
(2015) 01 PAT CK 0080
In the Patna High Court
Case No : CWJC No. 17892 of 2014

Chandrakant Kumar Anil

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 28-01-2015

Acts Referred:

Constitution of India, 1950 — Article 311(1), 311(2)

Citation : (2015) 1 PLJR 960

Hon'ble Judges : L. Narasimha Reddy, C.J.;Gopal Prasad, J.

Bench : Division Bench

Advocate : Kamala Kant Upadhyay, for the Appellant; Satyavrat Verma, Advocates for the Respondent

Final Decision : Disposed off

Judgement

L. Narasimha Reddy, C.J.—This writ petition is filed challenging the order dated 5.9.2014 passed by the Patna Bench of the Central Administrative Tribunal in O.A. No. 978 of 2012. The brief facts of the case are as under--

The petitioner is a member of the Indian Administrative Service, and is in the Bihar cadre. From the year 2010 onwards he worked as Secretary, Agriculture Department. Two allegations were made against him, as to his functioning. The first is that he was instrumental in transfer of the assets of Bihar State Marketing Board to the local Municipalities, and the second is that he allowed construction of flower marts in the premises of the Bihar State Seed Corporation. After obtaining the comments of the controlling authority, namely, the Agriculture Production Commissioner, the file was put up to the appointing authority i.e., the Chief Minister. 2. The appointing authority accorded the approval for initiation of disciplinary proceeding. This was followed by framing of charges, by the General Administration Department, in terms of Rule 9(1) of the Central Services (Classification, Control and Appeal) Rules, 1965 (in short, "the Rules"). Two charges were framed through charge-sheet dated 2.11.2012. The petitioner filed O.A. challenging the charge-sheet. His plea was that the charge-sheet has not

been cleared or approved by the appointing authority and in that view of the matter, proceedings are vitiated.

3. O.A. was opposed by the respondents. The Tribunal dismissed the O.A. through its order dated 5th of September, 2014. Hence this writ petition.

4. Mr. Kamla Kant Upadhyay, learned counsel for the petitioner submits that the approval of the appointing authority is essential at two stages, viz. securing clearance of the disciplinary proceedings for framing of charges, and in the instant case, though the clearance was given at the first stage, the charge-sheet was issued without clearance or approval from the appointing authority i.e., the Chief Minister. He placed reliance on a decision of the Supreme Court in *Union of India (UOI) and Others Vs. B.V. Gopinath*, . He submits that the Tribunal dismissed the O.A. without considering the legal aspects.

5. Mr. Sheo Shankar Prasad, learned Standing Counsel No. 10 appearing for the respondent-State submits that once the disciplinary proceedings was initiated with respect to the specific allegations after approval of the appointing authority, the drawing of formal charges is a ministerial act and that it is not necessary to seek approval of the appointing authority, for the second time.

6. The Rules provide for a detailed procedure, to be followed, whenever any disciplinary proceedings are initiated against the-members of the Indian Administrative Service. Rule 14 thereof assumes significance in this regard. Even in respect of other services, it is only the appointing authority or the disciplinary authority, as the case may be, who can initiate disciplinary proceedings. If the rules are silent in this behalf, mere issuance of charge-sheet by the disciplinary authority would meet the requirement of law. Rule 14, however, contemplates two different stages. The first is of taking a decision, to initiate disciplinary proceeding, and the second is approval of the text of the charges.

7. In the judgment of the Supreme Court relied upon by the petitioner identical issue arose for consideration. Repelling the contention that taking of a decision by the appointing authority for initiation of disciplinary proceedings will hold good for the subsequent stage i.e., framing of charges also, the Supreme Court held as under:--

"40. Disciplinary proceedings against the respondent herein were initiated in terms of Rule 14 of the aforesaid Rules. Rule 14(3) clearly lays down that where it is proposed to hold an inquiry against a Government servant under Rule 14 or Rule 15, the disciplinary authority shall draw up or cause to be drawn up the charge sheet. Rule 14(4) again mandates that the disciplinary authority shall deliver or cause to be delivered to the Government servant, a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and the supporting documents including a list of witnesses by which each article of charge is proposed to be approved. We are unable to interpret this provision as suggested by the Additional Solicitor General, that once the disciplinary authority approves the initiation of the disciplinary proceedings, the charge-sheet can be

drawn up by an authority other than the disciplinary authority. This would destroy the underlying protection guaranteed under Article 311(1) of the Constitution of India. Such procedure would also do violence to the protective provisions contained under Article 311(2) which ensures that no public servant is dismissed, removed or suspended without following a fair procedure in which he/she has been given a reasonable opportunity to meet the allegations contained in the charge sheet. Such a charge-sheet can only be issued upon approval by the appointing authority i.e. Finance Minister." 8. In the instant case, admittedly, the approval of the appointing authority, was not obtained for the charges. What has been laid down by the Supreme Court squarely applies to the facts of this case. We, therefore, allow this writ petition and set aside the order passed by the Tribunal. As a result, we set aside the charge-sheet and leave it open to the respondents, to issue a fresh charge-sheet after obtaining the approval of the appointing authority, for the same.

9. It is made clear that the entire disciplinary proceedings do not get vitiated and they shall be resumed from the stage of seeking approval of the charges by the appointing authority.

10. The writ application shall stand disposed of. The interlocutory application, if any, shall also stand disposed of. There shall be no order as to costs.