

(2007) 03 JH CK 0046
In the Jharkhand High Court
Case No : CWJC No. 1906 of 1991 (R)

Awadh Nandan Prasad

APPELLANT

Vs

The Commissioner, Chotanagpur Division (North) and Others

RESPONDENT

Date of Decision : 26-03-2007

Acts Referred:

Industrial Drugs and Pharmaceuticals Limited (Conduct, Discipline and Appeal) Rules, 1978 — Rule 30(A)

Citation : (2007) 3 JCR 552

Hon'ble Judges : R.R. Prasad, J; M.Y. Eqbal, J

Bench : Division Bench

Advocate : Ritu Kumar, M.K. Sinha, R.K. Singh and Niki Sinha, for the Appellant; P. Modi, G.P.I, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—This appeal under Clause 10 of the Letters Patent is directed against the judgment dated 28.7.1992 passed in CW.J.C. No. 1906 of 1991 (R) whereby the learned Single Judge dismissed the writ petition and refused to interfere with the order of dismissal passed by the Deputy Commissioner, Giridih and affirmed by the Commissioner, North Chotanagpur Division, Hazaribagh.

2. The facts of the case lie in a narrow compass:

The petitioner-appellant was a Panchayet Sevak and during the relevant time, i.e. 1978-79, he was posted at Udnabad panchayat in Giridih Block. In 1975, he was put under suspension and a disciplinary proceeding was initiated against him on the charges of misconduct. The then Deputy Collector, Land Reforms, was appointed Enquiry Officer who, after completion of enquiry, submitted inquiry report. Appellant's case is that the Enquiry Officer, in his inquiry report, came to the conclusion that the charges have not been proved. Instead of passing final order, the matter was kept in abeyance for a long time and in 1981, the petitioner was served with fresh memo of charge dated 19.3.1981, issued by the Deputy Commissioner whereby second inquiry was entrusted for the same

charges to another Deputy Collector, Giridih. The Enquiry Officer so appointed, submitted his inquiry report dated 4.5.1982. The Deputy Commissioner being the Disciplinary Authority, on the basis of the said report, passed the order dated 1.6.1982 holding the petitioner guilty of the charges and awarded punishment of compulsory retirement from the date of the suspension. The Deputy Commissioner also directed for recovery of the entire subsistence allowance from the petitioner-appellant. The appellant preferred appeal before the Commissioner challenging the initiation of the second inquiry and the order of punishment.

3. The Commissioner remanded the matter back to the Disciplinary Authority on the ground that no show cause notice was issued to the appellant before inflicting punishment. After the matter was remanded back by the Commissioner, the Deputy Commissioner issued show cause notice dated 20.2.1984 asking him to show cause as to why he should not be dismissed from service. The appellant challenged the very initiation of second disciplinary proceeding and denied all the charges leveled against him. After perusal of the show cause, the Deputy Commissioner dismissed the appellant from service by order 7.6.1984. The said decision was affirmed by the Commissioner in appeal filed by the appellant.

4. The appellant challenged aforesaid order of dismissal passed by the Deputy Commissioner and the Commissioner by filing C.W.J.C. No. 1251 of 1985 (R) which was disposed of on 17.10.1999. This Court quashed the order of punishment and directed the Commissioner to dispose of the appeal on merit. Consequent thereupon, the Commissioner passed order dismissing the appeal and affirming the order of dismissal passed by the Disciplinary Authority. The appellant then challenged the order of dismissal by filing C.W.J.C. No. 1906 of 1991 (R) on the ground, inter alia, that initiation of second disciplinary proceeding and service of fresh memo of charge is illegal and wholly without jurisdiction. The respondent-Department filed counter affidavit stating, inter alia, that in the earlier departmental proceedings, after submission of inquiry report by the Enquiry Officer and before passing order by the Disciplinary Authority, the file became traceless. It was under that circumstance, the second inquiry had to be conducted and in this way, the order of dismissal was passed.

5. The learned Single Judge, on the question of validity of second inquiry, held that the second inquiry can be conducted if good reasons are assigned for the same. Learned Single Judge further held that when the file had become traceless, the Deputy Commissioner was left with no option but to direct for holding a second inquiry in respect of the charges leveled against the appellant. Taking this view of the matter, the learned Single Judge dismissed the writ petition.

6. This Letters Patent Appeal was admitted for deciding the question as to whether second inquiry was permissible in law in the facts and circumstances of the present case.

