
(1992) 07 PAT CK 0019
In the Patna High Court
Case No : C.W.J.C. No. 1906 of 1991 (R)

Awadh Nandan Prasad

APPELLANT

Vs

Commissioner, Chotanagpur Division and Others

RESPONDENT

Date of Decision : 28-07-1992

Acts Referred:

Citation : (1992) 07 PAT CK 0019

Final Decision : Dismissed

Judgement

G.C. Bharuka, J.—The present writ application has been filed by the petitioner against the order dated 7-6-1984 (Annexure-8) passed by the Respondent-Deputy Commissioner by which the petitioner has been dismissed from service pursuant to departmental enquiry as also the appellate order dated 1-4-1991 (Annexure-12) passed by the Respondent-Commissioner, Chotanagpur Division, whereby he has affirmed the said punishment.

2. The relevant facts giving rise to the filing of the present writ application may be stated in short: the petitioner who was a Panchayat Sewak and during the material time i.e. 1970-71 he was posted at Udnabad Panchayat in Giridih block. By an order dated 11-12-1975 the petitioner was placed under suspension and a disciplinary proceeding was initiated against him on various charges including of misconduct. The then Deputy Collector, Land Reforms was appointed as the Enquiring Officer, who, after completion of the enquiry submitted his enquiry report. But according to the petitioner, instead of taking any action on that enquiry report, the matter was kept in abeyance for a long time and then he was served with another charge-sheet dated 19-3-1981 (Annexure-3) issued by the Respondent-Deputy Commissioner whereby a second enquiry was entrusted to Shri Madan Mohan Prasad, Deputy Collector, Giridih. The Enquiring Officer after considering the explanation offered by the petitioner, submitted his report dated 4-5-1982 (Annexure-15). Consequent upon the said enquiry report, the Deputy Commissioner by his order dated 1-6-1982 (Annexure-4) found the petitioner to be guilty of the charges levelled against him and, accordingly, awarded a

punishment of compulsory retirement from the date of his suspension and also directed for recovery of the entire subsistence allowance from the petitioner which was paid to him during the period of suspension. The petitioner, thereafter, preferred an appeal before the Commissioner and the appellate authority remanded the case to the disciplinary authority because no show-cause notice was issued to the petitioner before inflicting the punishment. Pursuant to the appellate order, the learned Deputy Commissioner then issued a notice dated 24-2-1984 (Annexure-6) to the petitioner after setting out charges against him and requiring him to show cause as to why keeping in view the seriousness of the charges levelled against him, he should not be dismissed from service. Thereafter, after giving due consideration to the show-cause filed by the petitioner, the petitioner was dismissed from service by an order dated 7-6-1984 (Annexure-8).

3. Against the above said order, the petitioner again preferred an Appeal to the Commissioner, who dismissed the same as being infructuous by taking the view that since the petitioner has already superannuated on the 20th June, 1984, therefore it is not necessary to enter into the merits of the appeal. Against this order, the petitioner preferred C.W.J.C. No. 1251 of 1985 (R) which was disposed of on 17-10-1990. This Court set aside the above said order with a direction to the Commissioner to dispose of the appeal on merits since the order of dismissal if allowed to stand, it will affect the entitlement of the petitioner to retirement benefits. The order of this Court has been filed as Annexure-10. Consequently the learned Commissioner, by a well reasoned order after entering into the merits of the case, dismissed the appeal of the petitioner and thereby affirming the order of dismissal from service awarded to the petitioner.

4. The Respondent have filed a counter affidavit in this case wherein it has been stated that the second enquiry was necessitated because of the fact that after the report of the first enquiry was received by the Deputy Commissioner, he, on applying himself to the said report, nature of the charge, explanations offered by the petitioner and the material available on the record, had prima facie formed an opinion to dismiss the petition and, accordingly, the file was sent to the office for issuing necessary orders in this regard. But before the said order could be issued, the file mischievously traceless. When the matter was brought to the notice of the Deputy Commissioner, he entrusted the enquiry in this regard to the Deputy Development Commissioner. Pursuant to the enquiry held in that regard, it revealed that the file was possibly made traceless at the instance of the petitioner and, therefore, the then head clerk of the Zila Panchayati Raj Office, who was primarily responsible for maintaining the file, was punished. It was under these circumstances that a second enquiry had to be conducted. These facts, which are borne out from the statements made in the counter affidavit and the copies of the order-sheets filed therewith as Annexures, have not been controverted or disputed by the petitioner by filing a rejoinder.

