

(2022) 02 PAT CK 0024

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 119 Of 2020

Alok Ranjan

APPELLANT

Vs

National Institute Of Technology Patna

RESPONDENT

Date of Decision : 07-02-2022

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14

Citation : (2022) 02 PAT CK 0024

Hon'ble Judges : Ashutosh Kumar, J

Bench : Single Bench

Advocate : Shekhar Singh, Manish Kumar No. 2, Sanjay Kumar Giri

Final Decision : Dismissed

Judgement

1. Heard Mr. Shekhar Singh, the learned Advocate for the petitioner and Mr. Sanjay Kumar Giri, the learned counsel for the respondents.

2. The petitioner has challenged the order of punishment dated 05.10.2019 issued by the Director of National Institute of Technology, Patna, removing

him from services of the National Institute of Technology, Patna (in short the NIT) where he had been serving as Assistant Professor in the Electrical

Engineering Department as also for quashing the memorandum of charges dated 21.09.2015 and all the consequent proceedings pursuant thereto.

3. While in job in the NIT, the petitioner had enrolled himself for Ph.D. in the Electrical Engineering Department at the NIT. He had appeared in the

Mid-Semester Examination for such Ph.D. course in the month of March, 2014. The invigilator of the aforesaid exam pointed out a discrepancy in his

answer book as on the answer book submitted by the petitioner, a different code was mentioned, which answer-book was not supplied to the

candidates in the examination hall. A notice was thereafter given to the

petitioner for having used unfair means during the examination.

4. To such notice, the petitioner replied on 29.04.2014 by stating that he could not have verified the answer-book code supplied to him in the

examination hall to see whether it tallied with the code number given on other answer-book and, therefore, the charge of using unfair means in the

exam was absolutely uncalled for.

5. The Unfair Means Committee found that the petitioner was an invigilator in another room in the forenoon session of 13.03.2014 and in the second

half, he was himself a candidate. The proceedings of the Committee further reflects that in the forenoon session, 48 copies with different code number

were issued to the candidates but only 47 candidates had appeared and those 47 answer-books were returned at the end of session. One unused

answer-book was never returned. The code number on such answer-book was different from the code number in the answer-book provided in the

afternoon session of the examination in which the petitioner was a candidate himself. Thus, it was found out that the petitioner had pilfered the unused

answer book in the forenoon session of the examination, in which he was an invigilator, filled it up with the answers and, thereafter, submitted it in the

afternoon session where he was a candidate. Such conduct was held to be unfair by the petitioner, who was also a Faculty Member.

6. A show-cause notice dated 20.03.2015 was issued to the petitioner as to why a disciplinary proceeding be not initiated against him for his

misconduct. To the aforesaid notice, the petitioner appears to have replied on 31.03.2015, claiming innocence and that he had no idea as to how he

was supplied with an answer-book with a different code.

7. Since the petitioner was found using unfair means in the examination, his admission in the Ph.D. course was cancelled and he was debarred forever

from applying for such course in the NIT.

8. The petitioner also took a plea in his show-cause reply with respect to departmental proceeding that he was already under lot of mental stress and

constraints for his admission in the Ph.D. course having been cancelled and he being debarred forever from taking admission in future and, therefore,

no useful purpose would be served by subjecting him to further departmental proceeding for imposing punishment.

9. The explanation of the petitioner did not find favour with the authorities and a

departmental proceeding was initiated against him with two charges, namely, (i) that he took away one blank-answer book of the Mid-Semester Examination, 2014 while he was on duty as an invigilator; and (ii) that he used the same answer-book for answering his own paper in Ph.D. course in the afternoon session of the examination for the subject Power System Protection on 13.03.2014. He was further charged that he had brought this answer-book with pre-written answers and had submitted it as if he was bona fide examinee.

10. The petitioner was served with the aforesaid charge memo dated 21.09.2015 and was directed to submit his reply within ten days of its receipt.

Along with the charge memo, a list of documents and name of witnesses by whom the articles of charges were proposed to be established, were also supplied.

