Patna High Court
Jai Ram Singh vs State Of Bihar And Ors. on 18 April, 1985
Equivalent citations: 1986 (34) BLJR 7
Author: M Varma
Bench: M Varma
JUDGMENT M.P. Varma, J.

1. The petitioner was a confirmed Havildar in Bihar police service. Sometime in the year 1973 he was posted at Police Station-Bazar T.O.P. at Barh in the district of Patna. It was on 27-11-1973 that two muskets bearing Nos. 230 and 327 were looted away by some miscreants from the custody of the police patrolling party. The petitioner was also supposed to be on duty in the patrolling party but it is his case that he had taken leave and was not on duty and it is stated that some interpolation was made in the duty-chart by putting the name of another constable, Raj Nath Singh although the fellow was not drafted for the purpose. The petitioner was charged for negligence and non-participation in the duty assigned to him. Charges were framed against him. Proceeding was drawn up. A regular enquiry was conducted and by an order dated 10-4-1977 (Annexure 2) the petitioner was finally dismissed from the service.

2. In this application filed under Article 226/227 of the Constitution of India the petitioner has attacked the validity of aforesaid order (vide Annexure 2) on various grounds including the ground that the order impugned was not passed by a competent authority. It has also been stated that the copy of the enquiry report was not given to the petitioner in the second show-cause-notice against dismissal, causing serious prejudice to him in presenting his case and the order is violative of the Police order No. 119 as contained under Clause 8(d)(v) which has got the statutory force under the Police Act. The petitioner made an appeal against the order of dismissal aforesaid to the D.I.G. of Police, Bihar (Central Range) Patna. But having lost the same (vide Annexure 3), he submitted a memorial the Inspector General of Police. No order whatsoever was passed on the same even after a long gap. The petitioner states that in not disposing of the memorial filed by the petitioner, amounts to non-consideration of the same or in other words the same will he deemed to have been rejected. The dismissal and removal from service are two distinct expressions. Both are, in term major punishments, whenever there is a dismissal of any employee the future career is affected and ruined. It is a disqualification as a result of which the delinquent may not get re-employment in future but in case of removal from service it may not be so. But in either case it is a termination of service and naturally justice demands that while inflicting such punishments, the Government employee should be given a reasonable opportunity to explain his case and to file his show-cause in his defence to save himself from the calumny, which befalls on him. It has been a well established principle that the charges must be spelt out and an enquiry be conducted before taking such tendinous action against the delinquent and it is needless to mention here that such an order must be passed by an authority competent to do it. Putting the case of the petitioner on the anvil of the principle enunciated above, the learned advocate Mr. Choubey has canvassed that the impugned order was passed by an Additional Superintendent of Police, who under the Police Manual, had no authority to do it. It has been argued that he is the Superintendent of Police who is an authority competent to appoint a Havildar and not the Additional Superintendent of Police. It has been submitted that Rule 10(a) of the Police Manual defines the duty of the police. It has also been submitted that the ranks of

the police officials have been described under Rule 639 of the Manual, which will indicate that there is no post as an Additional Superintendent of Police. The Additional Superintendent of Police figures under 'N.B.' given under Rule 724 and under Rule 10(f). The Inspector General of Police assigns duties to be performed by the Additional Superintendent of Police. In the aforesaid context the learned advocate while placing the aforesaid Rules of the Police Manual, has made an argument that in the hierarchy of the police-officials, the Additional Superintendent of Police must be deemed to be subordinate in rank to the Superintendent of Police and as such would be incompetent to pass an order of dismissal on a Havildar whose service is under the direct control of the Superintendent of Police.

3. It has been next contended that Clause 8(d)(v) of the Police Order No. 119 referred to above, is mandatory and it requires that the show-cause notice against the purported dismissal must accompany the report of the enquiring officer which, having not been done in this case, the order impugned is fit to be quashed. Counsel for the respondent Mr. Hoda has, however, produced the entire record relating to the proceedings drawn up against the petitioner. The learned Counsel, however, has very fairly pointed out that there is no specific note anywhere on the record that the copy of the enquiry report was handed over to the petitioner along with the show cause notice served on him but none-the-less it has been submitted that the petitioner did not raise any objection at any stage, so much so that even the show-cause filed by him does not show that there was any prejudice caused to him.

4. With regard to first part of the argument relating to the competency vested in the Additional Superintendent of Police in passing the order impugned it has been argued that Additional Superintendent is in fact equivalent in rank to the Superintendent of Police and it is just for the Rules of business that duties are assigned to the Additional Superintendent of Police under special orders to be passed by the Inspector General of Police. In other words it has been contended that the post being equivalent in rank it would be wrong on behalf of the petitioner that Additional Superintendent of Police is a Subordinate body and the order suffers from any such infirmity of not being passed by an authority competent to do it. In the last Shri Hoda has further submitted that in view of the amendment under Article 311 of the Constitution of India, the authority need not be called upon to furnish copy of the enquiry report and to issue any show cause notice and non-adherence to Clause 8(d) Clause 5 of the Police order No. 119 will in no way amount to any departure or violation of law laid down under the Police Manual. I have given due considerations on the points raised and 1 will only say that the Rule as aforesaid in the Police Manual appears to be a mandatory one. The Rule requires giving a copy of the enquiry report along with the second show-cause notice. Mr. Hoda conceded that the Rule very much exists and has not been wiped out. Admittedly issuance of a second show-cause notice against dismissal gives an advantageous position to a Government employee and as I said earlier that justice demands that while inflicting such punishment the employee should be given a reasonable opportunity to show-cause in his defence against calumny which follows him all through his career. Therefore, I feel the Rule in question is not in derogatory to the constitutional provisions as now stands under amended Article 311 of the Constitution of India. Coming to the case of the petitioner, true it is that no such grievance was made at earlier stage for the non-supply of the copy of the enquiry report in as much as there is some reference about it in the show-cause submitted by him but none-the-less the records of the

department does not categorically speak that the copy of the enquiry report was furnished to the delinquent along with the show-cause notice and this admittedly is a departure from the Rule laid down under the Police Manual and the order in question, therefore, suffers from the aforesaid infirmity. In my opinion, the application succeeds on this ground alone. In this circumstance I do not consider necessary to decide the other issues canvassed by Mr. Choubey. Counsel for the petitioner and I leave it for the department to examine the authority of the Additional Superintendent of Police in passing such an order in appropriate cases whenever situation arises. I find and hold that the petitioner was not given adequate opportunity in filing his show cause, in absence of the enquiry report, which compulsorily should have accompanied the show-cause notice.

5. Thus on consideration of the materials and attending circumstances referred to above, I am inclined to allow this application on the sole ground that the punishment should not have been inflicted without affording further opportunity in accordance with the provisions, as discussed above, to the petitioner to explain his case.

6. In the result the application succeeds and the impugned orders as contained in Annexures 2 and 3 are hereby quashed. I may, however, observe, that the respondents will be at liberty to issue a second show-cause notice against the proposed punishment, if at all to be proposed, and in that situation will pass order afresh in accordance with the law taking into consideration the observations made in this application. In the circumstances, I do not pass any order for costs.