

Arun Kumar Vs. State of Jharkhand and Ors

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Court : Jharkhand

Decided On : Jan-10-2017

Appellant : Arun Kumar

Respondent : State of Jharkhand and Ors

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S) No. 5827 of 2010
----- Arun Kumar, son of Sri Kamla Prasad Sinha, resident of 197/C, Vidyalaya Marg, Ashok Nagar, P.O & P.S-Argora, Ranchi, Jharkhand. ... Petitioner Versus
1.State of Jharkhand 2.Secretary, Mines and Geology Department, Government of Jharkhand, Nepal House, Doranda, P.O & P.S. Doranda, Ranchi. 3.Under Secretary, Department of Mines of Geology, Government of Jharkhand, Nepal House, Doranda, P.O & P.S. Doranda, Ranchi. . Respondents ----- CORAM:
HONBLE MR. JUSTICE PRAMATH PATNAIK ----- For the Petitioner : Mr. Saurabh Shekhar, Advocate. For the Respondents : Mr. Anshuman Kumar, J.C to A.G ----- C.A.V on 17.11.2016 Delivered on 10 /01/2017 Per Pramath Patnaik, J.:
In the accompanied writ application, initially the petitioner has prayed for quashing of entire departmental proceeding initiated against him, but, when during pendency of the writ application, the departmental proceeding culminated in passing of impugned order of punishment dated 09.03.2011, whereby petitioner has been imposed with the punishment of lowering down of minimum pay-scale, the petitioner challenged the same by way of filing amendment petition being I.A. No. 872 of 2011.

2. The facts, as delineated in the writ application, in a nutshell is that the petitioner while discharging his duties as District Mining Office, Jamshedpur at the instance of one complainant-Sri Arun Dubey, with the help of some Vigilance Personnel, the petitioner was implicated in a trap case by forcibly handing over an envelope containing some money making an allegation that he demanded Rs. 10,000/- for issuance of challan. Pursuant thereto, a criminal case being Vigilance Case No. 67 of 2002 for the offence under Section 7/13 of the Prevention of Corruption Act, 1988 was registered against the petitioner, which is still pending. It has submitted that though in the year 2002 no departmental proceeding was initiated but after eight years, the petitioner was served with a charge memo along with order dated 24.09.2010 directing him to appear before the Conducting Officer on 04.10.2010.

3. Being aggrieved, the petitioner knocked the door of this Court for quashing the entire departmental proceeding on the ground that on the similar set of charges criminal proceeding is pending. However, during pendency of the writ application, even after the request made by the petitioner on 04.10.2010 before the respondents authorities that since the criminal proceeding is pending, the departmental proceeding should await the result of criminal case, no order was passed and departmental proceeding was set in motion, which led to passing of impugned order of punishment dated 09.03.2011, whereby petitioner has been imposed with the punishment of lowering down of minimum pay- scale.

4. Learned counsel for the petitioner submitted that in spite of the repeated request made by the petitioner before enquiry officer to provide relevant document and permit him to cross-examine the witnesses, especially the complainant on the basis of whose complaint the entire allegation have been levelled against him no opportunity was afforded to him, which is in gross violation of 3 principles of natural justice. In this regard, learned counsel for the petitioner further submitted that the said complainant now does not survive and died on 3.12.2009 and hence, the petitioner has been deprived of cross-examine the complainant and on this lacuna alone, the impugned order is liable to be quashed as it has caused prejudice to the case of the petitioner as held by Honble Apex Court in the case of Union of India & Ors Vs. Prakash Kumar Tandon as reported in (2009) 2 SCC541. It has further been submitted that the transport challan was never provided to the

