
(2006) 12 PAT CK 0070
In the Patna High Court
Case No : CWJC No. 3168 of 2005

Awadhesh Chandra Sinha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 18-12-2006

Acts Referred:

Citation : (2007) 1 PLJR 366

Hon'ble Judges : Jayanandan Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Jayanandan Singh, J.—Heard learned counsel for the parties. Petitioner has filed this writ application for quashing of the order dated 20.12.2003 contained in Annexure-10, whereby on conclusion of departmental proceeding petitioner has been awarded punishment of withholding of three increments with cumulative effect. It has been further ordered that the petitioner shall not be promoted to the post of Tax Daroga and he shall not be paid anything else for suspension period except the subsistence allowance.

2. In the writ application the petitioner has stated that he was appointed as Tax Collector on 8.8.1968 and was promoted as incharge Tax Daroga on 14.5.1993. It is stated that he was rewarded on the eve of 15th August, 1993 for his commendable work as Tax Daroga. It is further stated that one Mahendra Kumar, a peon of the Municipality, was promoted as Tax Daroga on 5.10.1993. The promotion of Mahendra Kumar was challenged by the petitioner through C.W.J.C. No. 10366 of 1993. By order dated 23.4.1999 passed in the said writ application the promotion of said Mahendra Kumar was quashed and it was held that the post of Tax Daroga was promotional post from the cadre of Tax Collector.

3. However, Respondent Municipality subsequently promoted said Mahendra Kumar as clerk and made him incharge of the Establishment Section and Legal Section. Taking advantage of his position, said Mahendra Kumar started

poisoning the ears of the then Circle Officer (Respondent No. 3) against the petitioner. At his instigation this petitioner was verbally asked to hand over the keys of the almirah which was handedover on 12.1.2001. Thereafter by memo No. 20 dated 15.1.2001 issued under the signature of Respondent No. 3, petitioner was directed to handover the details of Form-C Wardwise. The said memo dated 15.1.2001 has been annexed as Annexure-1 to this writ application. Petitioner filed reply through Annexure-2 that the keys were not in his possession and therefore he was unable to handover details of Form-C which were kept in the almirah itself. Thereafter vide Memo dated 22.10.2001, as contained in Annexure-3 to the writ application, petitioner was prevented from acting as Tax Daroga and was directed to handover charge to one Raghunandan Prasad.

4. Thereafter, vide memo dated 7.11.2001, as contained in Annexure-4, petitioner was suspended with 13 allegations. Petitioner moved this Court in writ jurisdiction which was dismissed as it transpired during hearing of the said case that the departmental proceeding had already started. Petitioner also filed L.P.A, against the said order which was also dismissed. In the meanwhile, petitioner was served with charge memo dated 7.9.2002 in Form-"Ka", as contained in Annexure-5. Through this charge memo petitioner was directed to file show cause before Shyam Kishore Prasad, Junior Engineer, who was appointed as enquiry officer in the proceeding. According to the petitioner, charge memo did not contain list of evidence and list of witnesses and therefore he requested the disciplinary authority for supply of the same. Upon his request, certain documents were supplied to him on 21.2.2003.

5. Petitioner further states that he was suspended on 7.11.2001 whereas documents referred to in the charge memo were dated 7.11.2001 and 8.11.2001. However, he accepts that some more documents were supplied to him on his request. Petitioner asserts that in spite of his repeated representations no other documents were supplied to him. In support of this claim he has annexed letter dated 17.2.2003, as contained in Annexure-6. Petitioner claims that objections were raised in the said representations which have not been considered by the authorities. Petitioner finally filed his show cause dated 7.5.2003, which is annexed as Annexure-7 to the writ application. Petitioner asserts that the show cause is related to the charges for which documents had been supplied. After conclusion of enquiry, report was submitted by the enquiry officer on 19.5.2003, which is annexed as Annexure-8 to the writ application. Petitioner claims that thereafter petitioner was asked for second show cause with a copy of the enquiry report. Petitioner claims that before filing second show cause he twice applied for certified copy of the ordersheet of the proceeding on 5.5.2003 and 24.5.2003 but the same were not supplied to him. However, he filed his second show cause on 6.6.2003, as contained in Annexure-9 to the writ application. Finally after considering the matter, impugned order dated 20.12.2003 was passed, as contained in Annexure-10 with the punishment as aforesaid.

