

(1999) 05 PAT CK 0066
In the Patna High Court
Case No : C.W.J.C. No. 10066 of 1998

Chandra Shakhar Pd. and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 06-05-1999

Acts Referred:

Civil Services (Classification, Control and Appeal) Act — Section 55A
Civil Services (Classification, Control and Appeal) Rules — Rule 55, 55A

Citation : (1999) 2 PLJR 832

Hon'ble Judges : Nagendra Rai, J

Bench : Single Bench

Advocate : Birendra Kr. Sinha, Indushekhar Prasad and Ajay Kumar, for the Appellant; A.A.G. III for State and Haredra Pd. Singh, for A.G., for the Respondent

Final Decision : Dismissed

Judgement

Nagendra Rai, J.—The Petitioners have challenged the orders by which a direction has been issued for recovery of the amount mentioned in the impugned orders from their salary after following the procedure in terms of Rule 55A of the Civil Services (Classification, Control and Appeal) Rules (hereinafter referred to as the Rules). Copy of the said orders passed against Petitioner No. 1 has been annexed as Annexure-1, order against Petitioner No. 2 has been annexed as Annexure-5, and order against Petitioner Nos. 3 to 5 have been annexed as Annexure-8 series!

2. The Petitioner No. 1 at the relevant time was posted as Executive Engineer in Muzaffarpur, Petitioner No. 2 was posted as Assistant Engineer and other Petitioner were posted as junior engineers. In the year, 1995-96 the Petitioners were entrusted, with the Earthworks in Tirhut Main Canal from distance point No. 704 to 790 and other repairing works. The Chief Engineer, Water Resources Department, Mazaffarpur vide letter dated 19.4.96 communicated the department, to take departmental action against the Petitioners on the allegation that the work has not been completed. There was difference of 86,76,305 cubic

ft. in the quantity of the earth work. On the basis of the report of the Chief Engineer, Department constituted a flying squad and the flying squad made an enquiry and submitted a report on 11.5.96 wherein the squad found prima facie a case of misconduct against the Petitioners and others. Thereafter, the department asked explanation from the Petitioners and others. A copy of the said report was also supplied to them. After the Petitioners submitted their explanation again a meeting was held at the government level on 26.8.96 and it was decided that the flying squad will make inspection in presence of the delinquent officers and in pursuance of the aforesaid decision the writ Petitioners participated in the enquiry made by the squad from 6.9.96 to 12.9.96. Thereafter, the squad after completion of the enquiry submitted a report wherein out of 17, six officers were found prima facie guilty of misconduct and accordingly the memo of charge was served upon the Petitioners and they were asked to show cause. A copy of the show cause has been annexed as Annexure-1 to the writ, application. Thereafter, the Petitioners submitted their reply to the show cause and after consideration of the same the impugned order has been passed on the ground that monetary loss has been caused to the government because of the excess earth work shown by the Petitioners and a direction has been made to recover the amount from the Petitioners as mentioned in the impugned order.

3. It is asserted on behalf of the Petitioners that the procedure provided under Rule 55A of the Civil Services (Classification, Control and Appeal) Rules (hereinafter referred to as the Rules) was not followed in the sense that an adequate opportunity was not afforded to the Petitioners before passing the aforesaid order.

4. Under the provision of the Rules in case of minor punishment, which includes recovery of the amount for causing loss to the Government due to negligence on the part of the Government servant, the procedure u/s 55A of the Rules has to be followed, which provided inter alia that no order imposing penalty of recovery of amount from the salary of the employee shall be passed unless employee has been given adequate opportunity of making representation that he may desire to make and that representation has been taken into consideration before an order is passed. Thus, the requirement is that an adequate opportunity has to be given for making representation to the delinquent employee and that representation has to be taken into consideration before the order is passed. Rule 55 provides for fulfilled departmental enquiry in case of major punishment, dismissal or removal and compulsory retirement.

5. Learned Counsel for the Petitioners in support of his submission relied upon the judgments rendered by this Court in the case of Dr. Rabindra Nath Singh v. State of Bihar 1983 PLJR 92 and Union of India v. Sher Singh and Ors. 1993 BBCJ 96 and on the basis of the same submitted that adequate opportunity has not been given in this case. In these cases taking into consideration the facts as available in those cases it was held that no adequate opportunity was given.

6. There is no quarrel with the fact that even minor punishment cannot be imposed unless an adequate opportunity is given to the employees concerned. It has to be seen with regard to a particular case as to whether such opportunity has been given or not.

7. In the case of Shadi Lal Gupta Vs. State of Punjab, Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules was subject matter of consideration. The said rule provided that with regard to the minor punishment as provided under Rule 55A no order shall be passed imposing a penalty on a government servant, unless an employee was given adequate opportunity of making any representation that he may desire to make and such representation was taken into consideration. Elaborating the aforesaid provision the Apex Court held that only requirement under the Rule 8 is that the officer concerned should be given an adequate opportunity of making any representation that he may desire to make. There is no provision of examination of witness, cross-examination of witness and furnishing of copy of the report. Therefore, in case if the punishment has been imposed after chargesheet has been served upon the delinquent employee and he made representation and was also personally heard, the order would be legal. Rule 8 does not require anything more than that the allegations on the basis of which the officer concerned is charged should be made known to him and he should be given an opportunity to make representation with regard to that. He need not be told the punishment which is sought to be imposed on him either at the time chargesheet was served upon him or at any other stage.

8. In this case, as stated above, earlier a flying squad enquired the matter and it was found that the loss has been caused to the Government by the acts of the Petitioners and a copy of the said report was served upon them and thereafter they filed their show cause and again a flying squad was constituted and in presence of the Petitioners measurement was made and thereafter report was submitted and thereafter again a show cause notice was issued to the Petitioners informing them about the allegation against them. They filed show cause and after consideration of the same the impugned order has been passed. The impugned order, a copy of which is on the record, clearly shows that the adequate opportunity was given to the Petitioners and the measurement was made in their presence and thereafter the show cause filed by them was considered and the impugned order has been passed.

9. In my view, in this case an adequate opportunity has been given to the Petitioner and no procedural illegality has been committed by the department in imposing minor punishment in terms of Rule 55A.

10. Accordingly, there is no merit in this application and the same is dismissed.