petitioner and in absence of such documents, the inception of incident itself cannot be said to be genuine as enunciated by Honble the Apex Court in the case of State of U.P. Vs. Saroj Kumar Sinha as reported in (2010) 2 SCW1077 Furthermore, no file relating to issuance of challan of said Arun Dubey was pending before the petitioner, hence, the question of demand does not arise and only for some extraneous reason, he was implicated and was taken into custody. It has further been submitted that actually complainant-Arun Dubey is a person of criminal background and for misuse of government challans, three F.I.Rs have been instituted against him and no mining work were being carried out by him, which fact came into surface by report of Circle Officer dated 17.01.2005 addressed to Deputy Superintendent of Police, East Singhbhum and hence, his lease was cancelled by the Deputy Commissioner, East Singhbhum, which was earlier granted in his favour. Thus, it is crystal clear that the complainant himself was a man of doubtful integrity, hence, the very genesis of the charge itself was illegal. In support 4 thereof, learned counsel for the petitioner referred to the decision rendered in the case of Commissioner of Police, Delhi & Ors. Vs Jai Bhagwan as reported in (2011) 6 SCC376 Learned counsel further submitted with vehemence that though after eight years of cause of action, the departmental proceeding was initiated but only in four dates in a very haste manner, the impugned order has been passed, hence, the same deserves to be quashed outrightly.

5. As against this, learned counsel for the respondents-State on the maintainability of the writ petition submitted that the petitioner without preferring statutory appeal has directly approached this Court. On the merit of the case, it has been submitted that though charge report of the vigilance case and departmental inquiry emanates from the same set of transaction but are different as the Vigilance Case relates to taking of bribe by a government servant whereas the departmental proceeding relate to misuse of office and an attempt to loss of revenue to the Government by reduction of fine and issuing transport challans for resumption of business. It has further been submitted that the departmental proceeding was initiated and conducted in accordance with the departmental rules and regulations and there is no procedural irregularity in culmination of passing the impugned order of punishment. In the proceeding all the documents were duly supplied to the

petitioner and even if the petitioner had any grievance for non-supply of any document, he could have sought for under R.T.I Act also. Further, it is the petitioner himself who chose not to appear in the departmental proceeding and despite repeated reminders and on being fully aware of the ongoing departmental proceeding, the petitioner did not present himself before the authorities. Hence, the impugned order needs no interference by this Court.

6. Having heard learned counsel for the parties at length and on perusal of the record, I am of the considered view that the petitioner has been able to make out a case for interference for the following facts, reasons and judicial pronouncements: (a).On the complaint lodged by one Arun Dubey for demand of bribe, a raid was conducted on 03.10.2002, in which, the petitioner is alleged to have been caught red handed, though, the petitioner has denied such incident. Pursuant thereto, a Vigilance case No. 67 of 2002 was lodged, but surprisingly, it is still pending adjudication and even after more than a decade no substantial progress has been made. (b).Furthermore, after eight years, in the year 2010 departmental proceeding was initiated but that was concluded only in four dates in a very haste manner and in the enquiry, no witness including the police officials and the complainant, who is now dead, could be examined, which certainly prejudiced the case of the petitioner and rendered the impugned order vulnerable on the ground of violation of principle of natural justice as per the law laid down by Honble Apex Court in the case of Union of India Vs. Prakash Kumar Tandon (Supra). (c).The petitioner has seriously questioned at the credibility of the complaint stating at the relevant time he was undergoing criminal prosecution, which fact finds mention in the report of Circle Officer dated 17.01.2005, hence also it was necessary to examine him as per law laid down in the case of Commissioner of Police Delhi & Ors. Vs. Jai Bhagwan (Supra). (d).Moreover, all relevant documents were not supplied to the delinquent-petitioner so as to enable him put forth his defence, absence thereof vitiates the entire departmental proceeding as per the law laid down by Honble Apex Court in the case of State of U.P. Vs. Saroj Kumar Sinha (Supra).

7. On the cumulative effect of aforesaid facts, reasons and judicial pronouncement and as logical sequitur to the discussion made in the foregoing paragraphs, the

impugned order of punishment dated 09.03.2011, whereby petitioner has been imposed with the punishment of lowering down of minimum pay- scale, is hereby quashed and set aside 8. Accordingly, the writ petition stands allowed. (Pramath Patnaik, J.) Alankar/-

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