

(2011) 10 PAT CK 0036
In the Patna High Court
Case No : CWJC No. 7308 of 2006

Awadhesh Upadhayay

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 21-10-2011

Acts Referred:

Bihar Pension Rules, 1950 — Rule 43B

Citation : (2012) 2 PLJR 678

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Advocate : Binod Kumar Kantha and P.N. Pathak, for the Appellant; S. Raza Ahmad and Vishwambhar Prasad for the state, for the Respondent

Judgement

Ajay Kr. Tripathi, J.—Heard learned senior counsel for the petitioner and counsel for State. Petitioner was on deputation under the National Rural Employment Programme (NREP) of the Rural Development Department. He was holding the post of Assistant Engineer. During his period of posting, many different schemes for construction of roads under the N.R.P. Programme, was planned and approved by the competent authority. It was also put under execution. While the plans were being executed, a State level flying squad made a visit to the places where the schemes were being carried out to make a physical inspection as to the quality of the work being done by the agency.

2. Based on the report of the flying squad, the Junior Engineer, namely, one Sri Satyendra Yadav, the Assistant Engineer, the present petitioner as well as the District Engineer, were put under suspension and a decision was taken to proceed with them departmentally.

3. One Atul Kumar Karmkar, a Chief Engineer was appointed as the Enquiry Officer to conduct enquiry against the petitioner as well as the District Engineer with regard to the set of charges which was drawn up against them. The charges have been brought on record as Annexure-4. Four charges under different heads in relation to those projects were required to be gone into and have been gone

into by the Enquiry Officer. The report of the Enquiry Officer is Annexure-5 which is dated 27.4.2001.

4. Learned senior counsel representing the petitioner has taken this Court through the charges, the evidence so produced, both on behalf of Presenting Officer as well as the delinquent and the findings recorded by the enquiry officer on each and every head. The final opinion of the Enquiry Officer in relation to all the four charges was that the delinquents could not be found guilty on any of the charges leveled against them. With such a finding, the enquiry report was forwarded to the State Government.

5. The Disciplinary Authority was not satisfied with the findings, because he decided to refer the matter for a fresh enquiry before the Commissioner of departmental enquiry, as would be evident from reading of Annexure-6 to the writ application. The order for fresh enquiry and the reason therein has been gone into through this Court. The basic reason which has been given for holding a fresh or a re-enquiry is that proper procedure was not followed by the Enquiry Officer. Appreciation of evidence and conclusions have not been done properly and the finding reached therein may not be acceptable to the Government.

6. The so called fresh enquiry or denovo enquiry was held. Petitioner was absolved of some of the charges, but was held guilty of charge no. 2 and partially guilty with regard to charge no. 4. This formed the basis for imposition of punishment. The punishments are: reduction of the petitioner to the lowest scale of pay; debar him from promotion for the next five years as well as non-payment of his salary for the period of suspension except subsistence allowance. The order of punishment is Annexure-1. This punishment order is being challenged on many a grounds which have been urged at the bar by the learned senior counsel, which will being noticed herein below.

7. Submission is that if the Disciplinary Authority was not satisfied with the enquiry report or the manner, in which the enquiry was conducted, the matter could have been remitted back to him to undo that damage or mistake by either considering further evidence or adopting a procedure which would bring it inconformity with the procedure, in which such proceeding was to be conducted. If he was of the opinion that the Enquiry Officer has not reached the right conclusion, based on the evidence or material which was brought on record, he had a right of disagreement, but neither of the two procedures were adopted. Referring the matter to yet another body or person, for a new enquiry by ignoring the findings earlier given by an Enquiry Officer is not only uncalled for, but de hors the law as declared by the Hon''ble Apex Court in similar circumstances. Counsel brings to the notice of this Court a decision rendered in case of (2003) 3 LLJ 557 SC Union of India v. K.D. Pandey and Anr. as well as the case of Kanailal Bera Vs. Union of India (UOI) and Others, in support of what has been urged and noticed above. The Hon''ble Supreme Court in the case of K.D. Pandey above, after going through the matter expressed itself in paragraph-5 which is quoted below:-

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.

