Dhananjay Kumar Shukla Vs State of Jharkhand and Others

Court: Jharkhand High Court

Date of Decision: Sept. 2, 2013

Citation: (2014) 1 AJR 708 : (2013) 4 JLJR 327

Hon'ble Judges: S. Chandrashekhar, J

Bench: Single Bench

Advocate: Mahesh Tewari, for the Appellant; Shivani Verma, for the Respondent

Final Decision: Allowed

Judgement

S. Chandrashekhar, J.
The petitioner has challenged the penalty order dated 2.2.2012 and the appellate order dated 26.10.2012. The

brief facts of the case are that, the petitioner was appointed on the post of Constable and he gave his joining on 16.5.2009 at Ranchi Police Line.

The petitioner was sent for training on 6.6.2009 and completed the said training on 13.3.2010. On 14.3.2010, the petitioner was granted five

days" leave and he gave his joining on 19.3.2010. He was on duty on 20th March, 2010 however, on getting information from his daughter

regarding sudden illness of his wife, he had to leave for his native place. The petitioner again reported for duty on 24th March, 2010. In the

meantime, a criminal case was registered on 23rd March, 2010 being Gonda P.S. Case No. 80 of 2010 under Sections 419, 420, 467, 465, 471

and 120B of the Indian Penal Code against the petitioner and others. A departmental proceeding was also initiated against the petitioner on 26th

September, 2010 and a Charge Memo was given to the petitioner on the allegation that the petitioner forged the documents to secure appointment

and at the time of physical verification of the newly recruited persons he intentionally remained absent so as to escape detection. A departmental

enquiry was conducted and the enquiry report was submitted finding the charges levelled against the petitioner proved. The order of penalty dated

2.2.2012 was passed dismissing the petitioner from service and the appeal filed by the petitioner has also been dismissed vide order dated

26.10.2012 and therefore, the petitioner has approached this Court by filing the present writ petition.

2. A counter affidavit has been filed on behalf of respondent Nos. 3 and 4 stating as under:--

8. That it is humbly stated and submitted that a departmental proceeding has been initiated against the petitioner vide Ranchi District Departmental

Proceeding No. 240/2010. Charges against the petitioner were that after getting the training from Basic Training Centre, JAP-04, Bokaro, he

joined at Police Line, Ranchi. After returning from the training centre, photographs and physical verification of all the trainees have been conducted

on the complaint that some of the trainees have physically been changed. Information from their application forms and physically, they have been

verified. But, the petitioner at that very time, absconded without any information or permission or leave. It has been found that the petitioner after

forgery, changing documents, entering wrong information in the documents have got the job. Upon this, a First Information Report (F.I.R.) has also

been lodged vide Gonda P.S. Case No. 80/2010 dated 23.3.2010 under Sections 419/420/467/465/471/120B of the Indian Penal Code. His

salary has also been withheld vide Ranchi District Order No. 1307/2010.

9. That it is humbly stated and submitted that Shri Navin Kumar Lakra, Sergeant Major No. 2, Police Line, Ranchi has been appointed as

Conducting Officer. During the course of inquiry, the witnesses namely (i) Shri Anuranjan Kumar Kispotta, Deputy Superintendent of Police, City,

Ranchi, (ii) Shri Ravindra Prasad, Sergeant Major, Police Line, Ranchi, (iii) Shri Safir Ahmad Khan have confirmed the charges levelled against the

petitioner. The petitioner submitted his explanation.

10. That it is humbly stated and submitted that during the course of enquiry, it has been found that even after taking leave, the petitioner could go

for the treatment for his wife, but what he did at the time of verification, without any information he has absconded, which has created doubt upon

the petitioner. The Conducting Officer after completion of the enquiry has found the petitioner guilty of obtaining appointment on the basis of the

forged way.

11. That it is humbly stated and submitted that after completion of the enquiry, the Conducting Officer has submitted enquiry report to the

disciplinary authority. The disciplinary authority after being satisfied from the finding of the Conducting Officer, going through the materials on

record, seeing the exhibits, statement of witnesses has found the petitioner guilty of charges levelled against him.

12. That it is humbly stated and submitted that after that he asked the petitioner to submit his final explanation within 15 days as to why not order

of dismissal be passed against him vide Memo No. 7148/ra ka, dated 12.12.2011. The petitioner submitted his final explanation, but it was not

found to be satisfactory. Since, it was proved that the petitioner has obtained appointment by way of forgery and after changing the document and

absconded without any information, permission or leave at the time of verification of service, the disciplinary authority found the petitioner guilty of

charges. He passed the order of dismissal of the petitioner vide District Order No. 435/12 contained in Memo No. 465/ra ka dated 2.2.2012.

