petitioner has been found guilty and the subsequent action

by the respondents smacks of mala fide and ulterior motive.

4. Per contra, a counter affidavit has been filed on behalf of the respondents, controverting the averments made in the writ application. In the counter affidavit, it has been submitted that the petitioner constituted false records in favour of late Sardul Singh Kalasi and Sri Sarabjit Singh Kalsi and paid ex gratia additional amount of Rs. 55,00,000/- to late Sardul Singh Kalasi (receiver Sri Sarabjit Singh Kalsi) and Rs. 16,30,000/- to Sri Sarabjit Singh Kalsi. It was stated in these records that Sri Kalsi did not get any ex gratia payment earlier but the truth is that Sri Kalsi got Rs. 48,000/- as ex-gratia payment earlier from the District Nazarat Section. So as per Government guidelines Sri Kalsi has to be paid Rs. 4,32,000/- only, while Rs. 71,30,000/- was wrongly paid to Sri Kalsi as ex-gratia amount as per Annexure-A to the counter affidavit. The Dy. Commissioner, Bokaro communicated that an FIR had been lodged in Chas Police Station regarding this and the petitioner was guilty of the said wrong payment, so, it was recommended to institute departmental proceeding against him in this matter. Accordingly, the enquiry Officer was appointed. The Conducting Officer submitted an enquiry report vide letter dated 10.09.2012, wherein, the charges levelled against the petitioner have been reported to be proved. The petitioner submitted his written defence statement during departmental proceeding, which was not accepted by the Conducting Officer. It was stated in the enquiry report that in the meeting of the District Level Committee held on 29.03.2007, the petitioner submitted a list of six persons for payment of ex gratia amount in which he recommended for payment of Rs. 16,30,000/- to Sri Sarabjit Singh Kalsi and Rs. 55,00,000/- to late Sardul Singh Kalsi, which proved the charges against the petitioner, as evident from Annexure-D to the counter affidavit. In the light of the charges proved against the petitioner, it was proposed by the department to award punishment of dismissal from service to him and issue second show cause notice regarding it and after approval of the Government, the second show cause notice was issued to the petitioner vide department's letter dated 12.01.2013. The petitioner submitted his reply. In the light of the findings of the Conducting Officer, the reply of the petitioner was rejected and the order of dismissal vide memo dated 16.09.2015 (Annexure-16) was issued under the signature of the Respondent No. 4. It has further been submitted that instead of preferring an appeal, the petitioner has moved before this Court by filing the instant writ petition.

5. Reply to the counter affidavit on behalf of the petitioner has been filed, wherein, it has been submitted that it is a settled law of service jurisprudence that in absence of providing necessary records on the basis of which the employee has been charge sheeted and charges were framed, disciplinary proceeding gets vitiated as has been held in Bilashpur Raipur Kshetriya Gramin Bank & another v. Madanlal Tondon reported in (2015) 8 SCC 461 and South Bengal State Transport Corpn. v. Sapan Kumar Mitra & Others reported in (2006) 2 SCC 584.

6. After bestowing my thoughtful consideration to the rival submissions and on perusal of the records, I am of the considered view that the petitioner has been able to make out a case for interference due to the following facts and reasons:-

(i) In the instant writ application, after initiation of the departmental proceedings, the petitioner asked for the documents and the evidences on which the charges were framed vide letter dated 19.08.2011, 27.08.2011 and 20.09.2011 as per Annexure-12 to the writ petition, but indisputably, no such documents were supplied to the petitioner, which deprived the petitioner to prove his innocence and the relevant documents on the basis of which the findings have been arrived at by the Conducting Officer, have not been made available to the petitioner, which has vitiated the entire Departmental Proceeding, thereby causing serious prejudice to the petitioner. In pursuance to the decision taken by the Committee, constituted by the Government of Jharkhand, it was collectively decided for payment to be made to the riot victims including Sardar Sarabjit Singh Kalasi and Sardar Sardul Singh Kaalsi but the petitioner has been singled out for the alleged act of omissions or commissions of the responsible officers including the respondent nos. 5 to 8. It appears that the petitioner has been made an scapegoat for the collective decision taken by the Committee.

(ii) It would be apposite to mention that the Additional Collector, Bokaro was also issued a show cause by the Dy. Commissioner, Bokaro vide letter dated 21.10.2007, as he was also the responsible officer for the alleged charges but the said officer has been exonerated and the petitioner has been found guilty of the charge. There cannot be gain saying of the fact that there has been dereliction of duty on the part of the petitioner but certainly, the omission as has been proved in the enquiry does not constitute misconduct as nothing incriminating has been found against the petitioner. However, considering the gravity of punishment in juxtaposition with the proved charges, the punishment appears to be harsh and excessive and not commensurate with the proved charges.

7. In view of the aforesaid facts and as a logical sequitor to the reasons stated herein above, the impugned order of punishment of dismissal vide memo dated 16.09.2015 (Annexure-16), issued under signature of the Respondent No. 4 being not legally sustainable, is quashed and set aside and the respondents are directed to reinstate the petitioner in service forthwith. However, respondents are at liberty to start the proceedings from the stage of supply of documents after affording reasonable opportunity to the petitioner and complete the proceeding expeditiously preferably within a period of six months from the starting of the initiation of the proceedings.

8. Writ petition stands allowed in the aforesaid terms.