
(2003) 04 JH CK 0073

In the Jharkhand High Court

Case No : Writ Petition (S) No. 5148 of 2002

Brahma Deo Choudhary

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 02-04-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 2 JCR 710b

Hon'ble Judges : Vikramaditya Prasad, J

Bench : Single Bench

Advocate : Ajit Kumar, M.K. Sinha and D.K. Pathak, for the Appellant; Pradip Modi, for the Respondent

Final Decision : Allowed

Judgement

Vikramaditya Prasad, J.—Heard both the sides.

2. When the petitioner was posted as Panchayat Sewak at Churchu Block in the district of Hazaribagh, certain allegations were received against him in the Public Cell Grievances that he has committed certain irregularities in course of preparation of Red Cards and also obtained illegal gratification at the time of distributing the same. Consequent to that a preliminary enquiry was conducted against him by the Additional Collector, Hazaribagh, and he had submitted his report to the Deputy Commissioner, Hazaribagh. Consequent to that following charges were submitted against the petitioner.

(i) Illegal gratification of Rs. 20/- to Rs. 30/- was taken by the petitioner in course of preparation of the "Red Cards" Rs. 10/- was taken at the time of taking application and Rs. 10/- was taken at the time of handing over the "Red Cards".

(ii) The "Red Cards" facilities were issued to the owners of the land of 4 to Acres even.

3. Then it appears that the S.D.O., Hazaribagh Sadar, was appointed as enquiry

officer who in his turn directed the Block Development Officer, Churchu to make a factual enquiry. The B.D.O. in his turn asked Gram Panchayat Supervisor to submit an enquiry report and the charges were not found to be proved in the enquiry report. Thereafter the S.D.O. submitted his report to the Deputy Commissioner and the Deputy Commissioner passed the order of punishment in the capacity of the Disciplinary authority. It is relevant to note that on the prima facie charge having been proved (the petitioner has already been suspended) and the punishment was awarded by which two increments were withheld with cumulative effect and for the period undergone suspension other than subsistence allowance the petitioner was not to be paid any other allowance but for the purpose of pension, the period of suspension will not be counted as break in service. Against that order the petitioner filed a departmental appeal before the Commissioner and the Commissioner quashed that order and remanded the matter to the Deputy Commissioner for passing an order afresh. Consequent thereto the Deputy Commissioner, passed the impugned order contained in Annexure 10. It is very interesting to quote some of the paragraph of the impugned order, which reads as follows :--

"ANUMADAL PADADHIKARI KI, SADAR-SAH-JANCH PRATIVEDAN KE ANUSAR SHRI CHAUDHARI KE VIRUDH AROP PRAMANIT NAHIN PAYE GAYE, PARANTU SANCHALAN PADADHIKARI KE VIBHAGIYA JANCH AB-HILEKH KE AVLOKAN SE SPAST HOTA HAI KI JANCH PRAKRTYA NIYMANUKUL NAHIN GAYI.

JANCH PADADHIKARI KE AROP PATRA KE ADHAR PAR SWAYAM SUN-WAI KARNI CHAHIE THI, AISA NAHIN KARKE JANCH PADADHIKARI NE AROPON KE JANCH PUNAH PRAKHAND VIKASH PADADHIKARI, CHURCHU SE KARAI JINHONE SWAYAM JANCH NAHIN KARKE GRAM PANCHAYAT ARYAVECHHAK SE STHANIYA JANCH KARAKAR PRATIVEDAN SAMARPIT KAR DIYA.

YEH ASCHARYA KA VISHAY HAI KI APAR SAMAHARTA JAISE VARIYA PADADHIKARI KE JANCH KE PASCHAT USI VISHAY KI JANCH GRAM PANCHAYAT PARYAVECHHAK DWARA KI JATI HAI TATHA APAR SAMAHARTA KE JANCH KO NAKARTE HUYE VIBHAGIYA KARYAVAHU KE SANCHALAN PADADHIKARI NE GRAM PANCHAYAT PARYAVECHHAK KE PRATIVEDAN KO SWIKAR KIYA. AISI STHITI ME SANCHALAN PADADHIKARI KE PRATIVEDAN KO KATAI SWIKAR NAHIN KIYA JA SAKTA HAI.

APAR SAMAHARTA, HAZARIBAG DWARA SAMARPIT JANCH PRATIVEDAN. JO VISHIST AWAM TATHYAPARAK HAI, KE ADHAR PAR SHRI CHAUDHARY KE VIRUDH AROP PRAMANIT HAI. TADNUSAR ADESH PARIT KIYA JATA HAI."

4. The impugned order is a very speaking order in the sense that it discloses that the disciplinary authority was very much conscious of taking into consideration the manner in which the S.D.O. had conducted the enquiry and he has also come to a finding that the enquiry was not conducted according to the rules. Now question is if the disciplinary authority himself admits that the enquiry was not conducted according to the rule, even then the disciplinary authority placed

reliance upon the preliminary enquiry conducted by the Additional Collector and awarded the punishment. If the disciplinary authority was shocked and surprised over the conduct of the S.D.O. then I am also more surprised over the conduct of the disciplinary authority for the simple reason that he awarded the punishment on the finding in the preliminary enquiry. A preliminary enquiry is always made for finding a prima-facie case and for the purpose of submitting the charge sheet and it cannot be a substitute of a fullfledged departmental enquiry report. The learned counsel for the respondents submits that opportunity was given to the petitioner to defend his case, therefore, minor punishment can be passed upon preliminary report.

5. I do not find myself in agreement with this argument for the reason that if the Deputy Commissioner agreed with the preliminary enquiry then the Deputy Commissioner at that stage should have passed the minor punishment, which he has not done. Obviously after a full fledge enquiry the Disciplinary authority while passing the punishment on the same had to see whether in enquiry the charges were proved or not. Therefore, I find that the order of the Disciplinary authority using the preliminary enquiry report in awarding the punishment ignoring full fledge enquiry report cannot be upheld.

6. Consequently, I find merit in this writ, the impugned order dated 13.4.2002 as contained in Annexure 10 is quashed with obvious consequences. The writ is allowed at the stage of admission itself.