3. Heard the counsel appearing for the parties and perused the documents on record.

4. The learned counsel appearing for the petitioner has submitted that the charge against the petitioner that he forged the documents for securing

employment is not based on any evidence which can be termed as evidence in the eyes of law. A copy of the enquiry report has not been supplied

to the petitioner. Thus, the petitioner has been prejudiced seriously and therefore, the order of penalty dated 2.2.2012 is liable to be quashed. He

has further submitted that the defence taken by the petitioner that at the time when the physical verification had already been started, the petitioner

was present i.e. on 20th March, 2010 however, due to illness of his wife, he had to leave on 21.3.2010 and immediately after 3 days the petitioner

reported for duty therefore, it cannot be said that the petitioner absconded to avoid his physical verification.

5. The learned counsel appearing for the respondents has submitted that the present petition involves disputed questions of fact and therefore, this

writ petition is liable to be dismissed. She further submits that criminal proceeding as well as departmental enquiry can proceed simultaneously and

even if the criminal proceeding is pending, the disciplinary authority was justified in passing the order of penalty against the petitioner. She has

further submitted that in a property constituted departmental enquiry, the charges levelled against the petitioner have been found proved and

therefore, this Court, while exercising the jurisdiction under Article 226 of the Constitution of India, may not entertain this writ petition. She has

further submitted that before approaching this Court, the petitioner should have availed the remedy of revision, which is available under the Rules.

6. Replying to the contention raised by the learned counsel for the respondents, the learned counsel for the petitioner has submitted that in view of

specific provision under the Jharkhand Police Manual i.e. Rule 828, the action taken by the respondents cannot be sustained in law. The learned

counsel for the petitioner has further submitted that in the departmental enquiry, the petitioner has been held to be guilty only on suspicion and no

evidence has been produced by the respondents in support of the charges framed against the petitioner. Rule 828 of the Jharkhand Police Manual

is extracted below:--

Infliction of major punishments.-- (a) Of the punishments permitted by Rule 824, the items in serials (a) to (f) of that rule shall be regarded as major

punishments, and shall be inflicted by an officer not below that rank of Superintendent.

(b) Without prejudice to the provision of the Public Servants Enquiries Act, 1850, no order of dismissal, removal, compulsory retirement or

reduction shall be passed on any police officer (other than an order based on facts which have led to his conviction is a criminal court) unless he

has been informed in writing of the grounds on which it is proposed to take action, and has been afforded an adequate opportunity of defending

himself.

(c) In case in which, forfeiture of increment is proposed to be an adequate punishment, this may be inflicted without formal enquiry in the form of a

proceeding but every such matter shall state clearly: first, the charges against the defaulter; then his answers to each charge, one by one; and lastly,

the finding upon each charge of the officer inflicting the punishment. In such cases, the Superintendent need not hold the enquiry himself, nor shall

the delinquent have the right to appear before him, but he has the right to appear before the officer deputed to record the evidence and to take his

defence; and such officer, who shall not be below the rank of inspector, shall come to a clear finding on each charge and shall submit the record

with his recommendations to the Superintendent for orders.

(d) These provisions shall not be followed when the Governor is assured that it is not possible to do this in the interest of the safety of the State

according to Article 311(2) of Indian Constitution or it is not possible to follow these provisions entirely and there is no suspicion that in not

following them the accused may not get justice. Whenever such a possibility arises, the officer who is competent to remove or reduce delinquent in

the rank shall formally give orders as decided by the Governor which shall be considered final.

7. A perusal of the documents on record would clearly indicate that the facts stated by the petitioner with respect to his absence from 21st March,

2010 to 23rd March, 2010 have not been disbelieved by the respondents. It has also not been disputed by the respondents that the petitioner was

granted leave for five days and he reported for duty in time and he was present on 20th March, 2010 when the physical verification had already

started. The order passed by the disciplinary authority would clearly indicate that the order of dismissal from service has been passed only on

suspicion. Suspicion howsoever strong cannot take the place of proof. It has been held by the disciplinary authority that since the petitioner is

accused of forgery and fabricating the documents for securing employment therefore, the charges against the petitioner stand proved. The order

dated 2.2.2012 does not disclose that any documentary evidence in support of the criminal case lodged by the department that the petitioner had

forged the documents, was brought on record and the specific stand taken by the petitioner regarding the illness of his wife has also not been

properly dealt with by the disciplinary authority. In his explanation dated 4.4.2011 the petitioner gave a detailed description of his movement

between the period 14.3.2010 and 24.3.2010. He has disclosed the places where he took his wife for treatment. In his defence dated 4.11.2011,

the petitioner has specifically raised a grievance that 3 witnesses were not examined in his presence and therefore, he could not cross-examine

those witnesses. He made repeated requests for his physical examination to establish his innocence, however, that has not been done. The learned

counsel appearing for the petitioner has submitted that even a copy of the enquiry report was not given to the petitioner and therefore, the

petitioner has been denied opportunity to defend himself. He has further submitted that in paragraph No. 14 of the Appeal preferred by the

petitioner, such a plea has been specifically raised by the petitioner however, the appellate authority has not even dealt with this aspect of the

matter and in the counter-affidavit, the stand taken by the petitioner has not been disputed by the respondents. I further find that the copy of the

enquiry report was not furnished to the petitioner would be apparent from Memo dated 12.12.2011, which is second show cause notice issued to

the petitioner. The Memo dated 12.12.2011 does not disclose that the copy of the enquiry report has been furnished to the petitioner.

