
(1988) 04 PAT CK 0045
In the Patna High Court
Case No : C.W.J.C. No. 5279 of 1983

Chandradip Sharma

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 06-04-1988

Acts Referred:

Citation : (1989) 37 BLJR 76 : (1988) PLJR 1138

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.B. Sinha, J.—This writ petition was initially directed against the order dated 2nd February, 1981 passed by the respondent No. 5 and as contained in Annexure I/A and the order dated 12th April, 1983 passed by the respondent No. 3 and as contained in Annexure 1/B to the writ petition whereby and whereunder the petitioner was awarded a punishment of stoppage of three increments. However, during the pendency of this writ petition another order dated 2-3-1988 has been passed which is contained in Annexure 10 to the application for amendment of the writ petition. By reason of the said order it was directed that the petitioner shall only be paid to the subsistence allowance during the period 1-4-1978 to 4-12-1979 (during his period of suspension) and further no amount shall be payable to him.

2. The facts of the case lie in a very narrow compass.

3. At all material times the petitioner was working in the Police Department as Sub-Inspector of Police,

4. Against the petitioner a departmental proceeding being Departmental Proceeding No. 26/78 Bhojpur was initiated on the charges of gross misconduct, dereliction of duty, disobedience of order and unbecoming of a good police officer. The aforementioned charges were levelled against the petitioner in relation to two incidents which took place on 31-3-1978 and on 29-3-1978. The

incident of 31-3-1978 related to looting of 5 rifles and 50 rounds of ammunitions from the possession of the armed guard at Raghunathpur Railway Station by the Nexalites and the incident of 29-3-1978 related to damage of Railway properties at Raghunathpur Railway Station Cabin by some agitationists.

5. In the departmental proceeding, during which the petitioner was put under suspension, the Enquiry Officer found the petitioner guilty in respect of charge No. 2 but did not find him guilty in respect of charge No. 1. However the respondent No. 5 by an order dated 2nd February, 1988 as contained in Annexure I/A to the writ petition, differed with the said findings of the Enquiry Officer and held that the petitioner was guilty of both the charges. The petitioner thereafter preferred an appeal before the respondent No. 3 who by a speaking order dated 12-4-83 dismissed the said appeal. As stated hereinbefore, during the pendency of this writ petition, the respondent No. 5 directed that during the period, when the petitioner was put under suspension, only the subsistence allowance shall be paid to him and the said period shall be treated as on leave.

6. By a letter dated 3-1-1986 under the signature of respondent No. 5, the petitioner was communicated that the Director General of Police reduced the punishment inflicted upon the petitioner to the extent of stoppage of two increments instead of three increments.

7. Mr. S. J. Mukhopadhyaya, learned counsel appearing for the petitioner, has raised two fold contentions. Firstly he submitted with regard to paragraph 18 of the writ petition that all the papers were not supplied to the petitioner during the enquiry. The learned counsel secondly submitted that the respondent No. 5, although had the jurisdiction to differ with the findings of the Enquiry Officer whereby and whereunder he found the petitioner not to be guilty in respect of charge No. 1, in the impugned order as contained in Annexure-1/A to the writ petition he ought to have assigned sufficient and cogent reasons therefor.

8. So far as the first contention raised on behalf of the petitioner is concerned, it appears that paragraph 18 to the writ petition, wherein the relevant statements have been made, has been verified as true to the information derived from the records of the case. Therefore, no averment has been made in the writ petition, which is supported by proper affidavit. Further from the enquiry report as contained in Annexure 1 to the writ petition itself it appears that copies of all the exhibits were supplied to the delinquent officer. The petitioner in the writ petition has not challenged the said statements made in the enquiry report. In this situation it is not possible to agree with the submissions of the learned counsel to the effect that the petitioner was not supplied with all the documents during the pendency of the enquiry,

9. So far as the second point raised on behalf of the petitioner is concerned, prima facie, the same has force. The respondent No. 15, while passing the order as contained in Annexure I/A to the writ petition, ought to have pointed out by a speaking order with reference to the evidences on records, as to how and in what

manner he found the petitioner guilty and on the basis of what evidence adduced in the case relating to charge No. 1 but from a perusal of the appellate order as contained in Annexure-1/B to the writ petition it appears that the appellate authority has dealt with this matter.

10. Further, as noticed hereinbefore, the petitioner was found guilty by the Enquiry Officer even in respect of charge No. 2. The punishment awarded against the petitioner being stoppage of two increments only, there cannot be any doubt, in my mind, that even if it be held that charge No. 1 has not been proved as against the petitioner, the fact that charge No. 2 has been proved, would itself entail the punishment awarded to the petitioner.

11. However, Mr. S. J. Mukhopadhyaya is correct when he submits that if the disciplinary authority thought that the period during which the petitioner was put under suspension would be treated as the period on leave and during that period he would only be entitled to get subsistence allowance, the said direction ought to have been made at the time of passing of punishment order itself.

12. It is well known that the question as to whether the period during which a delinquent officer is placed under suspension shall either be treated on leave or on duty must be decided by the disciplinary authority at the time of awarding punishment itself. There does not appear any earthly reason as to why after a period of several years this order has been passed.

13. In this view of the matter this writ petition is allowed in part to the extent that the order dated 2.3.1988 as contained in Annexure-10 is quashed.

14. As the petitioner has already superannuated it is expected that the respondents would pay the arrears of salary, if any, due to the petitioner at an early date.

15. In the result this writ petition is allowed in part but without any order as to costs.