
(2002) 01 PAT CK 0005
In the Patna High Court
Case No : C.W.J.C. No. 9255 of 1999

Ambika Prasad Sinha

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-01-2002

Acts Referred:

Citation : (2002) 3 PLJR 109

Hon'ble Judges : Ravi S. Dhavan, C.J.; Shashank Kr. Singh, J

Bench : Division Bench

Advocate : Kalidas Chatterjee and Amlesh Kumar Verma, for the Appellant; Ajay Kumar Tripathi, for the Respondent

Final Decision : Allowed

Judgement

Ravi S. Dhavan, C.J.—The Petitioner Ambika Prasad Sinha has filed the present petition aggrieved by the order of 30 July, 1999 by which his claim O.A. No. 551 of 1993 : Ambika Prasad Sinha v. Union of India and Ors. was rejected by the Tribunal.

2. The back ground of the case, as was taken to the Tribunal, was an excuse virtually whittling the departmental action against the Petitioner. The department is the department of Tele-communication. The action against the Petitioner was that he was suspended. Thereafter, one increment was stopped and the suspension was revoked. The Tribunal felt that it ought not to interfere with the matter.

3. On this petition, if the High Court were merely have to a second opinion then there is no occasion to interfere with the decision of the Tribunal. But, a government employee regard being had to the circumstances that he has faced a departmental inquiry; suspended during service; seen stoppage of increments and all that has been reduced to denial of one increment now, may amount to a lifetime stigma.

The misdemeanour must be such that the action of the department must hold. A

departmental inquiry could be about misappropriation, misrepresentation or even insubordination or an act against the interest of the government.

4. In the present case, the Court feels that the departmental inquiry and penal action was stretched a bit too far. The Court will narrate the facts in brief. But, all this has happened primarily because the Tele-communication department was running a public utility service, and was doing so as a government department (sic) matter had been seen business li(sic) unlikely that an employee of the telecommunication department would have (sic) bear the brunt of muscle flexing ap(sic) subscribers, the one who got away (sic) person who took the prize with him a (sic) not a party to the proceedings. This p(sic) who got away is perhaps having the laugh. In the circumstances, a short res(sic) of the facts is necessary.

5. One Magandeo Narain Singh (sic) applied for a telephone connection in (sic) In the normal course, regard being ha(sic) the circumstances, 17 years ago telephone connections were not easy to come (sic) There were long queues and had red t(sic) hurdles and practices within the department jumped the rules. The subscribes intending to procure a telephone connection, thus, were also taking recourse(sic) short cuts. Magandeo Narain Singh (sic) one of such person. In the normal course he would not have received a telephone connection. Thus, he arranged to put (sic) self in a priority list. He declared to (sic) telephone department that he was a pre(sic) man and was entitled to a telephone connection as is normally given to the me(sic) persons. He declared that he works f(sic) leading Hindi newspaper of Bihar, "Arya(sic) In his application form he declared him(sic) as the Principal Correspondent. Thereafter he was putting pressure within the department that he be placed into a sp(sic) category. The Petitioner was at that tim(sic) Inspector (Defaulter) in the office of(sic) District Manager, Telephone, Patna.(sic) verification it was found that this pe(sic) applying for a telephone connection doing so personally and not in the name the organisation or the company was published the daily news paper "Aryav In the circumstances, a note had been by the Petitioner that there is misrepresentation in the application by the person(sic) seking a priority telephone connec(sic)e connection was not for the news(sic) or on behalf of the newspaper but (sic)private and personal to a person (sic)ade the application.

6. A delay in granting the connection (sic)s case before the District Consumers (sic)n. Within the department the higher (sic)s did not permit an inquiry whether a (sic)y connection could be made or not. files were left without decision. There (sic)a delay in providing a telephone connection on to Magandeo Narain Singh. He (sic) to the Consumers Forum with a com(sic) The District Consumers Forum, thus, (sic)ted the Department that the subscriber provided with a telephone forthwith and (sic)er awarded a cost of Rs. 5000/- against telephone department payable other(sic) by the District Manager, Telephone. this led to a complication. As the (sic)trnent had been saddled with costs amages, the blame was put upon the Petitioner that he had caused the delay (sic)sioning a stricture from the District sumer Forum. The tele-communication department did not file an appeal

against order of the District Consumers' Forum and permitted the order to become final. Before the Consumers Forum the matter was not examined in detail whether the subscriber who complained of delay in getting a telephone had made a misrepresentation and was not entitled to a telephone connection on a priority.

