
(2012) 01 PAT CK 0017
In the Patna High Court
Case No : CWJC No. 2161 of 2008

Bisheshwar Nath Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 06-01-2012

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : (2012) 2 PLJR 94

Hon'ble Judges : Mihir Kr. Jha, J

Bench : Single Bench

Advocate : S.B.K. Manglam and Bipin Bihari Singh, for the Appellant; Pawan Kumar, State, for the Respondent

Judgement

Mihir Kumar Jha, J.—Heard learned counsel for the parties. The petitioner in this writ application has assailed the order of punishment of dismissal from service as also the affirming appellate order.

2. Mr. S.B.K. Manglam, learned counsel for the petitioner while assailing the order of punishment has submitted that the petitioner was not afforded any opportunity of hearing in the disciplinary proceeding and in fact the petitioner had not even been served with the notice of such departmental proceeding. He has also submitted the enquiry report submitted by the enquiry officer is perfunctory in the eye of law, inasmuch as, even in an ex-parte proceeding, the onus to prove the charges was not discharged by the department and in fact no evidence whatsoever was led to prove the charge. Criticizing the appellate order, he would submit that the same is a bald, non-speaking order and does not consider any of the issues raised by the petitioner in his memo of appeal.

3. Mr. Pawan Kumar, learned AC to GA-5, on the other hand while defending the impugned order, has submitted that the petitioner was not only unauthorized absent from duty but he was also purposely evading the service of notice of the departmental enquiry and to that extent, he has drawn attention to the refusal recorded on the registered post despite the fact that it was sent on the same

address, which has been mentioned by the petitioner in this writ application. He has further submitted that there was no dispute that the petitioner was absent from duty for last several years and in fact, the notice published in the newspaper directing him to rejoin also did not evoke any response from him and he did not report for his duty. He has also tried to defend the appellate order of by stating that since the appellate authority had found no flaw in the departmental proceeding, he had rejected the memo of appeal by affirming the original order of punishment.

4. In the considered opinion of this Court, a time has come where the government officers are required to be trained and made aware of the basics of conducting a departmental proceeding. A departmental proceeding is a quasi judicial proceeding and, therefore, the principle of natural justice, fair play and equity have to be strictly adhered to. The delinquent, though stands in the dock as an accused, but the onus to prove the charge still remains on the department. The Enquiry Officer is also required to ensure service of notice of departmental proceeding on delinquent for the purpose of securing his attendance and enabling him to defend himself as against the charges framed against him. Service of notice of the departmental proceeding, therefore, is a condition precedent for a valid departmental proceeding.

5. In the present case, when the enquiry officer could not get the notice of the departmental proceeding served on the petitioner either through personal service from the school where the petitioner was posted or even through the registered post, he had to get such notice published in the local newspaper for affording an opportunity of hearing to the petitioner. Admittedly, that was not done and, therefore, the learned counsel for the petitioner is quite justified in highlighting the aspect of there being no notice of the departmental proceeding served on absence of the examination of the process server/peon of the postal department before the enquiry officer, it can also not be said with certainty that it was the petitioner who had himself deliberately refused to accept the notice. The factor of non-service of notice on the petitioner, therefore, remains undisputed, which by it self would be good enough for quashing the impugned order of punishment.

6. There is however yet another reason for this court to hold that there was another fatal procedural infirmity vitiating the entire departmental proceeding and the consequential order of punishment. A departmental proceeding even if held ex-parte, would require leading of evidence for proving the charge. In the present case in one page enquiry report, there is however no inkling that any evidence whatsoever was led by the Presenting Officer and/or anyone else on behalf of the department for proving charge against the petitioner. Thus, there is also a patent fatal procedural error in conducting the departmental proceeding, which by itself would vitiate the impugned order of punishment. The aforesaid view taken by this Court gets support from the judgment of the Apex Court in the case of *State of Uttar Pradesh & Ors. vs. Saroj Kumar Sinha* reported in 2010(2) SCC 772, relevant portion where of reads as follows:-

28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the un-rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

29. Apart from the above, by virtue of Article 311 (2) of the Constitution of India the departmental enquiry had to be conducted in accordance with the rules of natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee.

30. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The Inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.

7. This Court would also find that the appellate order affirming the impugned order of punishment is equally bad and in fact perverse inasmuch as, all these issues even when raised by the petitioner in his memo of appeal were not at all discussed much less decided by the appellate authority. The appellate authority, in fact, in the name of consideration of the memo of appeal, has merely paraphrased the earlier events of the departmental proceeding and his findings in the appeal is only in the following words:-

8. Such a non-speaking and bald appellate order without considering the issues raised by the petitioner in his memo of appeal, therefore, is wholly unsustainable in the eye of law. An appellate order has not to be a detailed reasoned order but, at the same time, the issues raised in the memo of appeal has to be summarily discussed by the appellate authority. Here in this case, when the petitioner had specifically asserted in his memo of appeal that as a matter of fact he was present in the school and that he had given no notice in the departmental proceeding and further no evidence was adduced before the Enquiry Officer on the basis of which he could have found to have the charge against the petitioner to have been proved, the appellate authority was required to at least record his reasons while rejecting such contentions on behalf of the petitioner. By now it is well settled that an appellate order has to be a speaking reasoned order as was also held by the Apex Court in the case of Ram Chander vs. Union of India & Ors. reported in 1986 SC 1173.

9. Thus, this Court would find that both the original order of punishment as also the appellate order are perfunctory in the eye of law and cannot be sustained. They are accordingly quashed and the matter is now remitted back to the District Education Officer, Siwan, who would now appoint a new enquiry officer and direct him to proceed afresh from the stage of framing charge.

10. In order to shorten this process this Court would direct the petitioner to appear before the District Education Officer on 13.2.2012, where after, the District Education Officer will fix a date for intimating the petitioner as with regard to the appointment of enquiry officer and the venue in which such enquiry will be held. It is however made clear that the petitioner will have to appear before the enquiry officer himself and he will be given no fresh notice for appearing before the enquiry officer. Once the enquiry would commence, the enquiry officer must proceed on day-to-day basis so that the enquiry itself is also brought to an end by submission of enquiry report as early as possible preferably within a period of four months from the date of his being appointed as enquiry officer.

11. It goes without saying that as soon as the enquiry is concluded and enquiry officer submits his report, a copy thereof will be sent to the petitioner for eliciting his comments/reaction to the findings in the said enquiry report.

12. The disciplinary authority, thereafter, will do the needful and pass final order within next two months from the date of filing of the show-cause reply to the enquiry report by the petitioner.

13. Any financial benefit to which the petitioner may be entitled will also await the final order in the departmental proceeding. With the aforementioned observations and direction, this application is disposed of.