
(2012) 05 PAT CK 0016
In the Patna High Court
Case No : CWJC No. 6866 of 2012

Awadhesh Prasad Sharma

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 03-05-2012

Acts Referred:

Citation : (2012) 3 PLJR 742

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Advocate : Arun Kumar Arun, for the Appellant; Vikas Kumar, for the Respondent

Final Decision : Allowed

Judgement

Navin Sinha, J.—Heard learned counsel for the petitioner and the State. The petitioner is aggrieved by the order dated 17.2.2011 imposing punishment for stoppage of three increments with non-cumulative effect.

2. It is submitted that a memo of twelve charges were framed against the petitioner. The evidence appended to the charges by which they were sought to be proved consisted of 12 departmental communications. The petitioner filed his reply to the charges. The enquiry officer submitted his report on 9.11.2010. The report itself manifests that no departmental proceedings in accordance with law were held. The documents necessary to prove the charge were not produced before the enquiry officer as mentioned in the report itself, despite directions to the presenting officer. The presenting officer was transferred midway and no new presenting officer was appointed despite request made. The petitioner has been exonerated of some of the charges and on some of the charges he has been held guilty partially even while the enquiry officer himself notices that the department had not made materials available during the inquiry. The documents annexed to the memo of charge were never proved by the presenting officer through leading evidence. The impugned order states that all the charges had been proved which is per se evidence of complete non-application of mind by the disciplinary

authority.

3. Counsel for the State submits that the defence of the petitioner has been considered by the enquiry officer, the impugned order is based on the proved charges only. The punishment is minor in nature and therefore, the Court may not interfere.

4. Rule 19(b) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as the Rules) provides that if the disciplinary authority so considers it necessary, he may hold a regular departmental inquiry as provided for a major punishment in accordance with Rule 17, sub-rule 3 to Rule 23 for imposition of a minor punishment also. In the present case a regular departmental proceeding was initiated, memo of charges framed, evidence annexed to the charge and a presenting officer appointed. According to Rule 17, sub-clause 14 the onus lay on the presenting officer to lead evidence to prove the charge and the documents annexed to the memo of charge. The enquiry report states that the presenting officer abandoned the proceeding midway and even while he was present did not lead any evidence or prove any document. The enquiry officer donned the cloak of the prosecution becoming the Judge and executioner both. He was required to perform a neutral role by considering the allegations and the defence to arrive at his own conclusions.

5. If that were not enough, the impugned order states that all charges had been proved. This is factually incorrect apparent from the enquiry report. The submission on behalf of the State that Clause-3 of the impugned order refers to proved charges, to the mind of the Court makes matter worse for the respondents reflecting a totally confused state of thinking indicative of complete non-application of mind.

6. Whether it be the holding of a departmental proceeding in a manner contrary to law, or an order of punishment reflecting non-application of mind, the Court finds it difficult to sustain the punishment. The order dated 17.2.2011 is set aside. The matter is remanded to the respondents for holding departmental proceedings afresh if they so desire. But simultaneously while initiating such departmental proceeding, the respondents are obliged by the direction of the Court to initiate departmental proceedings against those who conducted the present proceeding in a manner fundamentally contrary to the law and persisted with the same including the disciplinary authority who has passed the order dated 17.2.2011. If subordinate functionaries in the department were guilty for abusing the process of departmental proceedings, the disciplinary authority exercising superior powers cannot escape responsibility by casual exercise of a serious power to punish. The application is allowed.