7. The order of the District Consumer Forum was the cause for the departmental inquiry. The Petitioner was suspended. Thereafter the suspension was continued but given punishment to forego increments. Subsequently, when the orders were examined and re-examined in the department and thereafter on appeal, it was found that the Petitioner had received harsh punishment. The punishment in departmental proceedings was reduced to a loss of one increment without cumulative effect. Thus, from the record itself, it is clear that some mistake had happened somewhere which was not taken into account between the disciplinary and the appellate authority. Otherwise, on their own they would not be reducing the punishment earlier awarded to the Petitioner.

8. After this the Petitioner filed a claim petition before the Central Administrative Tribunal seeking a relief that the record be certified, in effect, that he was innocent of the charges which were made against him and, further, the balance of the punishment which remained, whatever it might be, be struck off also. The Tribunal declined the request of the Petitioner. Thus, the present petition.

9. The Additional Standing Counsel, Central Government did not make an issue and acknowledged that in the disciplinary and appellate proceedings, the punishments awarded were being reduced. He acknowledged that all these matters were initiated after a direction was issued by the District Consumers Forum on the subscriber's claim that he was entitled to a connection out of turn. The inquiry within the department that there had been a misrepresentation in extracting a connection out of turn was suppressed. If the correct facts had been given by the subscriber Magandeo Narain Singh, then the Additional Standing Counsel acknowledged that this subscriber would not receive a connection at all in the category for which he applied. Then, a question arises what sin has the Petitioner committed to have received so much punishment?

10. The fact that the subscriber misrepresented in his application to seek a priority connection as a media and a pressman for a particular newspaper is a matter of record. This subscriber had misled the department that he was entitled to a priority connection on behalf of a newspaper, normally given to a Journalist. It is on record that he was seeking a status as a journalist upon a declaration that he was working in the newspaper "Aryavart". The telephone department records were showing that this newspaper was in default of arrears. The Petitioner as an Inspector with the telephone department had merely recorded that no defaulter of the department who was in arrears of telephone revenues should be given a connection unless the arrears are paid up.

11. Further, before the District Consumers Forum the Petitioner Ambika Prasad Sinha was not a party. Then, the Tribunal itself notices the fact that the

subscriber Magandeo Narain Singh was at best a correspondent of M/s. Newspapers and Publications Ltd. which published "Aryavart" and did not have any direct relationship as an employee of this corporate body. This aspect is noticed and is writ large in the order of the Tribunal. Then there are some aspects which need to be noticed by this Court. These are: (a) to explain the entire situation the Petitioner sought a personal hearing before the appellate authority. This personal hearing was denied to him. This aspect is noticed in the order of the Tribunal in paragraph 14. (b) the Tribunal records that the punishment awarded to the Petitioner was too harsh and it further records "while the then Commercial Officer and A.Q.-TR, who were fully responsible for this act, somehow, managed and got scot (sic) free." The Tribunal also notices that "the applicant had put a long dedicated unblemished service career...."

12. With this background that the Petitioner had an unblemished record and that there were many high ups in the department who had perhaps facilitated the sanction of an irregular connection to Magandeo Narain Singh; that the latter had misrepresented the claim of a priority as a journalist when otherwise he was not entitled to; that the claim that he was employee of the corporate body which is a defaulter, and on all these aspects a(sic) could not be put upon the Petitioner's port. It was an inspector's report on a(sic) and finances. The issue is not that the Petitioner was being difficult but the far that within the department someone was granting a favour to the subscriber to p(sic) vide a connection out of turn. This sub-scriber claimed to be an agent or employee by a Principal who had telephone bill rears. The Petitioner earned the wrat(sic) the high officials by placing these man on record.

13. The plain question is that departmental proceeding and the (sic) proceeding have almost reduced the ishment which they had awarded to Petitioner and the Tribunal records that, (sic)ior officials have been let off, then, clear there is an error in the order of the Tribunal in permitting a subordinate to be flo(sic) when he committed no error. In the circumstances, stoppage of one increment was awarded as a punishment, not standing whether it had or did not have cumulative effect, if permitted to (sic) would cast a stigma on the Petitioner career. Clearly, the Tribunal has com(sic) an error that having noticed the (sic) facts it permitted the minor punishment remain on record. Thus, the order Tribunal dated 30 July, 1999 stands (sic) under a writ of certiorari.

14. Regard being had to the circumstances of the disciplinary inquiry (sic) was taken out against the Petitioner inquiry stands quashed and consigned such. The Petitioner would be entitled(sic) benefits of service as if the discription inquiry had not been taken out.

15. The writ petition is allowed with Court.

Shashank Kumar Singh, J.

I agree.