
(2016) 03 JH CK 0042

In the Jharkhand High Court

Case No : W.P.(S) Nos. 4755 of 2010 and 3969 of 2014

Choudhary Ratnesh Kumar

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 08-03-2016

Acts Referred:

Citation : (2016) 3 AIRJharR 67 : (2017) 1 JLJR 418

Hon'ble Judges : Pramath Patnaik, J.

Bench : Single Bench

Advocate : Saurav Arun and Deepak Kumar Dubey, Advocates, for the Appellant; Nehala Sharmin, J.C. to G.P. I, for the Respondent

Final Decision : Disposed off

Judgement

Pramath Patnaik, J.—W.P.(S) No. 3969 of 2014

1. In the instant writ application, the petitioner has inter alia prayed for issuance of writ of certiorari for quashing the letter dated 29.06.2013 (as contained in Annexure-5) pertaining to the order of punishment of "censure" in the departmental proceeding and for issuance of writ of mandamus commanding upon the respondents not to give effect to the impugned order dated 29.06.2013 till the disposal of the writ application.

2. The facts as disclosed in the instant writ application, in short, is that when being posted at Ramgarh, chargesheet was issued against the petitioner on 11.06.2012 on the allegation of unsatisfactory performance so far as purchase of milch cattle for the year 2011-12 under the "Rashtriya Krishi Vikash Yojana" is concerned. In pursuance to the said charges, the petitioner submitted his detailed reply denying the allegations/charges and in the said reply, the petitioner has stated about the year wise target, which he has achieved. The matter was enquired into and the charges levelled against the petitioner was not proved by the enquiry officer but the enquiry officer recommended that petitioner should be warned for satisfactory and speedy work in future. Finally,

the punishment of censure was awarded to the petitioner.

3. Mr. Saurav Arun, learned counsel for the petitioner has submitted with vehemence that the respondents have not given any cogent reason before advertng to the report of the enquiry officer and the impugned order of punishment has been passed in spite of the fact that none of the charges against the petitioner has been proved and the decision taken by the respondents in inflicting punishment is without any material and is based on no evidence.

Learned counsel for the petitioner further submits that before infliction of punishment, no second show-cause was issued to the petitioner, which has vitiated the decision making process. Learned counsel further submits that the letter dated 21.01.2013 of the Government of Jharkhand, Animal Husbandary & Fisheries Development (Annexure-6/1) discloses that the so-called allegation of not achieving the target, has, in fact, been achieved, therefore, the allegation on which the charges were framed is vague and evasive so as to apportion blame on the performance of the petitioner.

Learned counsel for the petitioner in that regard, has referred to the observations of the Hon"ble Apex Court rendered in the case of Punjab National Bank and others v. Kunj Behari Misra reported in [, (1998) 7 SCC 84] :

"19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7 (2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

In that regard, learned counsel for the petitioner, has also referred to the observations of the Hon"ble Apex Court rendered in Paras 30, 34 & 40 in the case of U.P. State Sugar Corporation Ltd. and Others v. Kamal Swaroop Tandon reported in [, (2008) 2 SCC 41]

In order to buttress his submissions, learned counsel for the petitioner has further referred to the following decisions of the Hon"ble Supreme Court:--

"(i) , (2013) 7 SCC 251, Paras 7, 13 and 20

(ii) , (2006) 3 SCC 690, Para 14"

4. Per contra, counter affidavit has been filed by the respondents repelling the

contentions made in the writ application. In the counter affidavit, it has been, inter alia, submitted that the petitioner while posted at Ramgarh, as District Dairy Development Officer was entrusted with the task of distribution of milch cattle in the district of Ramgarh vide office order dated 18.05.2011 and against the assigned target of 422 (which is later reduced to 401) the petitioner could achieve only 91, meaning thereby that the petitioner did not perform satisfactorily and failed considerably to achieve the assigned target. It has been further stated that against the said inefficient and unsatisfactory performance, a charge memo in Prapatra "Ka" was issued to him on 11.06.2012 by the Secretary of the Department and the petitioner after being served with the memo of charge was even separately intimated by the enquiry officer in terms of letter No. 611 dated 26.06.2012 with respect to the departmental proceedings and was also asked to submit his written note of defence. It is further submitted that the petitioner had attended the proceeding and the enquiry officer after conclusion of the proceeding forwarded the copy of the enquiry report dated 05.01.2013 to the disciplinary authority with a copy to the petitioner also in which the enquiry officer with respect to the charges and on the basis of the evidences adduced, came to the conclusion that the petitioner had faced difficulties in achieving the target and therefore, suggested for taking a decision at the Directorate level. From the plain reading of the recommendation part of the enquiry report, it is evidently clear that the enquiry officer has not recommended for awarding any punishment to the petitioner. It has been further stated that the enquiry officer can proceed to recommend that a particular penalty or punishment should be imposed in the light of his findings and such recommendation forms part of the record and constitute appropriate material for consideration. However, it is essential that the same should not be withheld from the charged employee. It has been further submitted that the enquiry officer has concluded enquiry with the finding that the charges have not been fully proved. However, the report of the enquiry officer is not binding upon the disciplinary authority and it is open to the disciplinary authority to come to its own conclusion on the basis of the charges and in view of the negligence shown towards duty and not achieving the given target, the petitioner was awarded "censure" as a minor punishment. It has further been submitted that the allegation of non-issuance of second show-cause notice has been denied as the same was issued to the petitioner vide memo dated 03.10.2013 vide Annexure-C to the counter affidavit.

