

(2011) 06 PAT CK 0042
In the Patna High Court
Case No : CWJC No. 950 of 2009

Awadh Bihari Lai	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 28-06-2011

Acts Referred:

Citation : (2012) 1 PLJR 450

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Advocate : S. Qaisar Hasan, for the Appellant; Sunil Kumar Ravi, for the Respondent

Final Decision : Allowed

Judgement

Navin Sinha, J.—Heard learned counsel for the petitioner and (earned counsel for the State. The petitioner was subjected to a departmental proceeding on two charges. Final order of punishment has been passed on 4.4.2007 visiting him with the punishment of censure to be entered in his confidential record and stoppage of three increments with non-cumulative effect.

2. Learned counsel for the petitioner has raised a very, short question of law. He submits that the petitioner has been exonerated of the second charge. The finding of guilt on the first charge is based on conjectures and surmises. It is submitted that there had to be a specific finding of guilt before any punishment could be imposed.

3. The writ petition was filed on 19.1.2009. A counter affidavit has been (s/c-filed?) by the Deputy Secretary in the Rural Development Department that the answerability lies with the Personnel Department.

4. Learned counsel for the State prays for adjournment submitting that the Personnel Department may be permitted to file further counter affidavit. The respondents cannot regulate proceedings before the Court and seek adjournments at their leisure. The Court declines the prayer.

5. The law stands well settled that a punishment in a departmental proceeding has to be based on a specific finding of guilt arrived at. There can be no punishment imposed on conjectures and surmises. The enquiry report itself notices with regard to the first charge that the presenting officer did not present the records and the original measurement book from which the allegations could be verified. It however proceeds to hold that based on the experience of senior administrative officials it can be held that payments made with regard to earth excavated and that found on the site may not have been found satisfactory. It also appears that the directions of the D.D.C. to carry out re-measurement may not have been followed and that the defence with regard to deposit of the measurement book appears suspicious.

6. There can be no two opinions that the aforesaid findings are not specific findings of guilt, but the personal opinion of the enquiry officer based on conjectures and surmises. No punishment can be founded upon the same.

7. In *State of Bihar and Ors. v. Lakshmi Shankar Prasad* reported in, (2003) 3 LLJ 225SC it has been held at paragraph 3 as follows:-

3....After the initiation of the fresh proceeding, though an explanation was called for from the delinquent, but the impugned order of punishment indicates that the disciplinary authority has not recorded a finding about the guilt of the delinquent of different charges which were leveled against him as well as the consideration of the explanation given by the delinquent to the charges leveled against. In such circumstances, the High Court was fully justified in interfering with the order of punishment on a conclusion that the disciplinary authority did not record a finding about the guilt of the delinquent nor has it recorded any reasoning for arriving at such conclusion.

8. The impugned order dated 4.4.2007 is set aside. The application is allowed.