

PETITIONER:
THE STATE OF BIHAR & ORS

Vs.

RESPONDENT:
SHEO NARAYAN SINGH

DATE OF JUDGMENT: 27/01/1997

BENCH:
J.S. VERMA, SUHAS C. SEN, S.P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

SEN, J.

When the case was taken up for hearing, Shri Gopal Singh, Advocate who was appearing for the respondent Sheo Narayan Singh all throughout submitted that his client had taken away the papers from him and he had instructions not to represent him in this appeal. He stated that he has no represent him in this appeal. he stated that he has no instruction to appear in this matter. Since the respondent had already been served and since he had taken away the papers from his advocate and had instructed him not to appear for him, it was his duty to arrange for proper representation of his case. Since nobody has appeared for the respondent, we have decided to proceed with the matter ex parte.

This is an appeal against the judgment and order passed by the Division bench of the Patna High Court on 8/15.12.1993 by which an order of Inspector General of Police Dated 10.9.1993 was quashed.

The facts of the case are as under :

Sheo Narayan Singh was appointed as Constable in Bihar Military Police in the year 1984. The allegation against sheo Narayan Singh was that in order to procure the appointment, he had manipulated records of his military service. He had suppressed the fact that while serving the Army, he was sentenced to four months' Civil Imprisonment by a Court Martial, and thereafter, he was dismissed from military service. he had forged the service records for getting job as Constable in Bihar Military Police. Coming to know of the true facts about his career in the Army, disciplinary proceedings were commenced against him. Ultimately sheo Narayan Singh was dismissed from service after having been found guilty of the charges.

On 7th February, 1991, Sheo Narayan Singh preferred an appeal before the Deputy Inspector General, Bihar Military Police who allowed the appeal and set aside the order of dismissal. On 3rd June, 1992, the Director General of Police set aside the order passed by the Deputy Inspector General and restored the order of dismissal in exercise of his powers under Rule 853-A (a) of the Bihar Police Manual.

This order of the Director General of Police was challenged by Sheo Narayan Singh by filing a writ petition in the High Court.

The High Court found that prior to the passing of the order by the Director General, the petitioner was not give any notice to show cause nor was, otherwise, give any opportunity of being heard. The High Court was of the view that the impugned order was passed by the Director General of Police without compliance with the principles of natural justice. The writ petition was, therefore, allowed and the impugned order was quashed. The Court, however, directed the Director General to pass a fresh order after giving an opportunity of being heard to Sheo Narayan Singh.

Thereupon, the Director General of Police as well as the Acting Inspector General asked the appellant for an explanation as to why he should not be removed from service by memo dated 3.5.1993. An explanation was given by Sheo Narayan Singh in which he raised mainly two issues:

- (1) The Additional Director General had no right to ask for any explanation.
- (2) After the charge against him had been quashed by the High Court, there was no scope for initiating disciplinary proceedings de novo.

Both the contentions were rejected by the Director General. It was pointed out that the explanation was properly called for. It was further pointed out that the High Court had not quashed the charge-sheet, but had directed the Director General to pass fresh order after giving an opportunity of hearing to the writ petitioner. The Director General, therefore, passed an order dismissing the appellant from services once again.

In the order, it was specifically noted that at the time of his appointment the appellant had produced a discharge book from the army in which it was shown that he had been discharged from service at his own request on the ground of domestic problem. On verification from the army authorities, it transpired that the 'Sepoy' (Sheo Narayan Singh) had been sentenced by the court Martial to undergo imprisonment in a civil jail for a period of four months and he was dismissed from service. These facts clearly established deceiptfulness and forgery on the part of the Sepoy on the strength of which the appointment was made.

After the second order passed by the Director General of Police, a further writ petition was filed in the Patna High Court which was heard by another Division Bench in which the only contention was that in Rule 853 of the Bihar Police Manual, there was no provision by which the department could prefer a memorial or revision against the order exonerating a police officer. The memorials/revision could only be preferred by the party against whom an order of punishment had been passed. This argument was upheld by the High Court which held that Rule 853 was meant to provide a forum for officers against whom an order of punishment had been passed in a disciplinary proceeding. The court also adverted to Rule 853-A of the Police Manual and held that the suo motu powers of the Inspector General and the State Government did not envisage a case where an officer had been exonerated in a departmental proceeding. In that view of the matter, the order dated 10.9.1993 passed by the Director General of Police was set aside.

The State of Bihar has come in appeal against this order of the Patna High Court.