11. The petitioner appears to have represented to the Director of the NIT on 28.09.2015 for making available to him the documents mentioned in the list appended to the charge memo for his better defense. On 07.10.2015, the petitioner further requested for being provided with the schedule of the Mid-Semester Examination and the Invigilators' Duty Chart of the Teachers.

12. It is the contention of the petitioner that without providing the documents demanded by him and without affording adequate opportunity to defend himself, the enquiry was concluded in a haste and a report was submitted on 10.02.2016, holding him guilty of both the charges.

13. The aforesaid enquiry report was communicated to the petitioner on 28.02.2016, asking him to submit his representation with respect to the quantum of punishment. The aforesaid communication is said to have been received by him on 17.04.2017.

14. The respondents content that after the completion of the enquiry, the petitioner had been absconding from his duty and, therefore, the Board of Governors of the NIT, in its meeting dated 12.12.2016, had resolved to publish such notice in the daily-newspaper for necessary information to the petitioner.

15. A perusal of the enquiry report reveals that all the formalities of a domestic enquiry was complied with, including the approval of the Board of

Governors and that the petitioner had deliberately taken one blank answer-book from the forenoon session of the examination for using it

unauthorizedly and dishonestly in the afternoon session.

16. The case of the petitioner was referred to the C.V.C. vide letter dated 15.02.2017 for second stage advise/consultation, which confirmed that the charges against the petitioner were proved and imposition of suitable major penalty was advised. The petitioner was asked to submit his representation against the C.V.C. advise which was never furnished.

17. Finding the defense of the petitioner to be absolutely unworthy of acceptance, the disciplinary authority passed the order for his removal from the service of Assistant Professor in the Electrical Engineering Department of the Institute with effect 15.10.2019.

18. The petitioner has challenged the aforesaid order on several counts, namely, (i) non-supply of documents demanded by him; (ii) the disciplinary proceeding having been concluded in hot haste; (iii) personal bias of the Enquiry Officer, namely, respondent No. 4, who was also a Member of Board of Governors in the NIT; and (iv) that the enquiry was held in pursuance to a Rule [Central Civil Services (Classification, Control and Appeal) Rules, Rule 14], which was not existent at the time of initiation of the departmental proceeding against him.

19. It has also been urged that an answer- book cannot be pre-written as an examinee would not know the questions which shall be asked in the examination. Lastly, it has been urged that the punishment of removal is far more harsh than what would have been in consonance with the gravity of the offence.

20. The counsel for the respondents has however denied all such assertions.

21. After having heard the counsel for the parties, it appears rather clearly that the petitioner had purloined one answer-book while invigilating in the forenoon session, which he used it in the afternoon session when he himself was an examinee. The contention of the petitioner that he would not have known the questions which would be asked in the afternoon session of the examination, gets strongly repelled by the report of the Unfair Means Committee which had initially found that the petitioner had answered a question which was never asked and that he had tried to deposit the answer-book only within thirty minutes of the commencement of the examination.

22. This makes it very obvious that the answer-book submitted by the petitioner in the afternoon session was pre-written on the answer-book with a

different code which answer-book had been circulated in the forenoon session of the examination and not in the afternoon session.

23. The petitioner was given the list of documents which were proposed to be used in the departmental proceeding which included the relevant

answer-book deposited by him; the report of the invigilators and the finding of the Unfair Means Committee. The petitioner actually wanted those

documents as also the Invigilators Duty Chart.

24. Whatever may have been the reason for the petitioner not being provided with the aforesaid documents, it appears that it has not caused any

prejudice to him as what was relevant was the document demonstrating the necessity of putting the petitioner to departmental proceeding.

25. The complaint of the petitioner regarding personal bias of respondent No. 4 could not be established by him as the two reasons ascribed in support

of the proceeding being biased are that the respondent No. 4, while discharging his duties as Enquiry Officer was also a Member of the Board of

Governors and, therefore, for all practical purposes, he would be treated as a disciplinary authority and that that in the enquiry report, the respondent

No. 4 has also suggested the quantum of punishment. Merely because the Enquiry Officer was also the Member of the Board of Governors of the

NIT, that by itself would not prove any bias, more so, when element of personal bias has not been shown. The Board of Governors comprise

Members of Academic Faculties and the decision of the Board is unanimous. The suggestion of respondent No. 4 regarding the quantum of

punishment only reflects his concern about the nature and gravity of offence which was proved, but that does not at all speak of bias.

