(2015) 03 PAT CK 0074

In the Patna High Court

Case No : Letters Patent Appeal No. 390 of 2014

Arjun Prasad Verma APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 19-03-2015

Acts Referred:

Citation : (2015) LabIC 3092 : (2015) 3 PLJR 178

Hon'ble Judges : L. Narasimha Reddy, C.J;Vikash Jain, J

Bench : Division Bench

Advocate : S.D. Sanjay, Senior Advocate and Prahalad Kumar Bhagat, for the Appellant; Nawal Kishore Singh and Ajay Kumar Singh, A.C. to S.C., Advocates for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, C.J.

1. This appeal arises out of the order passed in CWJC No. 7362 of 2003. The appellant was appointed in the year 1996 as an Assistant, in T.B. Centre at Patna, established and maintained by the Government of Bihar. In the year 2000, he was entrusted with the duties of the Establishment Section.

1A. An audit was conducted into the accounts of T.B. Centre for the years 1992-98. It was found that substantial amounts were drawn towards the salary on fictitious names. An FIR was filed in the year 2000, alleging defalcation of amounts referable to the years 1992-93. Four persons, including the appellant herein, were named therein. However, the police did not state anything in the charge-sheet against the appellant on the ground that nothing was found against him. In respect of others, the charge-sheet was filed and proceedings culminated in passing of final orders by the trial Court.

2. In respect of irregularities that are said to have taken place in subsequent years, another FIR was filed, but the name of the appellant did not figure therein.

3. Disciplinary proceedings were initiated against the appellant and one Mr. Kameshwar Prasad Karn, by the department. The appellant submitted his explanation denying the charges and referring various facts. The disciplinary authority, i.e. the Director-in-Chief, Health Services-3rd respondent herein appointed the Additional Secretary, Department of Health- 2nd respondent as an enquiry officer. The 2nd respondent, in turn, submitted a report dated 15.07.2002 holding that the appellant is guilty of misconduct. Taking the same into account, the 3rd respondent passed an order, dismissing the appellant from service on 24.1.2003, just one week before he attained the age of superannuation.

4. Challenging the same, the appellant filed CWJC No. 7362 of 2003, on several grounds, including one of the basic lapses in the disciplinary proceedings and absence of any specific charges, apart from the merits of the matter. The learned single Judge dismissed the writ petition through order dated 22.11.2013. Hence, this appeal.

5. Sri S.D. Sanjay, learned senior counsel for the appellant submits that though a charge memo was issued to the appellant, neither any charges were mentioned therein; nor any specific allegation was made against the appellant. He contends that almost all the allegations were against one Mr. Kameshwar Prasad Karn and the name of the appellant was not mentioned, even in a casual manner. He submits that though no specific charges were framed, the disciplinary authority thought it fit to appoint an enquiry officer and the latter, in turn, passed an order, and not report, that too without examining any witness, or referring to any document. He submits that the disciplinary authority also did not apply its mind to the facts of the case and has denied to the appellant, the benefit of his entire service by dismissing him, just one week before the date of actual retirement.

6. Sri Nawal Kishore Singh, learned Standing Counsel-2 for the respondents, on the other hand, submits that huge funds of the State have been misappropriated with the active co-operation of the appellant and that disciplinary authority as well as the learned single Judge have taken correct view of the matter. He submits that in the charge memo, extensive reference was made to the acts and omission on the part of the appellant and the enquiry Officer has also taken the same into account, and has submitted the report.

7. The brief factual background of the case has already been furnished. It is the prerogative of the employer- 3rd respondent, to initiate a departmental proceeding against the appellant, even if the criminal proceedings initiated against him did not fructify. It is fairly well settled that the parameters for proving the charges in the criminal case, on the one hand, and the disciplinary proceedings on the other hand, are different and even if an employee is acquitted of the particular charges in the criminal case, he can be found to be guilty of same allegation in the departmental proceeding; depending upon the facts of the case. Equally settled is the principle that a charge memo in the departmental proceedings must succinctly state the nature of acts and omission

on the part of the employee, and thereafter to elaborate or supplement the facts that gave rise to framing of charge.

8. In the instant case, what is issued to the appellant, in the name of the charge memo, is nothing but elaboration to various irregularities that have been taken place in the T.B. Centre between the years 1992 and 1998. Almost all the accusations are against one Mr. Kameshwar Prasad Karn and Dr. Harihar Prasad. There was no precision whatever, as to the alleged misconduct. Assuming that the appellant is guilty of any negligence or abetment of the irregularities, specific charges ought to have been framed against him. No such effort was made. Therefore, the very charge-sheet suffers from basic infirmity.

9. In case, there existed adequate proof and evidence about the illegality and irregularity committed by the employee, mere failure to succinctly state a charge may not be fatal to the proceedings. Once an enquiry officer is appointed, he is under obligation to furnish the list of witnesses to be examined and documents to be relied upon to the delinquent employee. In fact the list of witnesses and documents must be appended to the charge memo. The enquiry officer is required to maintain neutral, in the departmental proceeding.

10. In the instant case, not a single witness was examined before the enquiry officer; nor any document was relied upon. As a matter of fact, he named his enquiry report as an ''order'' and recorded the findings. Normally, the reports of the enquiry officer are not reproduced in the judgments. However, in the instant case, it has become necessary to do that, to demonstrate as to what sort of enquiry was conducted by the 2nd respondent, who is a senior I.A.S. officer. The report, which is named as order, reads as under :-

"Subject: Departmental Proceeding against Shri Arjun Prasad Verma (Suspended), Assistant, T.B. Demonstration and Training Centre, Agamkuan, Patna.

Conducting Officer : C.K. Anil, Additional Secretary, Health Department.