6. In the backdrop of the above facts, learned counsel for the petitioner has contended that in the show cause served on the petitioner itself enquiry officer was appointed without waiting for submission of his reply which shows bias in the mind of the authorities concerned. He further submitted that in the enquiry no presenting officer was appointed and the enquiry officer himself acted as presenting officer. Thus, the enquiry itself stands vitiated and the punishment order is fit to be quashed. It has been further asserted that in spite of his repeated request no further documents were supplied to him and no list of witnesses were made available for the purpose of cross-examining them. Learned counsel for the petitioner further submitted that petitioner was not given reasonable opportunity of adducing evidence or cross-examining the witnesses and was also not supplied with certified copy of the order-sheet inspite of his repeated request. Learned counsel also submitted that the petitioner had made specific claim against the enquiry officer to be involved in charge No. 4 and hence had requested for his removal. It was further submitted that no applicant was examined on whose petition enquiry had been initiated.

7. One counter affidavit as well as one supplementary counter affidavit has been filed on behalf of the respondents in which claims of the petitioner have been refuted. It has been asserted by the respondents in their affidavits that all the documents required by the petitioner were supplied to him. It has been further asserted that although no formal order for appointment of presenting officer was issued but one Raghunandan Prasad, Incharge Assistant Tax Daroga acted as presenting officer. It has been asserted that full opportunity was given to the petitioner and thereafter proceeding was concluded. It has been further asserted by the respondents that there was a preliminary fact finding enquiry in which petitioner was given show cause and was asked to reply which the petitioner did and assured to improve his conduct. However, he did not improve his conduct and as such the authorities decided to hold proper proceeding against petitioner and then charge memo under Form-"Ka" was issued and served on the petitioner. Respondents have annexed charge-sheet as Annexure-A, order-sheet of the enquiry proceeding as Annexure-B, enquiry report as Annexure-C, second show cause notice as Annexure-D and punishment order as Annexure-E. With the supplementary counter affidavit, respondents have annexed memo No. 251 dated 19.4.2001 by which petitioner was asked to show cause after fact finding enquiry which is marked as Annexure-G/1. Reply of the petitioner to this show cause notice dated 27.4.2001 is annexed as Annexure-G/2. The respondents have also disclosed in the supplementary counter affidavit that in another matter this Court has noticed large scale financial irregularities in the Municipality and direction had been issued to hold enquiry and take action against the persons concerned as per directions of the Government issued earlier. Order-sheet of that matter has been annexed as Annexure-F/1 in the supplementary counter affidavit.

8. Learned counsel for the State submitted that the petitioner has not availed the remedy by way of appeal and therefore, the writ petition is fit to be dismissed on

this score itself. In support of this contention, learned counsel for the State relied on the case of Central Coalfields Ltd. Vs. State of Jharkhand and Others, .

9. In reply to this submission, learned counsel for the petitioner referred to one decision of the Supreme Court in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, to contend that the availability of alternative remedy is not an absolute bar.

10. Here I am in agreement with the learned counsel for the petitioner that availability of alternative remedy does not act as a bar to the exercise of writ jurisdiction and in proper cases writ applications can be entertained even if any alternative remedy has not been exhausted by the petitioner.

11. Elaborating his submissions, learned counsel for the petitioner in support of his first contention, to the effect that the appointment of enquiry officer prior to the receipt of the reply to show cause was bad and shows bias, has relied on the case of State of Punjab vs.V.K. Khanna, reported in AIR 2001 S.C. 343. In this case the incoming Punjab Government had removed respondent from the post of Chief Secretary and had issued charge-sheet to him giving him 21 days time to show cause. However, without waiting for his show cause reply the then Chief Minister of Punjab had made a public announcement only after three days that enquiry was going to be set up against the respondent which was to be headed by a Judge of the High Court. In these facts it was contended by the learned counsel for the respondent in the said case that it showed pre-determination in the mind of the authorities and bias against the respondent which was accepted by the Supreme Court.