26. The proceedings also do not appear to have been concluded in haste.

27. The enquiry report could not be served upon the petitioner because of his absence from duty or else there would have been no necessity of issuing

a public notice to him through newspaper.

28. So far as the grievance of the petitioner regarding initiation of the departmental proceeding under Rule 14 of the Central Civil Services

(Classification, Control and Appeal) Rules, 1965 is concerned, such grievance is non-existent as in the first Statutes of all the National Institute of

Technologies dated 23rd of April, 2019, Section 24 there of clearly states that the employees of the Institute shall be governed by Central Civil

Services (Conduct) Rules, 1964. By amendment made in the Statute on 21st of July, 2017, Section 25 has been amended to read as

“The code of conduct for employees shall be made by each Institute in consultation with the Central Government and till such time the code of

conduct for an employee is framed, the Institute shall follow the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The aforesaid

amendment of Section 25 of the Statute is only clarificatory.

29. The petitioner was appointed on the post of Assistant Professor as per the recruitment rule issued by the M.H.R.D. dated 15.01.2014, in which it

has clearly been stated that for matters not covered by the Statutes, the corresponding Central Rules shall be applicable in respect of other service

conditions. In Section 24(5) of the first Statute, the employees of the NIT is stated to be governed by Central Civil Services (Conduct) Rules, 1964.

This Rule only provides for the do's and don'ts for the central government employees, but it does not specify the manner in which disciplinary

proceedings are conducted and penalties are imposed against the delinquent employees. Clause 26 of the first Statute also does not state anything

about the procedure to be followed for imposing penalty. It is precisely for this reason that the procedure and the penalty provided in Central Civil

Services (Classification, Control and Appeal) Rules, 1965 has been applied in the case of the petitioner as is done in cases of other employees as well.

30. The petitioner never raised such objection at the stage of receiving the memorandum of charge and ever thereafter. The objections were raised

only on 29.08.2019, though the fact remains that the first Statute was amended on 21.07.2017.

31. The Central Civil Services (Classification, Control and Appeal) Rules, 1965 is a procedural law which has been framed, enabling the employees to

be dealt with fairly, keeping in mind the principle of natural justice provided in those rules. No prejudice can be said to have been caused to the

petitioner on that account; rather he has been given an advantageous position in facing the departmental proceeding as it puts several obligations on

the disciplinary authority.

32. This Court is conscious of the fact that against the order passed by the respondents, debarring the petitioner from pursuing his Ph.D. course for

ever and canceling his admission in such course, he had put up a challenge vide

C.W.J.C. No. 19403 of 2016, but the same was dismissed by order dated 23.11.2017.

33. Notwithstanding the aforesaid fact, this Court does not find that the punishment of removal is disproportionate to the gravity of the misdemeanor which has been committed by the petitioner.

34. The law with respect to testing an administrative order on grounds of proportionality is no longer debatable. To judge the validity of an administrative order, normally the wednesbury test is to be applied, but only for the limited purpose of testing whether the decision is illegal or suffers from procedural improprieties or that the sentence is such that no sensible decision-maker would, on the materials available before him and within the framework of law, have arrived at.

35. This Court can only take into account whether all relevant materials were taken into account and that the decision was bona fide.

36. This Court would not like to go into the correctness of the choice made by the disciplinary authority with respect to the nature of punishment imposed on the petitioner. Many alternatives were open to the disciplinary authority but it would not be appropriate for this Court to substitute its decision with that of the disciplinary authority.

37. Since the order of removal in a misdemeanor of this kind does not shock the conscience of the Court nor can it ever be called perverse, more so when the petitioner himself was a Faculty Member and misused his capacity as an invigilator in taking away an unused answer-book for submitting it as his own answer-bok in the Ph.D. examination, no interference ought to be made with order impugned.

38. For the reasons afore-stated, this Court does not find any fault with the entire process of conducting the disciplinary proceeding against the petitioner as also the punishment imposed on him.

39. The petition is dismissed but with no order as to cost.