

Binay Kumar Sinha Vs. Police

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Court : Jharkhand

Decided On : Sep-06-2016

Appellant : Binay Kumar Sinha

Respondent : Police

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S) No. 7260 of 2012
----- Binay Kumar Sinha, son of Late Shiv Shankar Prasad, resident of Shansar Enclave Apartment, Flat No. 201, 2nd Floor, Near D.A.V. Kapil Deo School, Kadru, P.O Doranda, P.S. Argora, District- Ranchi. ... Petitioner Versus 1.The State of Jharkhand. 2.Inspector General of Police, Jharkhand, Ranchi. 3.Deputy Inspector General of Police, North Chhotanagpur Division, Hazaribag. 4.Superintendent of Police, Koderma. 5.Enquiry Officer-cum-Deputy Superintendent of Police (Headquarter), Koderma. Respondents ----- CORAM: HONBLE MR. JUSTICE PRAMATH PATNAIK ----- For the Petitioner : Mr. Dilip Kr. Chakraverty, Advocate. For the Respondents : Mr. Chanchal Jain, J.C to AAG ----- C.A.V. on 13.06.2016 Pronounced on 06/09/2016 Per Pramath Patnaik, J.: The captioned writ application has been filed praying, inter alia, for quashing appellate order dated 17.10.2012 passed by respondent no. 3, whereby respondent no. 3 upheld the order passed by the disciplinary authority-respondent no. 4 and also order dated 06.03.2012 whereby respondent no. 4 imposed punishment of stoppage of increment of salary for six months and further for declaring the inquiry report dated 27.01.2012 with respect to charge no. III not fair and proper.

2. Bereft of unnecessary details, the facts as delineated in the writ application, is that the petitioner initially joined on the post of Sub-Inspector of Police in the year 1989. While continuing as such vide order 31.08.2010, the petitioner was put under suspension and was asked to submit show cause by respondent no. 4, to which, the petitioner replied vide reply dated 08.09.2010 categorically mentioning therein that he had not received any show cause notice dated 10.08.2010 as mentioned in order dated 31.08.2010. But to the utter surprise, a charge memo dated 15.09.2010 was served upon the petitioner whereas the petitioner had already submitted show cause on 08.09.2010 itself. Basing on the charges, departmental proceeding was initiated against the petitioner, in which, the petitioner filed his show cause categorically stating that he never received show notice dated 10.08.2010, therefore, he is not able to file show cause before the concerned respondent and for this he cannot be held guilty. Thereafter, the Enquiry Officer concluded the proceeding and exonerated the petitioner from charge no. I and II and held guilty of charge no. III, which is not sustainable in the eye of law. Basing on the enquiry report dated 27.01.2012, the disciplinary authority-respondent no. 4 imposed the impugned order of punishment dated 06.03.2012, against which, the petitioner preferred appeal, which was also dismissed vide order dated 17.10.2012.

3. Learned counsel for the petitioner submitted with vehemence that respondents have no authority or jurisdiction to impose the impugned punishment of stoppage of six months increments for non-compliance of show cause notice, which was never served upon the petitioner. It has further been submitted that neither the petitioner was given the copy of enquiry report nor opportunity of hearing was afforded to the petitioner. Learned counsel for the petitioner further submitted that it would be evident from Annexure A to the counter affidavit that show cause 3 memo dated 10.08.2010 was received by one lady constable, Laxmi Oraon on 13.08.2010 but she had not handed over the said show cause notice to the petitioner till date. It has further been submitted that show cause memo is a personal document and it ought to be served him personally. Besides, that lady constable- Laxmi Devi has never been examined by the enquiry officer. Learned counsel for the petitioner further submitted that out of the three charges, charge no. 1 and 2 has not been proved whereas in charge no. 3, the petitioner has been

held guilty without taking into evidence that lady constable, who received the show cause memo in police station, there is no entry regarding receiving of the said show cause nor it was dispatched to the petitioner.

4. Per contra, counter affidavit has been filed on behalf of respondents controverting the averments made in the writ application. It has been submitted that initially a show cause notice dated 10.08.2010 was communicated to the petitioner, but, when the petitioner did not give any reply, he was put under suspension and show cause notice dated 31.08.2010 has been issued to the petitioner. It has further been submitted that plea of the petitioner that he never received show cause memo dated 10.08.2010 is not admissible as the S.D.P.O, Koderma has given a show cause notice dated 10.08.2010 along with charges to submit reply within two days but the petitioner has neither given any reply nor obeyed the order of S.D.P.O, Koderma. Hence, departmental proceeding was initiated against the petitioner, in which, there is no procedural irregularity and basing on the 4 findings recorded by the enquiry officer, just punishment has been imposed upon the petitioner.

5. After hearing learned counsel for the parties at length and on perusal of the record, I am of the considered view that the petitioner succeeds in making out a case for interference for the following facts and reasons: (i).From perusal of record, it appears that three charges were levelled against the petitioner. Out of them, charge nos. 1 and 2, which contains the allegation that he disobeyed the order with respect to curb the illegal mining in the area concerned and during raid he denied to be a party in the raid, has not been proved. So far as charge no 3 is concerned, which says that he did not reply to the show cause dated 10.08.2010 served by his superior authority, it appears that the petitioner from the very inception has been harping on that show cause notice dated 10.08.2010 has never been served upon the petitioner and for non-compliance of the order contained in memo dated 10.08.2010, the petitioner has been held guilty. As per Annexure A to the counter affidavit that memo has been received by one lady constable, Laxmi Oraon, but that lady constable has not been examined to come to a definite finding that the show memo dated 10.08.2010 has been served upon the petitioner. (ii).Furthermore, in the case at hand, the assertion of the petitioner that in the

departmental proceeding copy of enquiry report has not been served upon the petitioner which has not been controverted by the respondents thereby the impugned 5 order is violative of cardinal principles of natural justice thereby causing gross prejudice to the petitioner.

6. In view of the aforesaid facts and reasons, as discussed in the foregoing paragraphs, the impugned order dated 17.10.2012 as also order dated 06.03.2012 are hereby quashed and set aside. The writ petition stands allowed. (Pramath Patnaik, J.) Alankar/-

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