8. In view of the aforesaid, I find substance in the contention raised by the counsel for the petitioner that non-supply of the enquiry report has

caused serious prejudice to the petitioner.

9. A Constitution Bench of the Hon''ble Supreme Court in the case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., has held:--

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 alongwith 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.

10. After considering the judgment in the case of ""B. Karunakar"", the Hon''ble Supreme Court in the case of Punjab National Bank and Others

Vs. Sh. Kunj Behari Misra, has held as under:--

17. These observations are clearly in tune with the observations in Bimal Kumar Pandit case quoted earlier and would be applicable at the first

stage itself The aforesaid passages clearly bring out the necessity of the authority which is to finally record an adverse finding to give a hearing to

the delinquent officer. If the enquiry officer had given an adverse finding, as per Karunakar case the first stage required an opportunity to be given

to the employee to represent to the disciplinary authority, even when an earlier opportunity had been granted to them by the enquiry officer. It will

not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no

opportunity should be granted. The first stage of the enquiry is not completed till the disciplinary authority has recorded its findings. The principles

of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the

enquiring officer holds the charges to be proved, then that report has to be given to the delinquent officer who can make a representation before

the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the enquiry report is

in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against

the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings,

what is of ultimate importance is the finding of the disciplinary authority.

11. The learned counsel appearing for the respondents would next submit that non-supply of the enquiry report to the delinquent employee is of no

consequence unless the delinquent employee specifically pleads and proves the prejudice caused to him due to non-supply of the enquiry report.

Relying on the judgments of the Hon''ble Supreme Court in Burdwan Central Cooperative Bank Ltd. and Another Vs. Asim Chatterjee and

Others, and Union of India (UOI) and Others Vs. Bishamber Das Dogra, the learned counsel for the respondents has submitted that in the present

case, since no prejudice has been shown to have been caused to the petitioner, non-supply of the enquiry report would not vitiate the departmental

enquiry against the petitioner.

12. In the case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., the Hon''ble Supreme Court has held that, ""Whether in fact,

prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and

circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed it would be a

perversion of justice to permit the employee to resume duty and to take all the consequential benefits"". The Hon''ble Supreme Court has further

observed, ""the Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is

regrettable being at present. The courts should avoid resorting to short-cuts"".

13. In the case of Burdwan Central Cooperative Bank Ltd. and Another Vs. Asim Chatterjee and Others, the Hon''ble Supreme Court has taken

note of the judgment in the case of ""B. Karunakar"" (supra) and has observed as under:--

19. However, there is one aspect of the matter which cannot be ignored. In Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.,

despite holding that non-supply of a copy of the report of the enquiry officer to the employee facing a disciplinary proceeding, amounts to denial of

natural justice, in the later part of the judgment it was observed that whether in fact, prejudice has been caused to the employee on account of non-

furnishing of a copy of the enquiry report has to be considered in the facts of each case. It was observed that where the furnishing of the enquiry

report would not make any difference to the ultimate outcome of the matter, it would be a perversion of justice to allow the employee concerned to

resume his duties and to get all consequential benefits.

20. It was also observed in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., that in the event the enquiry officer''s report had not

been furnished to the employee in the disciplinary proceedings, a copy of the same should be made available to him to enable him to explain as to

what prejudice had been caused to him on account of non-supply of the report. It was held that the order of punishment should not be set aside

mechanically on the ground that the copy of the enquiry report had not been supplied to the employee.

14. In the case of Union of India (UOI) and Others Vs. Bishamber Das Dogra, in which a Security Guard in C.I.S.F. remained absent from duty

without justification for more than five times and an order of removal from service was passed, the Hon''ble Supreme Court while examining the

effect of non-supply of enquiry report, has observed as under:--

21. Thus, in view of the above, we are of the considered opinion that in case the enquiry report had not been made available to the delinquent

employee it would not ipso facto vitiate the disciplinary proceedings as it would depend upon the facts and circumstances of the case and the

delinquent employee has to establish that real prejudice has been caused to him by not furnishing the enquiry report to him.

