

ITEM NO.31

COURT NO.11

SECTION XVII

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).20346/2010

(From the judgement and order dated 03/04.5.2010 in LPA No. 569/2009 of The HIGH COURT OF JHARKHAND AT RANCHI)

UMA SHANKAR RAI Petitioner(s)  
VERSUS  
STATE OF JHARKHAND & ORS. Respondent(s)

(With appln(s) for exemption from filing O.T.)

Date: 02/08/2010 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI  
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Petitioner(s) Mr.O.P.Bhadani, Adv.  
Mr. Brij Bhusan, Adv.

For Respondent(s)  
UPON hearing counsel the Court made the following  
O R D E R

The petitioner is aggrieved by the orders of the learned Single Judge and the Division Bench of Jharkhand High Court, which dismissed the writ petition and letters patent appeal filed by him against the imposition of punishment.

The petitioner joined service as constable. By an order dated 8.12.2001, he was transferred from Baliapur Police Station to Jharia Police Station. He did not join duty at Jharia Police Station on the pretext that there was no one to take charge of 'Malkhana' at Baliapur Police Station. He absented from duty with effect from 9.1.2002 necessitating his suspension from service which the competent authority ordered on 12.4.2002. On 6.5.2002, the petitioner reported for duty.

On a representation made by him, the competent authority is

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said to have revoked his suspension and posted him at Chatra.

The petitioner again disobeyed the order of transfer and reported sick. The competent authority again placed him under suspension and ordered initiation of departmental proceedings.

Since, the petitioner did not co-operate with the Inquiry Officer, the latter submitted ex-parte report with the finding that the charges levelled against the delinquent have been

proved. The Disciplinary Authority i.e., Superintendent of Police, Dhanbad accepted the enquiry report and dismissed the petitioner from service. On appeal, the Director General and Inspector General of Police, Jharkhand converted the punishment of dismissal into one of compulsory retirement.

The petitioner challenged the appellate order in writ petition [W.P.(S) No.1252/2004]. The learned Single Judge rejected the petitioner's plea that he was not given reasonable opportunity of hearing and observed:

"In course of hearing, though the petitioner emphasized the said ground that the petitioner was on duty and the charge was sent on his home address, no admitted document in support of the said statement could be shown on behalf of the petitioner. Learned counsel tried to substantiate the said plea pointing out two papers (Annexures 7 and 8). Annexure 7 is the document of which the petitioner himself is an author. Annexure 8 is a certificate issued by the Officer-in-Charge, Baliapur Police Station, Dhanbad, regarding handing over of the charge of Malkhana and that no report regarding warrant and attachment is pending with him. Neither of the two documents go to show that the petitioner was on duty of a particular place on the date when the notice was issued and that the said notice was issued of the home address deliberately to deprive the petitioner of his right to defend."

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The Division Bench concurred with the learned Single Judge and dismissed the letters patent appeal preferred by the petitioner.

We have heard learned counsel for the petitioner and perused the record.

The main ground on which the petitioner had challenged his dismissal was of non-supply of the copy of the enquiry report.

Although supply of the copy of the enquiry report has held mandatory by the Constitution Bench in *Managing Director, E.C.I.L. v. B. Karunakar (II)* (1994) Supp. 2 SCC 391, but in the case in hand, this infraction of the rules of natural justice must be treated inconsequential because the petitioner was not at all prejudiced. He had not offered any justification for non compliance of the orders of transfer and posting. In *Gujarat Electricity Board v. Atmaram Sungomal Poshani* (1989) 2

SCC 602, this Court reversed the judgment of the Gujarat High Court and held that that action taken by the employer to dismissed an employee who avoided compliance of the order of transfer was justified.

In view of the above, we do not find any valid ground much less justification to interfere with the impugned order.

The special leave petition is accordingly dismissed.

( Satish K.Yadav )  
Court Master

( Phoolan Wati Arora )  
Court Master