12. However, in the present case it appears that the respondents had held a preliminary fact finding enquiry in which a show cause had already been issued to the petitioner and the petitioner replied to the same. In spite of the preliminary enquiry and show cause the petitioner did not improve his conduct and as such the respondents decided to hold formal enquiry against the petitioner. Annexure-4 as well as Annexure-G/1 shows that several acts of omissions and commissions were detected against the petitioner in which he was given an opportunity to explain and improve his conduct. He submitted his show cause reply by Annexure-G/2. However, since he did not improve his conduct, respondents decided to hold formal enquiry against the petitioner and as such charge memo in Form-"Ka" was issued to the petitioner since the decision had already been taken to hold formal enquiry against the petitioner by serving charge memo on him. Therefore there was nothing wrong on the part of the respondents to appoint enquiry officer by Annexure-5 and direct the petitioner to submit his show cause to the enquiry officer. Hence I find that the said judgment relied upon by the petitioner is of no help to him which differs on facts. The action of the respondents in simultaneously appointing enquiry officer by serving charge memo in Form-"Ka" was not bad.

13. In support of the next submission to the effect that the presenting officer

was not appointed by the respondents and the enquiry officer himself acted as presenting officer, learned counsel for the petitioner has relied on a decision of this Court in the case of Panchanand Kumar vs. Bihar State Electricity Board, reported in 1996 (1) PLJR 401. In that case although the presenting officer was appointed but he did not appear and as such the enquiry officer acted as presenting officer. There were other infirmities found in the case on the cumulative effect of which the case was decided.

14. In the present case, from a bare perusal of Annexure-B it appears that Raghunandan Prasad, Incharge Assistant Tax Daroga had appeared and produced the records in the enquiry which was perused and considered by the enquiry officer. Nothing appears from the order-sheet of the enquiry, Annexure-B, to show that the said Raghunandan Prasad did not act as presenting officer or the enquiry officer himself acted as presenting officer. Here, I may point out that the petitioner has not chosen to file any reply to the counter affidavit or the supplementary counter affidavit and has not refuted the claims made therein nor has challenged the veracity or correctness of any of the documents annexed with the said affidavits. In the circumstances, I find that the facts of the present case is quite different and the contention of the learned counsel for the petitioner that the enquiry officer himself acted as presenting officer is not born out from the records of the case.

15. As stated earlier, learned counsel for the petitioner further claimed that in spite of requests made by the petitioner, documents and list of witnesses were not supplied to him. From Annexure-6 it appears that the petitioner had asked for documents and list of witnesses but in the writ petition itself he has accepted that after submission of Annexure-6 he was supplied with certain documents on the basis of which he submitted his show cause. Petitioner has not disclosed as to which documents were not supplied to him in connection with which charge. Petitioner has not produced any other application or request made in the case to show that he had formally asked for some more documents after supply of documents by the respondents. From the order-sheet, Annexure-B, it appears that on 19.2.2003 documents in 16 pages were made available to him just two days after he made request for the same through Annexure-6. There is nothing on record to show that at any later date the petitioner asked for any other document from the enquiry officer. On the other hand, order-sheet, Annexure-B, shows that the petitioner participated in the enquiry at different stages. It also appears from Annexure-B that the enquiry proceeded on the basis of documents of the Municipality which were placed before the enquiry officer by the said presenting officer Raghunandan Prasad. As such the contention of the learned counsel for the petitioner that the petitioner was not supplied with the documents or list of witnesses does not hold good and is rejected.

