
(2015) 07 PAT CK 0149
In the Patna High Court
Case No : CWJC No. 13057 of 2000

Baidyanath Prasad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 31-07-2015

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2015) 4 PLJR 130

Hon'ble Judges : Chakradhari Sharan Singh, J.

Bench : Single Bench

Advocate : Manoj Kumar Ambastha and Akhileshwar Kr. Shrivastav, for the Appellant; Kumar Priya Ranjan, for the Respondent

Final Decision : Allowed

Judgement

Chakradhari Sharan Singh, J.—The short question involved in the present writ application is as to whether in a departmental proceeding, a delinquent has a right to make representation against the adverse findings of the Inquiry Officer before the Disciplinary Authority, after having received the report of Inquiry Officer, in order to convince the Disciplinary Authority that such findings of the Inquiry Officer are not correct and the Disciplinary Authority in turn, has an obligation to consider such representation before coming to his own findings as regards the delinquent's guilt. The petitioner in the present writ application is aggrieved by an order dated 30.11.2000, whereby the competent authority has imposed upon him following punishments:--

(i) "Censure" to be entered into ACR of the petitioner of the years 1988-1989.

(ii) Reversion from the post of Executive Engineer to Assistant Engineer.

(iii) The petitioner shall not be entitled to any emoluments other than subsistence allowance for the period during which he remained under suspension, which period, however, shall be counted for the purpose of his pensionary benefits.

2. With the issuance of charge-sheet dated 4.6.1991, a disciplinary proceeding was initiated against the petitioner, containing altogether three charges. The first charge against the petitioner related to splitting the work of maintenance and repair of Canal under Phulwaria Canal Division, Sirdala to bring the work within his jurisdiction for the purpose of entering into an agreement and further he made payments on hand receipts after preparing first and last bill under Rs. 2,000/-. The second charge related to proceeding with the work without obtaining prior sanction of the competent authority. It was also alleged against him that he was responsible for embezzlement of Government money to the tune of Rs. 58,97,837/-. An Inquiry Officer was appointed.

3. The petitioner submitted his written statement of defence. In course of the departmental enquiry, witnesses appear to have been examined. The Inquiry Officer submitted his report on 16.1.1992, to the disciplinary authority. The Inquiry Officer did not find all the charges to have been proved against the petitioner except charge No. 1 which related to Splitting of work for the purpose of entering into an agreement and making of payment on hand receipts by preparing first and last bills under Rs. 2,000/-. He found that the petitioner exceeded his jurisdiction with regard to financial powers in doing so. The Inquiry Officer did not find, however, the charge of embezzlement and of getting certain documents disappeared from the office and diversion of fund to be proved. The Inquiry Officer also came to a conclusion that the allegation against the petitioner of allotment of work to dummy contractors could also not be proved in course of departmental enquiry.

4. Thereafter, by a letter dated 9.4.1995, issued under the signature of Deputy Secretary, Water Resources Department, Government of Bihar, a second show cause notice was issued to the petitioner, seeking his explanation as to why he should not be dismissed from service in view of the report of the Enquiry Officer. Along with the second show cause notice dated 9.4.1995, a copy of the enquiry report was supplied to him. The petitioner submitted his detailed reply to the second show cause notice on 27.5.1995. Thereafter, another second show cause notice was issued to the petitioner through letter dated 19.9.1997 issued by the Additional Secretary, Water Resources Development Department, Government of Bihar. The said letter does not refer to the petitioner's reply dated 27.5.1995 to the earlier second show cause notice. Through the second show cause notice dated 19.9.1997, the petitioner was informed that on the basis of the report of the Enquiry Officer, the State Government has decided to impose upon him, the punishment of reversion from the post of Executive Engineer to the post of Assistant Engineer. Again, enclosing a copy of enquiry report, the petitioner was asked to submit his second show cause reply. The petitioner submitted his second show cause reply on 7.10.1997, which has been brought on record by way of Annexure-12 to the present writ application.

5. It appears that the State Government sought opinion from the Bihar Public Service Commission for imposition of said punishment of reversion in rank. The

Commission through its letter dated 29.4.1999, addressed to the Water Resources Development, Government of Bihar advised that the punishment so suggested was disproportionate to the misconduct proved against the petitioner. The State Government, however, by the impugned notification dated 30.11.2000 decided to impose upon the petitioner the punishment as indicated above, which is under challenge in the present writ application.

6. This writ application was filed on 13.12.2000. In the meanwhile, the petitioner attained the age of superannuation on 31.1.2001. Evidently, thus, notification imposing punishment was issued nearly two months prior to the date, when the petitioner attained the age of superannuation.

