(1996) 04 SC CK 0162

In the Supreme Court Of India

Case No : Civil Appeal No. ... of 1996 Arising out of SLP (C) No. 19575 of 1994

Chandreshwar Prasad Sinha APPELLANT

Vs

State of Bihar and Another RESPONDENT

Date of Decision : 18-04-1996

Acts Referred:

Citation : (2001) 10 SCC 469

Hon'ble Judges : S. P. Bharucha, J;S. C. Sen, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Special leave granted.

2. On 1-2-1992 the appellant retired as Chief Engineer, Daltonganj, State of Bihar. On 5-3-1992 he was charged with defalcation along with other officers of the State Government against whom a criminal case was already pending.

3. On 22-2-1992 a show-cause notice was issued by the State Government to the appellant under Rule 139 of the Bihar Pension Rules. It stated that a charge-sheet was enclosed to which the appellant''s explanation was required within 15 days. It also stated,

"The State Government is satisfied that the charges levelled because of irregularities to the extent of several lakhs of rupees is a reasonable cause for deduction from the pension payable to you. The State Government proposes to deduct 50% (fifty per cent) of the approximate pension."

The charge-sheet which was enclosed alleged that while the appellant was functioning as Superintending Engineer at Daltonganj, an emergent indent for purchase of certain electrical material signed by the Executive Engineer had been countersigned by him. The indent did not mention any reason for the emergency. A physical verification after about one-and-a-half years of the purchase showed that the electrical material had not been utilised. It was clear from these facts that there was no emergent situation and false document had been prepared in connivance for the emergent indent. The charge-sheet concluded:

"THUS, under a deep conspiracy, you had misused your post for a wrong emergent situation for purchase and countersigned it to cause financial loss to the Government and thus, you have been found guilty of it."

On 30-1-1994 the appellant replied. He stated that the criminal proceedings against him were still pending so that these proceedings were unlawful and deduction from his pension was not permissible. Apart from this, the appellant''s liability had not been fixed or described in the charge-sheet.

4. On 27-5-1994 an order was passed which repeated at two places that the State Government had suffered "a loss of lakhs of rupees". It said that it had been found that the appellant had countersigned the emergent indent although there was no mention of the justification for it and he had thus connived in the preparation of the background for the purchase of the electrical material. For these reasons the appellant "has been found guilty and his pension is reduced by 50% under Rule 139 of the Bihar Pension Rules. Accordingly, Shri Sinha is informed of the above punishment".

5. The appellant filed a writ petition impugning the aforesaid order before the High Court at Patna. The writ petition having been rejected, this appeal has been filed.

6. Learned counsel for the appellant has drawn our attention to the provisions of Rules 139 and 43 of the Bihar Pension Rules, the relevant portions whereof read thus:

"139. (a) The full pension admissible under the rules is not to be given as a matter of course, or unless the service rendered has been really approved. (b) If the service has not been thoroughly satisfactory, the authority sanctioning the pension should make such reduction in the amount as it thinks proper. (c) The State Government reserve to themselves the powers of revising an order relating to pension passed by subordinate authorities under their control, if they are satisfied that the service of the pensioner was not thoroughly satisfactory or that there was proof of grave misconduct on his part while in service. No such power shall, however, be exercised without giving the pensioner concerned a reasonable opportunity of showing cause against the action proposed to be taken in regard to his pension, or any such power shall be exercised after the expiry of three years from the date of the order sanctioning the pension was first passed."

"43. (a) Future good conduct is an implied condition of every grant of a pension. The Provincial Government reserve to themselves the right of withholding or withdrawing a pension or any part of it, if the pensioner is convicted of serious crime or be guilty of grave misconduct. The decision of the Provincial Government on any question of withholding or withdrawing the whole or any part of a pension under this Rule, shall be final and conclusive. (b) The State

Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the pensioner is found in departmental or judicial proceeding to have been guilty of grave misconduct, or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered or re-employment after retirement."

7. Our attention was invited to this Court''s decision in State of Bihar v. Mohd. Idris Ansari where it has been held that Rules 139(a) and 139(b) can be invoked only if the delinquent has been found guilty in departmental proceeding under Rule 43. It is submitted by learned counsel for the appellant that in the present case there had been no disciplinary proceeding against the appellant and the criminal proceedings were pending. It is also pointed out that several of those accused along with the appellant in the criminal proceedings have obtained from the High Court orders by which the pension proceedings against them have been quashed and petitions for special leave thereagainst have been dismissed.

8. Learned counsel for the State Government did not dispute this, but his argument was that the State had suffered a loss of approximately rupees 18 lakhs as a result of the emergent indent aforementioned and was entitled to pass the order reducing the pension of the appellant by 50 per cent.

9. It is patent from a reading of the charge-sheet, the letter written to the appellant enclosing the charge-sheet and the order impugned in the writ petition that action was taken against the appellant to recoup the loss or part of the loss that was alleged to have been sustained by the State by reason of the emergent indent. There has been no determination in departmental proceedings under Rule 43 or in criminal proceedings that the emergent indent was put in for any ulterior or mala fide purpose and that such purpose, if any, was shared by the appellant. There has also been no determination of the loss alleged to have been suffered by the State. Indeed, in the show-cause notice, the letter enclosing it and the order thereon all that is stated in this behalf is that a loss of "several lakhs of rupees" had been incurred. This would indicate that no attempt had been made departmentally to determine what the loss was and give to the appellant an opportunity of showing that it was, in fact, much less or not there at all, nor was it done thereafter.

10. We have no hesitation in holding that the order issued to the appellant reducing his pension by 50 per cent was bad in law.

11. The appeal is allowed, the order under appeal is set aside and the writ petition filed by the appellant is allowed.

12. The arrears of pension shall be paid by the State Government to the appellant within 12 weeks from today.

13. The State Government shall pay to the appellant the costs of the appeal.

