

(2010) 03 JH CK 0021
Jharkhand High Court
Case No: None

Krishna Murari Singh

APPELLANT

Vs

The State of Jharkhand, The
Director General of Police, The
Deputy Inspector General of
Police, Kolhan Range and The
Superintendent of Police

RESPONDENT

Date of Decision: March 26, 2010

Citation: (2010) 125 FLR 702

Hon'ble Judges: Dabbiru Ganeshrao Patnaik, J

Bench: Single Bench

Judgement

D.G.R. Patnaik, J.

Heard the learned Counsel for the parties.

2. The petitioner, in this writ application, has prayed for quashing the order dated-29.04.2003 (Annexure-6), passed by the Superintendent of Police, West Singhbhum, (Respondent No. 4), whereby the punishment of dismissal from service was awarded to the petitioner. The petitioner has also challenged the order dated-04.02.2004 (Annexure-8), passed by the Appellate Authority, whereby the appeal preferred by the petitioner against the impugned order of his dismissal, was dismissed.

3. The main grounds on which the petitioner has challenged the impugned orders are as follows:

(i) The departmental proceeding was conducted against the petitioner in a most illegal and arbitrary manner without affording opportunity to the petitioner to cross-examine the witnesses and even the material witnesses were not examined.

(ii) The findings recorded by the Enquiry Officer are against the weight of evidence on record and perverse and based on conjectures and surmises and without

application of mind.

Even otherwise, the findings recorded by the Enquiry Officer regarding the guilt of the petitioner is vague and ambiguous, since no definite finding that the charge has been proved against the petitioner, has been recorded.

(iii) The Disciplinary Authority has committed a grave error in failing to consider the specific defence of the petitioner that no opportunity was given to him to cross-examine the witnesses and that material witnesses even though named in the prosecution's case, were not examined.

(iv) The punishment of dismissal from service is unjustified, excessive and highly disproportionate to the gravity of the charges levelled against the petitioner.

(v) The Disciplinary Authority as also the Appellate Authority have passed the impugned orders without application of mind.

4. The facts of the petitioner's case in brief are as follows:

The petitioner was posted as a Constable in the Police Centre at Chaibasa.

On 01.05.2002, he was served with a memorandum of charge on the allegation that while he was on Guard duty on 08.11.2001 between 12 mid night to 2 A.M., it was found by Havildar Head Constable Kapildeo Sharma during his rounds of checking, that the petitioner was sleeping. When the Havildar Head Constable wanted to wake up the petitioner, he was abused by the petitioner. It was further alleged that even on 09.11.2002 between 4 P.M. to 6 P.M., while the petitioner was on Guard duty, he was found without his uniform and when the Guard in- charge objected and wanted to note the petitioner's conduct in the Guard Register, the petitioner resisted by snatching away the Register and indulged in a quarrel with the Guard in-charge.

On the basis of the charges, the departmental proceeding was initiated against the petitioner. Though no Presenting Officer was appointed, the Enquiry Officer himself became the Presenting Officer and conducted the enquiry.

In the show-cause replies, the petitioner had pleaded that the Head Constable Kapildeo Sharma was inimical to him on account of certain previous incidents and had also stated that one more Guard, namely, Constable Om Prakash Roy was also on duty along with the petitioner at the same time and the said co- constable would confirm that the petitioner had been diligent in attending his duty and there was no dereliction or negligence on his part.

In the enquiry, the complainant Kapildeo Sharma was the only witness, who was examined as a material witness and on the basis of his statements, the Enquiry Officer concluded that the charge against the petitioner "appeared to be proved".

On the basis of the Enquiry Report, the Disciplinary Authority recorded the impugned order of punishment of dismissal from service against the petitioner.

5. Assailing the impugned order, learned Counsel for the petitioner would elaborate that even from the copy of the deposition of the solitary witness, namely the complainant, namely, Kapildeo Sharma, it would be apparent that the petitioner was not given opportunity to cross-examine him. Learned Counsel adds further that the fact that the Enquiry Officer was himself the Presenting Officer, renders the manner in which the proceeding was conducted, violative of the principles of natural justice. Furthermore, the material witness including the other guard, who was also on duty at the relevant time along with the petitioner, having not been examined, it has caused serious prejudice to the petitioner in his defence.