7. I would first like to discuss the inquiry report submitted by the two Enquiry

Officers in the respective departmental inquiries. In the first departmental inquiry, Mr. R.N. Prasad, Land Reforms Deputy Collector, Giridih was appointed as Enquiry Officer who conducted inquiry by examining the witnesses and considering the documentary evidence adduced by the parties. The Enquiry Officer recorded a finding holding that the charges have not been proved and the delinquent has not committed such wrong which may make him liable for suspension or for termination from services. The Enquiry Officer recorded a finding that the rent receipt was issued on the verbal order of the Circle Inspector and the rent receipt was issued by the delinquent on the basis of the sale deed. The relevant portion of the finding of the Enquiry Officer is reproduced herein below:

Findings

The total area of khata No. 35 of village Koimara is 126.61 acres. The land lord was Nil Kanth Narayan Singh. His son Raja Wazir Narayan Singh executed a registered mortgage on 16.9.1925 in favour of Nathu Ram & others. Granted a registered patta in favour of Dukhi Ram & Others in respect of the above land on 10.11.26. Thus Dukhi Ram & others are the valid settlers. They got rent receipt from Ex-land lord But they has not got rent receipt from the Govt. As it is alleged the Panchayat Sewak issued rent receipt No. 03196 on 31.3.71. It is a fact that Panchayat Sewak issued rent receipt but it is beyond imagination that the issued receipt without any order. Some times subordinate staff has to work on the verbal order of their superior officer. The copy of Register III has been filed. It is found that rent receipt No. 031796 dated 31.3.71 is the rent receipt of 70-71. The total amount of receipt is Rs. 136.12. The C.I. Bindeshwari has checked it on 7.6.71 and he has written checked & found correct. Sri R.A. Singh, A.A. has also checked it on 8.6.71. It went into knowledge of the C.I. and A.A. on the dated of a checking. The C.I. is supposed to examine the entries in details. The circumstances proved that rent receipt was issued on verbal order of the C.I. Bindeshwari Singh. The C.I. Upendra Singh has ordered on Register II of step issue of rent receipt on 3.3.75. The question did Upendra Singh not report the matter to the Anchal Adhikari. On 8.10.75 before some days of leaving the Anchal on transfer. He was relieved in Oct. 75 as the C.I. Upendra Singh had suppressed the matter from 3.2.75. The Panchayat Sewak is responsible for the issue of rent receipt for 126.61 acres of land but the C.I. and Anchal Adhikari cannot be absolved from this responsibility. All are responsible for the same. The rental demand is mentioned in registered Patta is Rs. 10/- and if Panchayat Sewak has realized Rs. 10- he has not committed any wrong. It has been alleged that he realized rent not from the date of vesting. It is said that the same rent receipt was shown to the Panchayat Sewak and on this basis he issued this rent receipt. This may be possible.

It has been alleged that the demand for 10 Bighas and 7.82 acres in the name of Basudeo Singh and respectively was already there but the Panchayat Sewak issued rent receipt for entire land. The certified copy of order dated 2.3.63 of the

learned S.D.O. Shri Y. Sinha has been filed. The learned S.D.O. ordered to cancel the demand opened in the name of Basudeo Singh. Thus this demand has got no value. The Panchayat Sewak issued rent receipt in the name of Budhan Mahto on the basis of sale deed.

Some times the collecting agents realize rent in anticipation of approval of Mutation.

Under these circumstances the Panchayat Sewak issued rent receipt. The demand opened for 126.61 acres in the name of Dukhi Ram has been cancelled. The Panchayat Sewak has not committed such wrong which may make him liable for suspension or termination of service.

Sd/- R.N. Prasad Land Reforms Dy. Collector Giridih

8. After the second memo of charge was served for the same charges, one Mr. M.M. Prasad, District Supply Officer, Giridih was appointed Enquiry Officer. The said Enquiry Officer made a summary inquiry and after considering the show cause only filed by the appellant, submitted inquiry report holding that the charges have been proved. A copy of the said inquiry report was annexed as Annexure-15 to the supplementary affidavit filed by the appellant in the writ application. From perusal of the inquiry report it transpires that the Enquiry Officer has not held a regular inquiry rather on the basis of explanation submitted by the appellant, submitted a report holding that the charges levelled against the appellant were proved. On the basis of the said report, the Disciplinary Authority passed order of punishment.

9. Mr. P. Modi, learned Counsel appearing on behalf of the State, submitted that when the record of the earlier departmental inquiry became traceless, then there was no bar for the Disciplinary Authority to initiated a fresh departmental proceeding. Learned Counsel relied upon the decision of the Supreme Court in the case of Indian Drugs and Pharmaceuticals Ltd. and Another Vs. R.K. Shewaramani, .

