

PETITIONER:
HARDWARI LAL

Vs.

RESPONDENT:
STATE OF U.P. & ORS.

DATE OF JUDGMENT: 27/10/1999

BENCH:
S.R.Babu, S.Saghir Ahmad

JUDGMENT:

RAJENDRA BABU, J. :

Leave granted.

The appellant was a constable in the police department in the State of Uttar Pradesh. On a charge that on the night between 16/17.1.1991 being under the influence of liquor hurled abuses in the police station at Constable, Prakash Chandra Pandey, a departmental enquiry was initiated against the appellant. On receipt of enquiry report the disciplinary authority passed an order of dismissal. Challenge to that order by the appellant before the Public Services Tribunal [hereinafter referred to as the Tribunal] failed. The appellant further carried the matter to the High Court by way of writ petition. The ground based on non-supply of copies of certain documents like preliminary enquiry report, the statement of the complainant made to Inspector Virender Singh was rejected by the Tribunal being of the view that the appellant had participated in the preliminary enquiry having inspected the entire record and documents and had not asked for any copies of the record. This finding recorded by the Tribunal stood affirmed by the High Court. Similarly, the contention regarding non-examination of Virender Singh, who was the complainant in the case, and witness, Jagdish Ram, who was supposed to have witnessed the incident, was also rejected by the Tribunal on the basis that the examination of Virender Singh was only formal to prove the report dated 17.7.1991 and no prejudice has been caused to the defence of the appellant. According to the Tribunal, evidence of Jagdish Ram also was not important because he had merely accompanied him for the purpose of medical examination. The High Court affirmed this finding and ultimately concluded that apart from the evidence of these two witnesses there was sufficient material on record to establish the fact that the incident took place and thus there was no ground to interfere with the order made by the Tribunal and dismissed the writ petition. Hence this appeal.

Before us the sole ground urged is as to the non-observance of the principles of natural justice in not examining the complainant, Shri Virender Singh, and witness, Jagdish Ram. The Tribunal as well as the High Court have

brushed aside the grievance made by the appellant that the non-examination of those two persons has prejudiced his case. Examination of these two witnesses would have revealed as to whether the complaint made by Virender Singh was correct or not and to establish that he was the best person to speak to its veracity. So also, Jagdish Ram, who had accompanied the appellant to the hospital for medical examination, would have been an important witness to prove the state or the condition of the appellant. We do not think the Tribunal and the High Court were justified in thinking that non-examination of these two persons could not be material. In these circumstances, we are of the view that the High Court and the Tribunal erred in not attaching importance to this contention of the appellant.

However, Shri Goel, the learned Addl. Advocate General, State of Uttar Pradesh, has submitted that there was other material which was sufficient to come to the conclusion one way or the other and he has taken us through the same. But while appreciating the evidence on record the impact of the testimony of the complainant cannot be visualised. Similarly, the evidence of Jagdish Ram would also bear upon the state of inebriation, if any, of the appellant.

In the circumstances, we are satisfied that there was no proper enquiry held by the authorities and on this short ground we quash the order of dismissal passed against the appellant by setting aside the order made by the High Court affirming the order of the Tribunal and direct that the appellant be reinstated in service. Considering the fact of long lapse of time before the date of dismissal and reinstatement, and no blame can be put only on the door of the respondents, we think it appropriate to award 50 per cent of the back salary being payable to the appellant. We thus allow the appeal filed by the appellant. However, there shall be no order as to costs.