5. In the background of the aforesaid facts, the learned Counsel-appearing for

the petitioner has raised the following questions in order to assail the impugned orders:

(i) The disciplinary authority has acted beyond the directions given by the Appellate authority in the order of remand (Annexure 5) by inflicting a punishment of dismissal.

(ii) In the facts of the present case, the second enquiry as conducted was not permissible in law.

(iii) The findings in the second enquiry report are not based on any relevant materials borne out from the record.

6. So far as the first point is concerned, the order of the Appellate authority has to be construed in the context of the facts and submissions made before him. Admittedly the petitioner had preferred an appeal against the order by which he was awarded with the punishment of compulsory retirement. His grievance before the Appellate authority was that before awarding the said punishment he was not given an opportunity to file his representation in this regard by way of show-cause. It was in this context that the Appellate authority had directed to issue show cause against compulsory retirement. It is apparent that the word "compulsory retirement" here did not indicate that the Appellate authority had at all intended that in the facts of the case the petitioner can be punished or exonerated only by show cause of a notice by proposing a punishment of compulsory retirement. The true import of the appellate order was that whatever punishment the disciplinary authority intended to inflict that should be done only after show-cause, of a notice to the petitioner. Therefore, in my opinion, it is wrong to say that in the present case the disciplinary authority had acted beyond the directions contained in the remand order. The reference to the Supreme Court case in the case of *Rallis India Ltd. Vs. G. Lakshmi Kanthan*, in my opinion does not apply to the facts of the present case.

7. So far as the second point is concerned, it is suffice to point out that in the facts as enumerated above, since the entire file regarding the disciplinary proceeding had admittedly become traceless, for whosever fault it may be, the Deputy Commissioner was left with no opinion but to direct for holding a second enquiry in respect of the charges levelled against the petitioner. Neither any statutory provision nor any binding precedent could be cited before me to substantiate that once an enquiry is held in respect of certain set of charges then under no circumstance a second enquiry is permissible. In my opinion a second enquiry can be conducted if good reasons could be assigned for the same and such an action is not otherwise taken with any mala fide intention. In the present case, in my opinion, there was not only good grounds for directing a second enquiry rather it was imperative for conclusion of the disciplinary proceeding initiated against the petitioner. Learned Counsel, in support of his submissions, has placed reliance on the decisions in the case of *Shyamdev v. Union of India and Ors.* reported in 1982 (3) SLR 784 and in the case of *Sri C. D. Prabhu v. The*

Deputy Commissioner, South Kanara District, Bagalore and Anr. reported in 1969 SLR 362. In Both these reported cases, the court has held the second enquiry to be bad because no good ground could be assigned for such an action. This is not the situation in the present case.

8. Coming to the last ground of attack, it is suffice to say that the charges levelled against the petitioner are borne out from the official record. The charges relate to the issuance of rent receipts and creating of Jamabandi in favour of unauthorised persons without any authority and thereby causing loss to the Government revenue, which is found true by all concerned authorities including the Appellate court. One of the charges against the petitioner is that while he was posted in Giridih Anchal and doing rent collection work had issued a rent receipt bearing No. 031786 dated 30-1-1971 in favour of Shri Dukhi Ram and others for a piece of land measuring 1.26 acres of G. M. lands consisting of valuable sakhua trees over 28 plots including part of a river under Khata No 35 in mauza Koimara on a nominal annual rent of Rs. 10/- without any settlement order from any competent authority. In his explanation, issuance of rent receipt has not been disputed by the petitioner. But he came out with a bald explanation that he had done so on the verbal order of Circle Inspector. Similar are the explanations with regard to other charges. But this explanation was not found acceptable by the fact finding authority. It is not for this Court to enter into those facts and adjudicate the same.

9. In my opinion, no material has been placed in the record to show that the findings of fact arrived by the Respondents-authorities are vitiated on the ground of perversity or having been based on irrelevant materials.

10. For the reasons, as aforementioned, there is no merit in this writ application. It is, accordingly, dismissed. However, there shall be no order as to costs.