6. Per contra, the submissions of the learned Counsel for the Respondents is that there is no impropriety or illegality in the findings of the Enquiry Officer or in the impugned order of punishment or even in the impugned Appellate order as because, the disciplinary enquiry was conducted against the petitioner in accordance with the Rules of procedure and the petitioner was given adequate opportunity of defending his case and furthermore, the Enquiry Officer has recorded his reasons for arriving on the findings of guilt against the petitioner. Learned Counsel further submits that the charge of negligence and dereliction of duty having been proved against the petitioner, such act of misconduct does invite the extreme punishment of dismissal from service and in this view of the matter, the impugned order of the petitioner's dismissal from service is perfectly justified.

7. Upon hearing the learned Counsel for the parties and going through the documents on record, as also from the copy of the deposition of the statement of the witness, Head Constable Kapildeo Sharma, I find that his deposition is limited to the statements recorded in the examination-in-chief. There is no statement by way of his cross-examination.

The consistent case of the petitioner is that he was not afforded opportunity to cross-examine the witness. This appears to be a specific ground, which he has taken in his second show-cause replies, submitted to the Disciplinary Authority. The obvious inference, therefore, is that the petitioner was not afforded reasonable opportunity to defend his case and to cross-examine the witness, upon whose statements, the Enquiry Officer has sought to rely. Furthermore, it also transpires from the admitted facts that besides the petitioner, one more Constable was also posted on duty along with the petitioner on both occasions. The Enquiry officer has not offered any explanation in his Enquiry Report as to why he did not chose to examine the other witness, namely, the co-Sentry Guard and why he has chosen to place implicit reliance upon the statement of the Head Constable without obtaining corroboration from the statements of the other material witness.

The above facts amply demonstrate that the departmental proceeding was conducted against the petitioner without affording him a reasonable opportunity of defending his case and in violation of the principles of natural justice. The petitioner has therefore, a reasonable ground to draw the inference that the Enquiry Officer

had proceeded to conduct the enquiry with a pre-conceived mind.

It is a settled principle of law that non-examination of material witnesses in the departmental proceeding does cause prejudice to the proceedee.

Likewise, in the case of Bhupinder Pal Singh-versus-Director General of Civil Aviation and Ors. reported in (2003) 3 SCC 633, the Supreme Court has held that non-granting of opportunity to cross-examine the witnesses, results in serious prejudice to the proceeding.

8. From perusal of the impugned order, as passed by the Disciplinary Authority, it appears that the Disciplinary Authority has merely adopted the findings of the Enquiry Officer without discussing or even considering the grounds stated by the petitioner, in his show-cause replies including the grounds that the material witness has been examined and the petitioner has been afforded opportunity to cross-examine the witness.

Another aspect, which is equally significant to note in this case, is that the Enquiry Officer has himself acted as a Presenting Officer. Such practice has been highly deprecated. The Patna High Court in its judgment passed in the case of Panchanan Kumar-versus-The Bihar State Electricity Board and Ors. reported in 1996 (1) P.L.J.R. 401, has observed that such a practice is a serious procedural error, which adversely affects the decision making process.

9. From the above facts, I am satisfied that there is procedural error in the manner of conducting the departmental proceeding and before arriving on the findings regarding the proving of the charges and the Enquiry Officer did not afford a reasonable opportunity to the petitioner to defend his case. These aspects having not been taken into consideration by the Disciplinary Authority as also by the Appellate Authority. The impugned orders do suffer from the vice of non-application of mind. There being merit in this writ application, the same is accordingly allowed. Both the impugned orders, namely, the order passed by the Disciplinary Authority and the order, passed by the Appellate Authority are hereby quashed. The Respondents are directed to reinstate the petitioner in service forthwith. The period from the date of termination of the petitioner from service till the date of his reinstatement in service shall be treated as period spent on duty for the purposes of computing his pension. However, in view of the fact that the petitioner has not pleaded and specifically stated that during this entire period, after the date of termination of his service, he was not gainfully employed, the petitioner shall not be entitled to receive any back wages.