
(2013) 02 JH CK 0013

In the Jharkhand High Court

Case No : Writ Petition (S) No. 2528 of 2002

Bharat Prasad Verma

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 22-02-2013

Acts Referred:

Citation : (2013) 3 AJR 182 : (2013) 2 JLJR 168

Hon'ble Judges : Chandrashekhar, J

Bench : Single Bench

Advocate : Ajit Kumar, for the Appellant;

Final Decision : Allowed

Judgement

Chandrashekhar, J.—In this writ petition, the petitioner has sought quashing of order communicated by letter dated 13.03.2001. The petitioner was appointed on 01.04.1964 and has superannuated from service w.e.f. 29.02.2000. When the petitioner was posted as Block Co-operative Extension Officer at Jharia, two complaints were made against him, both to the Minister, Co-operative Department, Government of Bihar, Patna. Copy of one complaint dated 19.01.1994 was supplied to the petitioner and he was asked to submit his reply. The petitioner submitted his detailed reply on 25.06.1996. In the meantime, a charge memo dated 08.06.1996 was served upon the petitioner and the petitioner submitted his defence on 03.06.1997 denying the charges. He submitted necessary documents along with his reply in support of his defence that charges were baseless. The petitioner was served the punishment order dated 05.12.1997. Neither the departmental proceeding was conducted nor a copy of the enquiry report was furnished to the petitioner. The order of punishment dated 05.12.1997 was passed without even issuing show-cause notice to the petitioner. The petitioner moved High Court in C.W.J.C. No. 375 of 1998 (R), which was disposed of by order dated 30.06.1999 as the petitioner had not availed the remedy of appeal provided under the service rules. The petitioner, thereafter preferred Service Appeal No. 15 of 1999, which was partly allowed by

order dated 11.01.2001. The original order of penalty dated 05.12.1997 was modify to the extent that "two annual increments were ordered to be withheld with non-cumulative effect." The said order was communicated to the petitioner by letter dated 13.03.2001. The petitioner has challenged the said order contained in letter dated 13.03.2001 by filing the present writ petition. A counter affidavit has been filed on behalf of Respondent Nos. 1, 2 and 4 supporting the impugned order.

2. Heard learned counsel for both the parties and perused the documents on record.

3. Learned counsel for the petitioner has submitted that in view of the law laid down by the Hon"ble Supreme Court in the case of "Mohd. Ramzan Khan" and several decisions of Patna High Court, the order of punishment is liable to be quashed on the ground of violation of principles of natural justice. He further submitted that non-supply of the enquiry report and deprivation of an opportunity to reply to the proposed punishment have caused serious prejudice to the petitioner and the impugned order is liable to be quashed.

4. On the other hand, learned counsel for the respondents has submitted that during the enquiry, it has been found that the petitioner's conduct was against the norms of the Co-operative movement and ethics. The petitioner was found interfering in the election matters of societies unnecessarily. A copy of the complaint was supplied to the petitioner and charge memo was furnished to him and he was afforded an opportunity to reply and, therefore, there is no violation of principles of natural justice.

5. From the counter affidavit filed on behalf of respondent nos. 1, 2 & 4, I find that the respondents have not disputed the fact that enquiry report was not supplied to the petitioner and before passing the penalty order, no show-cause was issued to the petitioner. The respondents have stated in the counter affidavit as under,

As the enquiry officer had already sought and taken the explanation from the petitioner and after perusal of the inquiry report of Assistant Registrar, Cooperative Societies as well as the opinion of the Joint Registrar, Co-operative Societies, Hazaribagh, the respondent No. 3 came to conclusion that the petitioner was guilty of gross-misconduct and as such the respondent No. 3 imposed the punishment vide Order No. 8868 dated 05.12.1997 as contained in Annexure-5 to the writ application.

6. I further find that after the charge-memo was furnished to the petitioner the enquiry, if any, was conducted behind the back of the petitioner. The so-called enquiry report was not supplied to the petitioner and the petitioner was not afforded an opportunity to reply, before the order of penalty was passed.

7. In the case of " Union of India and others Vs. Mohd. Ramzan Khan, , the Hon"ble Supreme Court has held that wherever there has been an Inquiry Officer

and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge.