7. Mr. Manoj Kumar Ambastha, learned counsel appearing on behalf of the petitioner has drawn my attention to the impugned notification imposing punishment upon the petitioner and has submitted that the petitioner's reply to the second show cause notice was not at all considered. He has submitted that the petitioner had a right to represent against the findings of the Enquiry Officer and to challenge such findings before the Disciplinary Authority. He has contended that without seeking petitioner's representation on the findings of the Enquiry Officer, the Disciplinary Authority accepted the findings of the Enquiry Officer and decided to impose upon the petitioner the punishment as indicated above. He submits that the procedure which was adopted by the Disciplinary Authority was in violation of the principles of natural justice, inasmuch as, the petitioner was denied an opportunity to satisfy the Disciplinary Authority that findings of the Enquiry Officer, to the extent he held some of the charges to be proved, were incorrect. He has further submitted that the opportunity which was given to the petitioner through second show cause notice was against the principles of natural justice inasmuch as, it did not contain tentative notes disagreement from the such findings of the Enquiry Officer, which were favourable to the petitioner, and proceeded as if all charges against the petitioner stood proved. He contends that after having received the report of Enquiry Officer along with second show cause notice, the petitioner attempted to convince the Disciplinary Authority, by way of detailed reply that such findings were not correct. He has further submitted that it was obligatory upon the Disciplinary Authority to have considered the petitioner's representation against the said findings of the Enquiry Officer.

8. A counter affidavit has been filed on behalf of the respondent-State of Bihar. It has been stated that allegation of financial irregularities committed by the petitioner were found to be proved in course of departmental enquiry and accordingly, keeping in view, the nature of misconduct, the Disciplinary Authority rightly imposed upon the petitioner, the punishment of reversion in the facts and circumstances of the case. It has been stated in the counter affidavit that the advice of the Bihar Public Service Commission was not binding upon the Disciplinary Authority, who after due application of mind imposed upon the petitioner the said punishment. He has also submitted that no question of

violation of principles of natural justice arises in the facts and circumstances of the case, inasmuch as, the petitioner was given full opportunity to raise his defence before the Enquiry Officer in course of the departmental enquiry and after submission of the enquiry report, a copy of the findings of the Enquiry Officer, were supplied to him. He accordingly, submits that all the essential requirements of principles of natural justice were fulfilled by the respondents. He has further submitted that this Court, exercising power of judicial review, may not interfere with the quantum of punishment imposed upon the petitioner.

9. There is no dispute about the fact that after the Enquiry Officer submitted his report and before the disciplinary authority issued order imposing punishment, as indicated above, a second show cause notice was issued to the petitioner along with a copy of the enquiry report. In my opinion, there is purpose behind supply of the enquiry report to a delinquent, when the enquiry is conducted by a person who is not the Disciplinary Authority himself. Such report of the Enquiry Officer is supplied to the petitioner in order to give him an opportunity to deal with the findings of the Enquiry Officer if such findings are against him and represent before the Disciplinary Authority that such findings are incorrect. In my opinion, this right to represent against the findings of the Enquiry Officer by an employee of the State Government before the Disciplinary Authority is saved under Article 311 of the Constitution of India. True it is that there is no requirement, after 42nd amendment in the Constitution of India, to seek petitioner's comment on the proposed punishment but at the same time it was obligatory on the part of the Disciplinary Authority to have sought for comments upon the findings on the report of the Enquiry Officer. Such opportunity was admittedly not given to the petitioner. The Disciplinary Authority accepted the report of the Inquiry Officer without considering petitioner's comments on adverse findings of the Enquiry Officer and decided to impose the said punishment. This in my opinion, is violative of principles of natural justice. It is settled law that right to represent against the findings in the enquiry report to prove one's innocence is distinct from the right to represent against the proposed punishment. It is true that later right has been taken away by 42nd amendment of the Constitution of India but the right to represent against the findings of the Inquiry report is intact. This view finds support from Supreme Court decision in the case of Punjab National Bank and Others Vs. K.K. Verma, .

10. There is no dispute about the fact that though the petitioner was not asked to submit his comment upon the report of Inquiry Officer, he had in fact dealt in detail with the findings of the Inquiry Officer which were against him, in his representations which have been brought on record by way of Annexures to the writ application, which fact is not in dispute.

11. I have perused the order passed by the Disciplinary Authority imposing the punishment upon the petitioner as indicated above. I do not find any discussion on the petitioner's representation against the findings of the Inquiry Officer in the said order of punishment. The impugned notification/order of punishment

dated 30.11.2000 has thus become vulnerable and requires interference by this Court. The notification dated 30.11.2000 imposing punishment upon the petitioner is, accordingly, quashed.

12. The Respondents are directed to pass an order afresh after considering the petitioner's representation which has been brought on record by way of Annexure-12 to the present writ application. Such order must reflect application of mind showing consideration of the said representation of the petitioner against findings of the Inquiry Officer. This Court will not comment upon the nature of punishment which the disciplinary authority may pass thereafter as learned State Counsel appears to be right in his submission that it is purely within the discretion of the disciplinary authority to impose appropriate punishment.

13. However, as has been stated at the bar, the petitioner is said to have attained the age of superannuation on 31.1.2001, the disciplinary authority will consider awarding appropriate punishment upon the petitioner under Bihar Pension Rules. The disciplinary authority must pass an order, in the light of the present order of this Court within a period of six months from the date of receipt/production of a copy of this order, failing which the petitioner will be entitled to all benefits. This application is allowed with the observations as above.