10. In the case of Indian Drugs and Pharmaceuticals (Supra) the fact was quite different from the fact of the instant case. In the case before the Supreme Court, the employee was transferred from Delhi to Andhra Pradesh and on the charges that the employee did not join the transferred post, charge-sheet was issued on 27.9.1989. There was another set of charges and charge-sheet was issued on 12.12.1989. While these two charges were pending consideration in departmental proceedings, action in terms of Rule 30(A) of the Industrial Drugs and Pharmaceuticals Limited (Conduct, Discipline & Appeal) Rules, 1978 was taken and show cause was issued requiring the employee to show cause as to why his services shall not be terminated on account of unauthorized absence from duty exceeding 30 days. The order of termination was passed by the Company on the third charge of unauthorized absence during pendency of the earlier two departmental proceedings. The order of termination was questioned by filing a writ petition on the ground that when the authorities have round it

inconvenient to establish the earlier charges and therefore have bypassed them and taken resort to the amended Rule 30(A) with mala fide intent. The matter ultimately went to the Supreme Court. The Supreme Court held that the employer is free to proceed in as many departmental proceedings as it considers desirable. Merely because two proceedings were pending, that did not in any way stand in the way of the employer to initiate another departmental proceeding and that too on the basis of an amended provision which came into effect after initiation of the previous departmental proceeding.

11. There is no dispute that the employer is entitled to initiate two departmental proceedings one after another in respect of different charges, but the question that falls for consideration here is whether after submission of inquiry report exonerating the employee from the charges, the employer can initiate fresh departmental proceeding for the same charges. In my view, therefore, the decision relied upon by the learned State Counsel will not apply in the facts of the present case.

12. On the other hand, learned Counsel appearing for the appellant, has relied upon a decision of the Supreme Court in the case of (2003) 3 LLJ 557 SC Union of India v. K.D. Pandey and Anr. . In that case, departmental proceedings were initiated against the employee in respect of six charges. After the inquiry, a report was submitted to the effect that none of the charges levelled against the employee stood proved. The Disciplinary Authority examined the matter and found that four of the six charges could be substantially proved beyond doubt with the available documentary evidence and thereafter, remitted the matter for further inquiry. On the said direction of the Disciplinary Authority, the Enquiry Officer made a subsequent report finding the employee guilty of four charges and on the basis of that report, the employee was dismissed from service. The decision was challenged by the employee and ultimately the matter went to the Supreme Court for deciding the issue whether it was proper for the Disciplinary Authority to remit the matter to the Enquiry Officer for further inquiry. The Supreme Court held that such a procedure adopted by the Disciplinary Authority will amount to second inquiry and would be abuse of process of law. Their Lordship observed:

5. Learned Counsel for the appellant contended that in this case the Board had examined the material on record and come to the conclusion that four of the six charges could be proved on the available material, which had not been properly examined in the earlier inquiry. In fact from the order made by the Railway Board as well as from that part of the file where the inquiry report made earlier is discussed, it is clear that specific findings have been given in respect of each of the charges after discussing the matter and, if that is so, we fail to understand as to how there could have been a remit to the inquiry authority for further inquiry. Indeed this resulted in second inquiry and not in a further inquiry on the same set of charges and the material on record. If this process is allowed the inquiries can go on perpetually until the view of the inquiry authority is in accord with that

of the disciplinary authority and it would be abuse of the process of law. In that view of the matter we think that the order made by the High Court affirming the order of the Tribunal is just and proper and, therefore, we decline to interfere with the same. The appeal is dismissed accordingly.

13. As noticed above, in the first departmental inquiry, the inquiry officer so appointed has not only considered the show cause submitted by the appellant but also examined the witnesses and received documentary evidence and after considering the evidence elaborately discussed the matter and recorded a finding holding that charges have not been proved. Even assuming that issuance of fresh memo of charges for conducting departmental inquiry afresh on the ground that record of the earlier departmental inquiry was traceless was justified, the Second Inquiry Officer, so appointed was not supposed to hold summary inquiry and only after considering the show cause/explanation come to the conclusion that charges have been proved. Consequently, on the basis of report of the second Inquiry Officer, order of punishment passed by the Disciplinary Authority is illegal and wholly without jurisdiction and violative of principles of natural justice. In my considered opinion, therefore, such an action of the Disciplinary Authority is abuse of the process of law, Learned Single judge has not considered this aspect of the matter and the proposition of law settled by the Supreme Court. Learned Single Judge had, therefore, not correctly decided the law and the judgment impugned needs interference by this Court.

14. For the reasons aforesaid, this appeal is allowed and the impugned judgment passed by the learned Single Judge is set aside. Consequently, the entire second summary departmental inquiry and the order of punishment is vitiated in law, which are accordingly, quashed.

R.R. Prasad, J.

15. I agree.