We are of the view that the high Court clearly failed to appreciate the scope and effect of Rules 853 and 853-A of the Bihar Police Manual which are as under:

"853. Memorials and revision. - No memorial or petition, which is a representation against an order passed in a disciplinary case shall be submitted to any authority other than the authority which under the rule for the time being in force is empowered to entertain the appeal:

Provided that an officer of the rank not below the rank of Sub-Inspector may, if a final order of dismissal, removal, or reduction in rank has been passed in appeal against him in a disciplinary case, submit to Government through the proper channel a memorial against such order, within six months after the date of which the officer submitting the memorial was informed of the order on appeal:

Provided further that memorials of and below the rank of Assistant Sub-Inspectors shall be entertained by Inspector General only in cases of dismissal, removal or reduction in rank if they are submitted within a period of six months after the date on which the memorialist was informed of the order passed in the appeal:

Provided further that the Inspector-General shall submit quarterly to Government a statement of memorials from Police Officers below the rank of Sub-Inspector which have been withheld by him under the provisions of these rules.

853-A. (a) Inspector-General may call for the file in any case even when no appeal lies and pass such order as he may deem fit. The Deputy Inspector-General may call for any file but he should refer it to the Inspector General with his recommendation for his order. The above action should be taken within a reasonable time from the date of final order in departmental proceeding.

(b) Notwithstanding anything contained in these rules the State Government may call for the proceedings in any disciplinary case even when no appeal or memorial lies, and pass such order as it may deem fit.

(c) When an appeal has been filed and the Inspector-General on applying his mind thinks that he should enhance the punishment, he

can dismiss the appeal but must simultaneously mention in that order that as per powers given in the rule 853-A (a), he has decided to review it for enhancement and take action for obtaining a show cause, etc., where necessary."

Rule 853 deals with "memorials and revision". It declares that no memorial or petition against an order passed in a disciplinary proceeding shall be submitted to any authority other than the authority which under the rule in force was empowered to entertain the appeal. The proviso enables an officer of the rank of sub-Inspector or of higher rank to submit to the Government a memorial against an order of "dismissal, removal or reduction in rank". The second proviso enables officers below the rank of Assistant Sub-Inspector to prefer memorial to the Inspector General "only in cases of dismissal, removal and reduction in rank" within the period of time prescribed in the proviso.

Rule 853-A, however, is not restricted in any manner by the provisions of Rule 853. This rule enables the Inspector General to call for the file in any case even when no appeal lay and pass such order as he may deem fit. The Deputy Inspector General is also empowered to call for any file but he is not empowered to pass an order. All that he can do is to refer the file to the Inspector General with recommendations for his orders. Sub-rule (b) of Rule 853-A also empowers the State Government to call for the proceedings in any disciplinary proceedings even when no appeal lay or no memorial could be filed and pass such order as it deems fit. Sub-clause (c) of Rule 853-A deals with a case where appeal has been filed and Inspector General is of the view that the punishment should be enhanced. he can then dismiss the appeal, but he must simultaneously mention in that order that as per his powers given in Rule 853-A, he had decided to review it for enhancement and take action after issuing a show cause notice where necessary.

These provisions of Rule 853-A go to show that the Inspector General has been given suo motu power to pass such order as he may deem fit when an appeal lay and also when no appeal could be filed. Even when an appeal had been filed, the Inspector General could pass in order enhancing the punishment. From this, it however, does not follow that the Inspector General could not pass any order under Rule 853-A unless and until an order of punishment had been passed by the authority. After the authority had erroneously passed an order exonerating the sepoy of the charges levelled against him, the Inspector General could under sub-rule (a) of Rule 853-A Call for the file and pass such order as he deemed fit. This wide power enables the Inspector General to inflict a punishment when such an order is called for an exonerate an officer of punishment when such punishment has been wrongly given. There is nothing in the wording of Rule 853 to suggest that the Inspector General can act only when an order of punishment has been passed by the authority below him and not when an order has been passed exonerating an officer of the charge levelled against him.

The scope and purpose of Rules 853 and 853A are quite different. Rule 853 deals with memorials and revision which were filed by a person against whom final order of dismissal, removal or reduction in rank had been passed. The power under Rule 853-A is not to be exercised on the basis of a memorial or a revision filed by an aggrieved party. The power is to be exercised whenever the Inspector General is of the view that the impugned order calls for revision. The

order contemplated under Rule 853-A need not be against a final order of "dismissal, removal or reduction in rank".

The High Court was clearly in error in reading into Rule 853-A the requirements of Rule 853. The two rules are independent of each other.

We, therefore, allow this appeal and restore the order of the Director General of Police dated 10.9.1993. There would be no order as to costs.

JUDIS