8. Hon"ble Apex Court in paragraph-6 of Kanailal Bera's case (supra) had this to say:-

The question as to whether a punishment of confinement to Civil Lines could have been directed or not should not detain us as we agree with the contention raised by learned counsel for the appellant that the purported order dated 5.4.1995 of the disciplinary authority was unsustainable in law. Rule 27 of the Central Reserve Police Force Rules, 1955, inter alia, lays down the procedure for conducting a departmental inquiry. Once a disciplinary proceeding has been initiated, the same must be brought to its logical end meaning thereby a finding is required to be arrived at as to whether the delinquent officer is guilty of charges leveled against him or not. In a given situation further evidences may be directed to be adduced but the same would not mean that despite holding a delinquent officer to be partially guilty of the charges leveled against him another inquiry would be directed to be initiated on the selfsame charges which could not be proved in the first inquiry.

9. In the opinion of this Court both the cases supports the petitioner on the proposition that the methodology adopted by the Disciplinary Authority was uncalled for and, therefore, any punishment which has been imposed based on such a deviation from the norms may require interference.

10. Yet another submission on behalf of petitioner is that they were three sets of persons who came to be proceeded against. Only the petitioner cannot be made to suffer the ignominy of punishment when two other persons in identical circumstances have been allowed to walk away free. In this regard, he submits on the basis of the evidence produced in the rejoinder affidavit filed on his behalf, which is Annexure-12. When the District Engineer was visited with a punishment u/s 43-B of the Bihar Pension Rules arising from the same proceeding, which did not conclude while he was still in service the same was interfered with by the High Court and the order of punishment was quashed.

Same is the situation with regard to the Junior Engineer.

11. Counsel relies on a Division Bench decision of this Court which was the case of *The State of Bihar vs. Yogendra Singh* reported in 2009 (1) P.L.J.R. 187. Paragraph No. 2 of the said decision is quoted here which has a bearing to the present dispute.

We are afraid, if for almost identical charges, the Junior Engineer has been exonerated by his disciplinary authority, there was no justification in holding the charges proved against the present respondent and punishing him with stoppage of one increment with cumulative effect, censure for the year 1999-2000 and that the delinquent would be entitled to subsistence allowance only during the period of suspension. Consideration of the matter by the Single Judge cannot be said to suffer from any legal infirmity justifying interference by us.

12. Counsel for the State submits that the basis or the reason for the Disciplinary Authority to refer the matter for a fresh enquiry by yet another authority arose in the circumstances indicated in Annexure-6. For after all the object of the enquiry was to find out actual state of affairs with regard to the omission and commission of the persons so charged. If the enquiry report submitted earlier did not satisfy the Disciplinary Authority on the parameters indicated therein, then there was no option but to refer the matter to yet another body, namely the Commissioner of enquiries. Nothing more should be read into the action, because the decision to impose punishment is based on the finding of guilt given by the Commissioner of enquiry.

13. But when questioned closely, learned counsel for State submits that proposition which has been urged at the bar and the ratios laid down by the Hon'ble Apex Court in the two decisions cited at the bar cannot be disputed but it has applicability in a given set of facts.

14. The distinction which the learned counsel for State is looking for in the present case is not available from the record. The Court is not required to go beyond what has been recorded by the authorities as reason for holding of a fresh enquiry in terms of the order contained in Annexure-6. The reasons given for the fresh, enquiry surely false foul of the parameters of the law laid down by the Hon'ble Apex Court in the two decisions referred above. If that be so, then the petitioner surely has made out a case for interference with the order of punishment because the manner and the methodology adopted for holding the petitioner guilty by holding a fresh enquiry and not remitting the matter back to the original enquiry Officer with certain guidelines is in the teeth" of the two decisions. Annexure-1 therefore, is quashed, matter is allowed. The consequences thereof will flow in favour of the petitioner.