
(1999) 08 PAT CK 0015
In the Patna High Court
Case No : L.P.A. No. 169 of 1999

Anarsi Ram

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 30-08-1999

Acts Referred:

Civil Services (Classification, Control and Appeal) Rules — Rule 55, 55A

Citation : (2001) 3 PLJR 314

Hon'ble Judges : M.L. Visa, J;B.P. Singh, J

Bench : Division Bench

Advocate : Udayan Choudhary, for the Appellant; A. Hussain, for the Respondent

Final Decision : Allowed

Judgement

1. Heard learned Counsel for the parties.
2. With the consent of the counsel for the parties we are disposing of this appeal at the admission stage itself.
3. The Appellant was holding the post of Peon and serving under the Prak-hand Vikas Karyalaya, Dighwara. He was appointed as a Peon to execute certain works under the Jawahar Rojgar Yojna and Indira Awas Yojna. The charge levelled against him is that out of a sum of Rs. 1,81,975/- he had not accounted for a sum of Rs. 34,287/-.
4. It is not in dispute that chargesheet was submitted against the Appellant and an Inquiring Officer was also appointed. The Appellant appeared before the Inquiring Officer. Thereafter the impugned order (Annexure-3 to the writ petition) was passed by the disciplinary authority, namely, the Collector, Saran at Chapra dated 13th July, 1996. The impugned order refers to the charge levelled against the Appellant and thereafter the disciplinary authority proceeded to impose punishment agreeing with the findings recorded by the Inquiring Officer that the charges have been proved.

5. Counsel for the Appellant submitted before us that the impugned order cannot be sustained in law because if the disciplinary authority wished to proceed under Rule 55A of the Civil Services (Classification, Control and Appeal) Rules, he ought to have given to the Appellant adequate opportunity of making a representation, and after taking into consideration such representation, an order could be passed by the disciplinary authority imposing a minor punishment. It was submitted that in the instant case, as would appear from the impugned order date 13.7.96, the disciplinary authority has imposed the punishment after taking into account the findings recorded by the Inquiring Officer. Counsel therefore submitted that the disciplinary authority had not chosen to act under Rule 55A of the aforesaid Rules but under Rule 55. We are of the opinion that the submission urged on behalf of the Appellant must prevail. In a case where Rule 55A is applied, there is no question of finding being recorded by an Inquiring Officer. In such a case, it is the disciplinary authority who is required to consider the representation made by the concerned Government employee and the disciplinary authority may thereafter impose any minor punishment. If, on the other hand, the disciplinary authority frames the charges and also appoints an Inquiring Officer and acts on the basis of the report submitted by such Inquiring Officer, it must be held that the procedure followed by the disciplinary authority was one under Rule 55 of the aforesaid Rules. Under Rule 55 the Inquiring Officer is required to submit his report which was to be considered by the disciplinary authority, and it is by now well settled that before disciplinary authority imposes any punishment on the basis of a finding of guilt recorded in the report by the inquiring officer, a copy of the report has to be made available to the concerned Government servant in order to give him an opportunity to represent against the findings recorded by the Inquiring Officer in its report. Admittedly, in the instant case a copy of the enquiry report was not given to the Appellant because the authorities appear to have proceeded on the basis that since the order had been passed under Rule 55A, there was no need to furnish a copy of the Inquiring Officer's report to the Appellant. In our view, the law as laid down by the Supreme Court has wider application, and whenever an enquiry report is made the basis for imposition of punishment by the disciplinary authority, such inquiry report must be served upon the delinquent Government servant.

6. We therefore, are of the opinion that the learned Counsel for the Appellant is right in submitting that the department proceeded against the Appellant under Rule 55 and as would appear from the impugned order passed by the disciplinary authority, on the basis of the finding recorded by the Inquiring Officer in his report three minor punishments were imposed, but without affording to the Appellant an opportunity of representing against the findings of the Inquiring Officer.

7. The learned Judge, who dismissed the writ petition preferred by the Appellant proceeded on the basis that the procedure followed was one under Rule 55A of the Rules. We are not in agreement with him and hold that since a departmental proceeding was initiated, inquiring officer appointed, and the order of

punishment passed on the basis of the report of the inquiring officer, the procedure adopted was one under Rule 55 and not Rule 55A.

8. In the circumstances, this appeal is allowed to the extent that the Respondents are directed to served on the Appellant a copy of the report of the inquiring officer and afford to him reasonable opportunity of making representation against the findings recorded by the inquiring officer. The disciplinary authority will thereafter proceed in accordance with law. We have, however, not expressed any opinion on the merit of the case as well as the enquiry report.