16. In support of his next contention that material witnesses and the complainant were not examined, learned counsel for the petitioner relied on the case of Hardwari Lal Vs. State of U.P. and Others, . I am afraid this submission of

the learned counsel for the petitioner does not hold good as from the order-sheet, Annexure-B. It appears that the enquiry proceeded on documentary evidence and the records of the Municipality which were brought and produced by the said presenting officer Raghunandan Prasad and were examined in the enquiry. No witness appears to have been examined in the enquiry neither any material is on the record to show that the petitioner ever asked for examination of any witness or production of any more documents. In such circumstances, this submission of the learned counsel for the petitioner also fails. In this background submission of the learned counsel for the petitioner that the petitioner was not given opportunity to cross-examine witnesses also does not hold good.

17. Although learned counsel for the petitioner has further contended that the petitioner had levelled allegations against enquiry officer as being involved in charge No. 4 and had requested for his removal, I do not find any material on record in support of this assertion. The only material giving some inkling to this assertion is found in the reply of the petitioner to the second show cause in which at one place it is mentioned that the petitioner had filed a petition on 24.2.2003 in which he had levelled such allegation. However, this alleged petition dated 24.2.2003 said to have been filed by the petitioner is neither enclosed alongwith his reply, Annexure-9, nor has been annexed independently with the writ petition so as to come to the conclusion that in fact he had filed any such petition before the authorities.

18. Learned counsel for the petitioner also tried to make his submissions on the question of alleged mala fide against said Mahendra Kumar asserting that it was he who engineered the entire matter. However, said Mahendra Kumar has not been made party respondent in this case and during hearing of the case also learned counsel for the petitioner did not make any prayer to add said Mahendra Kumar as party respondent. As such I am unable to go into the question of mala fide of fact in absence of and behind the back of said Mahendra Kumar.

19. Learned counsel for the petitioner has submitted that the specific assertion of facts made in the writ petition have not been dealt with and denied in detail in the counter affidavit and thus the same should be accepted as admitted. In support of this contention, learned counsel for the petitioner has relied on the case of Lohia Properties (P) Ltd., Tinsukia, Dibrugarh, Assam Vs. Atmaram Kumar, . The said case arose out of a proceeding under the CPC and in context of written statement filed in the suit. The Apex Court had observed that in absence of specific denial the allegations made in the plaint should be deemed to have been admitted. To be particular, against claim of service of notice made in the plaint, the only statement in the written statement was that service was not valid which was held by the Apex Court to be no denial to the specific assertion made in the plaint. In the present case, I find that the assertions made in the writ petition have been denied in the counter affidavit and more so in the supplementary counter affidavit where each and every submission and stand of the petitioner has been dealt with and replied. Therefore, in absence of specific

challenge to the assertions made in the counter affidavit and to the documents annexed thereto in support of the same by the petitioner by way of any rejoinder, the same has to be accepted as correct.

20. In matters concerning departmental proceedings concept of fairness in action and reasonableness depends on facts of each case. In this context, I may usefully quote opening lines of the judgment in the case of State of Punjab vs. V.K. Khanna (supra) which is as follows:-

"The concept of fairness in administrative action has been the subject matter of considerable judicial debate but there is total unanimity on the basic element of the concept to the effect that the same is dependant upon the facts and circumstances of each matter pending scrutiny before the Court and no straightjacket formula can be evolved therefor."

21. On perusal of the impugned order I find that the petitioner was further given opportunity by the disciplinary authority on a number of dates and the petitioner appeared and presented his stand. He was also supplied with a number of documents totalling 67 pages by the disciplinary authority. This fact also stands supported by the order-sheet which has been annexed as Annexure-C to the counter affidavit wherein after enquiry report the disciplinary authority had proceeded to consider the case of the petitioner by recording orders passed on various dates and opportunity given to him. Thus, I find that in the enquiry full opportunity was given to the petitioner and the enquiry does not suffer from any bias or any legal infirmity in the decision making process causing any prejudice to the petitioner. In the circumstances, I do not find any merit in this writ application. The writ application is accordingly dismissed.