

Mukesh Kumar Singh Vs. State of Jharkhand and Ors

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Court : Jharkhand

Decided On : Nov-06-2015

Appellant : Mukesh Kumar Singh

Respondent : State of Jharkhand and Ors

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S) No. 5816 of 2011
Mukesh Kumar Singh, Son of Sri Awadh Bihari Singh, Resident of Nawadih Khajri,
P.O.-Nawadiha, P.S. Chattarpur, District-Palamu. .. Petitioner Versus 1. The
State of Jharkhand 2. The Deputy Inspector General of Police, Palamu Range,
P.O. & P.S. Daltenganj, District-Palamu.

3. The Superintendent of Police, Garhwa, P.O., P.S. & District- Gadhwā.

4. The Deputy Superintendent of Police, Grhwa, P.O., P.S. & District- Garhwa.

5. The Sub-Divisional Police Officer, Garhwa, P.o., P.S. & District-Garhwa. ..
Respondents ----- CORAM: HONBLE MR. JUSTICE PRAMATH PATNAIK
----- For the Petitioner : Mr. Dilip Kumar Prasad, Advocate For the
Respondents : Mr. Anshuman Kumar, J.C. to A.G. ----- st CAV on:01 October,
2015 Pronounced on 06/11/2015 Per Pramath Patnaik, J.:

1. In the accompanied writ application, the petitioner has inter alia prayed for
quashing of the order dated 30.07.2010 passed in Departmental Proceeding
No.45/2008 by the Respondent no.3-Superintendent of Police, Garhwa pertaining

to dismissal from services and for quashing of the order dated 21.05.2011 passed by the appellate authority, rejecting the appeal against the dismissal order and also for proper directions commanding the respondents to reinstate the petitioner with all consequential benefits.

2. The factual matrix, as has been delineated in the writ application, in a nutshell is that the petitioner initially joined in the services of police since December 31, 2005 as police 790 in Garhwa Police Force, and after joining without any unblemished service career he continued to discharge his duties to the utmost satisfaction of his superior authority. Unfortunately, the petitioner was suspended from services vide memo dated 22.12.2007 issued by the S.P. Garhwa on the allegations that the petitioner leaks information regarding police movements and having relation with the extremists outfit. In this regard, respondent no.5, Sub Divisional Police Officer, Garhwa was asked to submit report against the charges levelled against the petitioner. The petitioner submitted his reply on 05.01.2008 to the said charges. The 2 respondent no.5, Sub Divisional Police Officer, Garhwa vide memo dated 24.05.2011 submitted his report before the respondent no.3, Superintendent of Police, Garhwa stating therein that one Sharad Kumar, a Central Reserve Police Force personnel on 10.12.2007 at about 4.30 p.m. informed the respondent no.5 that he saw a District Police Personnel was leaking information regarding the movement of the Superintendent of Police on mobile phone but he did not know the name of the police personnel. The respondent no.5 thereafter, asked the petitioner to show his mobile phone. The petitioner told him that there is no balance in his mobile, therefore, he borrowed mobile phone from his friend and made call to his uncle Suman Singh. In the report, as per the print out of the call made by the mobile, which is one of the active extremist Ajay, one call was made to the petitioner on 09.12.2007 and two call made to Suman Singh (uncle of the petitioner) on 10.12.2007. On these allegations, apart from the other, respondent no.5 recommended for strict disciplinary action against the petitioner. Thereafter, the petitioner has been served with the memo of charges issued by respondent no.3, S.P. Garhwa and the names of the witnesses were alongwith the evidences. Thereafter, the petitioner submitted his reply before the respondent no.5 to the alleged charges but the petitioner was held guilty of the charges by the Enquiry/Conducting Officer in the Departmental Proceeding bearing no.45 of 2008

with appreciating and acknowledging the defence taken by the petitioner with ulterior motive to punish him. Thereafter, the petitioner was served show cause against the dismissal from services vide memo dated 04.06.2010 and petitioner thereafter in pursuance to the show cause dated 04.06.2010 submitted his detailed clarification pleading not guilty by submitting therein all his defence, which were sufficient to prove the innocence of the petitioner and also requested S.P. Garhwa to examine the material witnesses. But, the petitioner has not been supplied with relevant documents which he has requested vide letter dated 11.08.2008. Thereafter, the services of the petitioner has been terminated vide order dated 30.07.2010, as per Annexure-9 to the writ application. Being aggrieved by the impugned order of termination, the petitioner preferred appeal before the appellate authority and the appellate authority rejected the appeal of the petitioner vide order dated 21.05.2011, vide Annexure-11 to the writ application. 3 Being aggrieved by the order of termination dated 30.07.2010 and confirmed by the appellate authority vide order dated 21.05.2011, left with no alternative, efficacious and speedy remedy, the petitioner has approached this Court under Article 226 of the Constitution of India, invoking extraordinary jurisdiction of this Court for redressal of his grievance.