8. A Constitution Bench of the Hon''ble Supreme Court in the case of " Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., has held that a delinquent officer is entitled to represent to the disciplinary authority where the findings in the enquiry report are against him. Taking note of the decision in the case of "B. Karunakar", the Hon''ble Supreme Court has held in the case of " Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, as under,

17. These observations are clearly in tune with the observations in Bimal Kumar Pandit case quoted earlier and would be applicable at the first stage itself. The aforesaid passages clearly bring out the necessity of the authority which is to finally record an adverse finding to give a hearing to the delinquent officer. If the enquiry officer had given an adverse finding, as per Karunakar case the first stage required an opportunity to be given to the employee to represent to the disciplinary authority, even when an earlier opportunity had been granted to them by the enquiry officer. It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the enquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the enquiring officer holds the charges to be proved, then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the enquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings, what is of ultimate importance is the finding of the disciplinary authority.

18. Under Regulation 6, the enquiry proceedings can be conducted either by an enquiry officer or by the disciplinary authority itself. When the enquiry is conducted by the enquiry officer, his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with the decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the enquiry officer. Where the disciplinary authority itself holds an enquiry, an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the enquiry officer and proposes to come to a different conclusion, there is no

reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the enquiry officer, they are deprived of representing to the disciplinary authority before that authority differs with the enquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation, the charged officer must have an opportunity to represent before the disciplinary authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of enquiry as explained in Karunakar case.

19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.

9. In the case of " Punjab National Bank and Others Vs. K.K. Verma, the Hon''ble Supreme Court was examining the case of a Bank Manager, who was neither supplied with enquiry report nor report of disciplinary authority differing with enquiry officer was supplied to the Bank Manager. The Hon''ble Supreme Court has noted as under:

12. Now, what is material to note is, that the respondent was not furnished with a copy of the enquiry report, and the disciplinary authority straightforward passed the order of removal which has been quoted earlier. The report of the enquiry officer and the detailed order of the disciplinary authority became available to the respondent only along with the order of removal, and he did not have any opportunity to make his submissions on that report to defend the charges anytime prior to the punishment of removal being decided and imposed.

30. This being the position, in the instant case it is clear that the appellant had not followed their own Regulations which clearly require the disciplinary authority to record the reasons where it differed from the enquiry officer. The Regulations also clearly lay down that a copy of the enquiry report and the order of disagreement are to be provided to the employee. In the present case, we are concerned with the stage where the disciplinary authority differs with the enquiry officer on his findings. This is prior to arriving at the guilt of the employee. His right to receive the report and defend at that stage before the guilt is established is very much recognised as seen above. The counsel for the appellant submitted

that the Constitution Bench has held in *Union of India v. Tulsiram Patel* that after the 42nd Amendment, the employees are not entitled in law to be heard in the matter of penalty.

31. In *Karunakar* case, another Constitution Bench has referred to *Tulsiram Patel* in para 13 and then explained the legal position in this behalf in para 25 as follows:

25. While the right to represent against the findings in the report is part of the reasonable opportunity available during the first stage of the inquiry viz. before the disciplinary authority takes into consideration the findings in the report, the right to show cause against the penalty proposed belongs to the second stage when the disciplinary authority has considered the findings in the report and has come to the conclusion with regard to the guilt of the employee and proposes to award penalty on the basis of its conclusions. The first right is the right to prove innocence. The second right is to plead for either no penalty or a lesser penalty although the conclusion regarding the guilt is accepted. It is the second right exercisable at the second stage which was taken away by the Forty-second Amendment.

32. Thus the 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 penalty. It is only the second right to represent against the proposed penalty which is taken away by the 42nd Amendment. The right to represent against the findings in the report is not disturbed in any way. In fact, any denial thereof will make the final order vulnerable.

10. It is an admitted position that after serving charge-sheet upon the petitioner, enquiry was conducted without notice to the petitioner. The enquiry report was not supplied to the petitioner and no show-cause notice was issued to the petitioner before the penalty order was passed. Certainly, prejudice has been caused to the petitioner. The order of penalty and the appellate order are liable to be quashed. In the result, the writ petition is allowed with all consequential benefits to the petitioner.