15. However, I am of the considered view that the contention raised by the learned counsel for the respondents, in peculiar facts and

circumstances of the case, is not tenable. The charge levelled against the petitioner is specific. The petitioner has been accused of fabricating

documents for securing employment and intentionally avoiding physical measurement and thus, since enquiry report has not been furnished to the

petitioner, this does not require any further proof that serious prejudice has been caused to the petitioner, as the petitioner had no opportunity to

put up his defence and reply to the findings given by the enquiry officer. This is a serious violation of the principles of natural justice and definitely

serious prejudice has been caused to the petitioner.

16. There is another aspect of the matter which has drawn my attention during the hearing of the case. Since the charge against the petitioner is of

criminal nature and therefore, in view of the judgment rendered by the Hon''ble Supreme Court in Union of India (UOI) and Others Vs. Gyan

Chand Chattar, the test which should have been applied by the departmental authority for holding the charges proved, would be proof beyond

reasonable doubt and not mere preponderance of probabilities. In ""Union of India & Ors. vs. Gyan Chand Chattar"" (supra), the Hon''ble Supreme

Court found as under:--

20. So far as Charge 6 i.e. asking for 1% commission for making the payment of pay allowances is concerned, the learned Single Judge has

appreciated the evidence of all the witnesses examined in this regard and came to the conclusion that not a single person had deposed before the

enquiry officer that the respondent employee had asked any person to pay 1% commission for making payment of their allowances. It was based

on hearsay statements. All the witnesses stated that this could be the motive/reason for not making the payment.

21. Such a serious charge of corruption requires to be proved to the hilt as it brings civil and criminal consequences upon the employee concerned.

He would be liable to be prosecuted and would also be liable to suffer severest penalty awardable in such cases. Therefore, such a grave charge of

quasi-criminal nature was required to be proved beyond any shadow of doubt and to the hilt. It cannot be proved on mere probabilities.

17. On a consideration of the materials on record, I find that the petitioner has categorically stated that due to illness of his wife he had to leave

suddenly. The petitioner has given the names of the doctors also who treated his wife however, no effort was taken either by the enquiry officer or

any other departmental authority to ascertain the truthfulness of the defence raised by the petitioner. The petitioner has repeatedly requested for re-

measurement and physical examination for establishing his innocence, as the charge framed against him is of securing employment by producing

another person during the physical examination however, this has also not been done by the department. The petitioner has cross-examined the

witness namely, Rabindra Prasad who has admitted that since the petitioner was not present at the time of the physical verification, a case was

lodged and the charge was framed against him. The disciplinary authority has also recorded a similar finding that since the petitioner absented

himself during the physical examination, the charge of forging documents and securing employment, stood proved. I find that the disciplinary

authority as well as the appellate authority have failed to take any effort to ascertain the defence taken by the petitioner. Even the evidence of the

witness produced on behalf of the department namely, Rabindra Prasad that a charge was framed against the petitioner, as he absconded at the

time of the physical verification, would indicate that the order of dismissal from service was passed on suspicion only. However, I find that the

charge stands disproved on the face of the defence taken by the petitioner that due to sudden illness of his wife, he had to leave and the repeated

requests of the petitioner for re-measurement and physical verification were not accepted by the department. It is settled law that the suspicion,

howsoever strong cannot take the place of proof.

18. In the case of Balwinder Singh Vs. State of Punjab, the Hon''ble Supreme, Court while examining a case based on circumstantial evidence

where a father was charged for murder of his own daughters, held as under:--

4..... In a case based on circumstantial evidence, the Court has to be on its guard to avoid the danger of allowing suspicion to take the place

of legal proof and has to be watchful to avoid the danger of being swayed by emotional considerations, however strong they may be, to take the

place of proof.....

19. In the case of Anil Kumar Singh vs. State of Bihar, reported in (2003) 9 SCC 67, the Hon''ble Supreme Court while stressing the need to be

cautious and avoid the risk of allowing suspicion to take the place of proof, has held thus:--

8..... The court has to be cautious and avoid the risk of allowing mere suspicion, howsoever strong, to take the place of proof. A mere moral

conviction or a suspicion howsoever grave it may be cannot take the place of proof.

20. Again, in the case of Ramreddy Rajeshkhanna Reddy and Another Vs. State of Andhra Pradesh, the Hon"ble Supreme Court has held as

under:---

26..... It is also well settled that suspicion, however grave it may be, cannot be a substitute for a proof and the courts shall take utmost

precaution in finding an accused guilty only on the basis of the circumstantial evidence.

21. In view of the aforesaid, the impugned orders dated 2.2.2012 and 26.10.2012 cannot be sustained in law and accordingly, the impugned

orders are quashed. The disciplinary authority is directed to pass a fresh order within a period of 12 weeks after furnishing a copy of the enquiry

report and giving an opportunity of hearing to the petitioner. The present writ petition is allowed with the aforesaid directions.