3. Per contra, 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 inter alia stated that the petitioner was suspended on the ground of leaking information of the movement of police force having his relation to the extremists/naxlites and in enquiry by the police authority, Sub Divisional Police Officer the charge against him found proved and established as true that he used mobile phone for giving information to his relation and through his relation to veteran extremists/naxlites finding him guilty of the charges were framed and memo of charge was served to him. The Annexures-1, 2 and 3 of writ petition became the subject of departmental proceeding. It has further been submitted that the departmental proceeding has been fairly conducted and proceeded giving all possible opportunity of hearing to the petitioner and found well proved. The petitioner failed to satisfy the authority regarding his innocence as the materials and facts in evidence are found true in support of allegation/charge against the petitioner, has been terminated from services by serving the order of dismissal.

The respondents have not committed error in deciding the departmental proceeding nor have violated the Articles 14, 16 or 21 of the Constitution of India nor the same is against the principle of natural justice.

4. Heard Mr. Dilip Kumar Prasad, learned counsel appearing for the petitioner as well as Mr. Anshuman Kumar, J.C. to A.G. appearing for the respondents.

5. Learned counsel for the petitioner has strenuously urged that the inherent illegalities have been committed while conducting departmental proceeding. At the outset, the learned counsel for the petitioner submits that Annexure-4/1 of the writ application is the basis for initiation of charge. Sharad Kumar, a C.R.P.F personnel is the person who informed the respondent no.5 about the involvement of the petitioner in information leaking, has not been examined by any authority during departmental proceeding. Non-examination of the complainant has vitiated the 4 departmental proceedings. In support of his contention, learned counsel for the petitioner has relied upon the decision of the Honble Apex Court reported in AIR 2000 SC277. Learned counsel for the petitioner submitted that another basis against the petitioner is the report of respondent no.5 dated 24.05.2008 although, he himself was the part and parcel then he had been asked to conduct investigation and submit report against the petitioner which is clear cut violation of one of the principles of natural justice *nemo iudex causa sua*. In support of the said contention, learned counsel for the petitioner has referred to the judgment reported in AIR 1993 SC2155. Learned counsel for the petitioner has further submitted that the petitioner has never been supplied with relevant documents in his defence. Therefore, the respondents have violated statutory provisions in conducting departmental proceeding as well as have violated the principles of *audi alteram partem*. Learned counsel for the petitioner has further submitted that the call detailed report (CDR) has not been proved in accordance with Section 65 (B) of the Evidence Act, therefore charge has not been proved. In order to buttress his submission, learned counsel for the petitioner has referred to the judgments of the Honble Apex Court reported in 2014 (4) JLJR593(SC). Learned counsel for the petitioner has further submitted that in view of the glaring irregularities in conducting departmental proceeding, judicial review is permissible in the instant case. In support of his contention, learned counsel for the petitioner has relied

upon the judgment reported in 2008 (3) PLJR292(SC) (Moni Shankar Vs. Union of India & Anr.).

6. As against the submission of learned counsel for the petitioner, learned counsel for the respondents-State vehemently submitted that grave charges have been levelled against the petitioner in which enquiry officer has found him guilty of the charges and the disciplinary authority on thorough scrutiny of the evidence, has found the petitioner guilty and dismissed the petitioner from services which has been confirmed by the appellate authority.

7. After hearing learned counsel for the respective parties and on perusal of the records, I am of the considered view that the impugned order of dismissal dated 30.07.2010, vide Annexure- 9 of the writ application and the order of the appellate authority dated 21.05.2011, vide Annexure-11 of the 5 writ application are not legally sustainable due to the following facts and reasons : (I) Admittedly, on the basis of the allegations made by the CRPF personnel, Sharad Kumar Singh, vide Annexure-4/1, the basis of initiation of charge, and in the instant case the complainant has not been examined in the departmental proceeding which has caused serious doubt on the fairness of the proceedings and non-examination of the complainant vitiated the proceedings, and thereby, petitioner has been grossly prejudiced. Therefore, the impugned order of dismissal from services confirmed by the appellate authority have been rendered untenable in the eyes of law. (II) It is also the case of the petitioner that certain documents which have been asked for, has not been supplied which caused gross prejudice to the petitioner. Moreover, the call detailed report has not been proved in accordance with Section 65 (B) of the Evidence Act, therefore, the charges have not been proved. (III) Although, the High Court under Article 226 cannot reappraise the evidence, the facts and findings given by the disciplinary authority and it is settled position of law that the High Court has limited scope of interference into action of the State, in exercising under Article 226 of the Constitution of India and the findings recorded by the enquiry officer and the punishment of dismissal of service would not be disturbed but in the instant case the foundation of the case i.e. allegations made by CRPF personnel, who is the complainant has not been examined which has vitiated the entire proceeding and non- supply of the documents to the petitioner, has caused

great prejudice and thereby, affected the outcome of the disciplinary proceedings.

8. On cumulative effect of the facts, reasons and judicial pronouncements, the impugned order of termination dated 30.07.2010 vide Annexure-9 of the writ application and the order dated 21.05.2011 passed by the appellate authority, vide Annexure-11 are not legally sustainable and are accordingly quashed. However, the matter is remitted to the respondent no.3 to supply the relevant documents to the petitioner and conclude the proceeding within a period of four months from the date of receipt/production of a copy of the order. 6 9. The writ petition is, accordingly, disposed of. (Pramath Patnaik, J.) Saket/-

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