Order

15.07.2002

A departmental proceeding was initiated against Shri Arjun Prasad Verma (Suspended) Assistant, T.B. Demonstration and Training Centre, Agamkuan, Patna vide memo No. 34(8) dated 01.03.2001. The undersigned was appointed as Conducting Officer vide memo No. 119(8) dated 21.07.2001 and upon such appointment notices were issued to the delinquent employee to file written statement if any vide memo No. 16 dated 23.03.2002. The delinquent asked for copies of some relevant document and the same were supplied to him vide memo No. 20 dated 17.04.2002. A reminder was sent vide memo No. 24 dated 07.05.2002.

The delinquent submitted his written statement on 15.05.2002 and was present before the undersigned on 15.07.2002 to plead his own case. After hearing the matter, it was put up for orders.

Perused the written statement and all other documents on the face of the record.

The main charges against Shri Arjun Prasad Verma, Assistant, along with Kameshwar Prasad Karn, Head Assistant are that they both colluded to do financial irregularities and misappropriated Government funds. The modus operandi was taking out false salary bills worth Rs. 46,99,407/- for fictitious employees whose names do not figure on the rolls of the T.B. Institute at Agamkuan, Patna. The same was detected and reported by the CAG in the inspection report No. 851/97-98.

The defence of the delinquent is summarized briefly as follows :-

(a) That his name does not figure in the CAG report.

(b) That the then Director, T.B.D.C. has inserted his name maliciously.

(c) That an F.I.R. was lodged the then Director Alamganj P.S. Case No. 153/2000 in which he was made accused along with three others to have swindled Rs. 2,36,764/- only. The City D.S.P. in his report -2 submitted to the Senior Superintendent of Police on 05.02.2001 has found that Shri Arjun Prasad Verma, Assistant was posted in the Establishment Section in 1996 and it appears to he didn''t have any hand in the misappropriation of funds. Further, the D.S.P., Patna City has also recorded similar findings. Hence, since the police have found him innocent, there is no case against him.

(d) That the delinquent says he was never in-charge of the accounts section hence he had no role to play in the misappropriation.

(e) Finally, he has stated that he joined in 1965 and his retirement is due in January, 2003 and there never has been any complaint against him during his entire service career.

From the above and after perusal of all the documents on the face of the record, the following conclusions can be drawn :-

(a) That Shri Arjun Prasad Verma, Assistant in-charge of the Establishment Section joined in 1996.

(b) The Audit by the CAG was done between 24.10.1997 to 29.10.1997 and during the test, audit Bill No. 64/96-97 to 69/96-97 was checked for payment of salary of Rs. 16,92,000/- and was found that the amount was withdrawn against several persons e.g. Dasrath Prasad Sah, Diwakar Prasad Sah, Rakesh Kumar Rai, etc. of whom there was no service book in the establishment section and the same was not produced for verification.

(c) The F.I.R. and findings of police is in regard of Rs. 2,36,764/- only and not with regard to Rs. 46,99,407/- as in the charge-sheet submitted.

From the above it is abundantly clear that although Shri Arjun Prasad Verma was posted in 1996, he colluded in illegal withdrawal of money from the treasury worth Rs. 16,92,000/-. He was in-charge of the establishment section which has specific duty to maintain service books of all employees on the rolls of the institute. The CAG audit report specifically indicts for non-production of relevant records during audit in 1997.

CONCLUSION :- From the above, the undersigned has come to the conclusion that Shri Arjun Prasad Verma, Assistant, T.B. Demonstration and Training Centre, Agamkuan, Patna colluded along with others for misappropriating Government money worth Rs. 16,92,000/-. Thus the charge as enumerated in the charge-sheet is proven.

RECOMMENDATION:- The delinquent Government servant has colluded in illegal withdrawal of money worth Rs. 16,92,000/- by making false salary bills which is a grave financial irregularity and a misconduct for the same he may be awarded dismissal as major punishment.

Sd/ (C.K. Anil) Additional Secretary Health, Government of Bihar.

Place: Patna Date : 15.07.2002."

11. Even where the case is presented by a departmental representative and witnesses are examined, the discussion is required to be with reference to every charge. The enquiry officer was not even aware as to what exactly is the charge. He did not make any distinction between the general allegation, on the one hand, and the charge, on the other hand. One does not have to endeavour much, to emphasise the importance of a charge. The Conduct Rules, wherever framed, define the acts and omissions, that constitute misconduct and the charges are framed to fit the acts and omission of the employee into the defined acts of misconduct. Where charges are framed, serious infirmity comes into play.

12. Notwithstanding the absence of the specific charges, even general allegation was required to be proved by adducing evidence and that not having been done, the enquiry proceedings suffered a serious infirmity.

13. The disciplinary authority did not take all these aspects into account and has simply dismissed the appellant from service one week from the date he attained the age of superannuation.

14. The learned single Judge did not take into account the various points urged on behalf of the appellant and dismissed the writ petition. We are of the view that the order of dismissal and for that matter, the report of the enquiry officer, cannot be sustained in law.

15. The appeal is accordingly allowed. The order dated 22.11.2013 passed by the learned single Judge in CWJC No. 7362 of 2003 is set aside. As a result, the writ petition is allowed and the order dated 24.01.2003 passed by the disciplinary authority is set aside. We direct that the respondents shall forthwith release the

pensionary benefits to the appellant. We also make it clear that in case the respondents intend to proceed against the appellant, they shall be under obligation to issue a fresh charge-sheet and to appoint an enquiry officer. The charges, framed, must be proved by adducing oral and documentary evidence. This exercise, if chosen, shall be completed within a period of six months from today, after releasing the retirement benefits to the appellant. The consequential proceedings of recovery shall also stand set aside. Interlocutory application, if any, shall stand disposed of. There shall be no order as to costs.

