

A VIJAY KUMAR NIGAM (DEAD) THROUGH LRS.
v.
STATE OF M.P. AND ORS.

NOVEMBER 6, 1996

B [K. RAMASWAMY AND G.B. PATTANAİK, JJ.]

Service Law :

C *Disciplinary inquiry—Sub-Inspector of Police—Charged of receiving illegal gratification from organiser of gambling—Misconduct proved against delinquent—Dismissal from service—Pleas of delinquent that he was not supplied with a copy of the report of preliminary inquiry and that the statement of the co-accused against the delinquent was inadmissible in evidence—Held, not sustainable—The preliminary report is only to decide and assess whether it would be necessary to take any disciplinary action against the delinquent and it does not form any foundation for passing the order of dismissal against the employee—In a departmental inquiry the question whether or not any delinquent is co-accused with other does not arise and evidence recorded therein stricto sensu is not evidence as per the provisions of Evidence Act. Therefore the statement of other delinquent employee objected to by the appellant also formed part of the record which could be taken into account in adjudging the charge of misconduct against the appellant.*

Administrative Law :

F *Natural justice—Disciplinary inquiry—Non-supply of copy of report of preliminary inquiry to delinquent—Held, does not violate principles of natural justice.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2564 of 1980.

G From the Judgment and Order dated 2.5.78 of the Madhya Pradesh High Court in M.P. No. 204 of 1974.

Nemo for the Appellants.

H S.K. Agnihotri for the Respondents.

The following Order of the Court was delivered :

Though the legal representatives of the appellant have been brought on record, they did not appear either in person or through counsel. We have taken the assistance of Shri S.K. Agnihotri, learned counsel for the State.

The appellant, while working as Sub-Inspector, and being in-charge of the Police Station Pakhanjur, District Jagadalpur, on receipt of illegal gratification failed to prevent the running of common gambling house of one N.K. Ghosh. Consequently, in the departmental enquiry initiated against him the Enquiry Officer, after due enquiry and giving him opportunity, found that the appellant had received illegal gratification from the organiser of gambling, N.K.Ghosh. Thereby, misconduct was proved against him. Based thereon, he was dismissed from service by order dated July 31, 1971. On appeal, it was confirmed by the Inspector General of Police by order dated January 21, 1974. The same came to be challenged in the Misc. Petition No. 204/74. The Division Bench of the High Court in the impugned judgment dated may 2, 1978, dismissed the same. Thus, this appeal by special leave.

Two grounds have been pressed for consideration in the High Court and reiterated in the appeal. The main ground was that the report of the preliminary enquiry conducted against him before initiating departmental enquiry, was not supplied to him and, therefore, it is violative of the principle of natural justice. The High Court has rejected the contention and, in our view quite, rightly. The preliminary report is only to decide and assess whether it would be necessary to take any disciplinary action against the delinquent officer and it does not form any foundation for passing the order of dismissal against the employee. The High Court also found as a fact that all the statements of persons that formed basis for report, recorded during the preliminary enquiry were supplied to the delinquent officer. It was then contended that one of the constables, namely, Palairam was a co-accused who was also charged along with the appellant and his evidence was taken into consideration in deciding against the appellant which is inadmissible in evidence. In a departmental enquiry, the question, whether or not any delinquent officer is co-accused with other does not arise. That would arise in a prosecution laid for officer under the IPC or prevention of Corruption Act. The evidence recorded in the departmental enquiry *stricto sensu* is not evidence as per the provisions of the Evidence Act. Therefore, the statement of Palairam also formed part of the record which could be taken into account in adjudging the

A misconduct against the appellant. The Inspector General of Police had stated that even if that evidence was excluded from consideration, there was other sufficient evidence to come to the conclusion that the appellant had taken illegal gratification from the organiser of gambling. Thus, the High Court has not committed any error of law in dismissing the writ petition of the appellant.

B

The appeal is accordingly dismissed, No costs.

R.P.

Appeal dismissed.