5. During course of arguments, learned counsel for the petitioner has referred to the Circular dated 02.09.2014 and submitted that in view of the aforesaid Circular, the impugned order of punishment dated 29.06.2013 (Annexure-5 to the writ application) has lost its effect so far as award of punishment of "censure" is concerned, but, since vide the impugned order, it has been directed to insert the same in the service book, the petitioner's chance of promotion to higher rank would be very-very bleak.

6. On the other hand, learned counsel for the respondents has especially

submitted that since the impugned order of punishment has been issued, there was no necessity of issuance of second show-cause and considering the nature of allegations, just a minor punishment has been inflicted upon the petitioner, which does not warrant any interference by this Court.

7. After hearing the learned counsel for the respective parties and on perusal of the relevant records, the impugned order of punishment dated 29.06.2013 is not legally sustainable due to the following facts:--

"In the instant case while the petitioner was posted at Ramgarh as the District Dairy Development Officer, he was entrusted with the duty of distribution of milch cattle but there was allegation of unsatisfactory performance for which charges were framed and the petitioner was given opportunity to file his show-cause and the enquiry officer was appointed and in the enquiry report, charges were not proved against the petitioner but the disciplinary authority for the reasons best known, has inflicted punishment, although minor in nature but the same has been inflicted on the petitioner and the reasons for differing with the views of the enquiry officer has not been given, which has laid to unsustainability in the eyes of law. Moreover, the impugned order of punishment has been passed without issuance of second show-cause notice which has vitiated the whole proceedings. Once a procedure for infliction of major punishment has been adopted the same is to be followed till the culmination of the proceedings.

In view of the decision of the Hon'ble Apex Court referred to in the case of U.P. State Sugar Corporation Ltd. and Others v. Kamal Swaroop Tandon reported in , (2008) 2 SCC 41 (Supra), when the disciplinary authority distinguishes with the findings of the enquiry officer, cogent reasons must be assigned. In the instant case, the impugned order of punishment has been passed without disclosing the reasons of disagreement, which renders the impugned order unsustainable in the eyes of law."

8. In view of the reasons stated hereinabove, the impugned order of punishment vide Annexure-5 being not legally sustainable, is hereby quashed and set aside and the writ petition (W.P.(S) No. 3969 of 2014) stands allowed.

... W.P.(S) No. 4755 of 2010 ...

9. In the accompanied writ application, the petitioner has, inter alia, prayed for issuance of appropriate writ/direction in the nature of mandamus commanding upon the respondents to give regular promotion, which the petitioner is holding since 2001 i.e. Class II post and for issuance of a writ of mandamus commanding upon the respondents to pay the salary of Class II post and for issuance of writ of certiorari for quashing the letter dated 10.02.2009 (Annexure-10) and for issuance of a writ of mandamus commanding upon the respondents to consider the case of the petitioner for promotion to the next higher post for which he is entitled before passing of the order of censure or issuance of chargesheet w.e.f. 29.06.2013 or 11.06.2012 and for issuance of writ of certiorari for quashing of the letter dated 30.06.2014 (Annexure-14), whereby the petitioner has been

reverted to the post of the Dairy Technical Officer.

10. The brief facts, as described in the writ petition, is that the petitioner was appointed on 10.01.1992 as Laboratory Supervisor after completing the examination conducted by the Bihar State Subordinate Selection Board. During his continuance in the said post, the petitioner has been officiating on the promotional post as per the Notification dated 29.06.2001, where the name of the petitioner stood at Serial No. 6. The petitioner submitted a representation for his promotion on Class-II post i.e. the District Dairy Development Officer (Annexure-5) and also made representation on 04.12.2006 asking the respondent to pay, scale of Class-II post, as he is working on ad hoc basis since 2001. The petitioner's representation did not evoke any response from the respondents. The case of the petitioner was recommended by the Deputy Director for promotion on regular basis in Grade II from Grade III in view of the Government circular, as evident from Annexure-7 and the case of the petitioner was also recommended by the Regional Joint Director for giving him regular promotion in Class II as per Annexure-8 of the writ application. It has been submitted in the writ application that as per the Circular dated 15.10.1984, where the eligibility has been given for promotion of the petitioner to the next higher post on completion of 8 years of service from the date of appointment. The petitioner cited the case of some juniors, who are getting higher scale of pay. It has been also alleged in the writ application that the juniors to the petitioner have been given promotion on 01.12.2012 and as per the seniority list dated 28.09.2012 approved by the Department of Personnel, Administrative Reforms and Rajbhasha, Government of Jharkhand, the name of the petitioner stands at Serial No. 2. It has been also stated in the writ application that the petitioner is the second senior most and rather the only person at serial No. 1 under his category of Scheduled Caste. It has been submitted that Serial Nos. 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 17 and 18 in the seniority list, juniors to the petitioner, have been granted promotion without following any rule or regulation only in terms of Circular and the copy of the seniority list dated 28.09.2012 has been marked as Annexure-12 to the writ petition. It is further stated that 9 posts of SC/ST category is still vacant and the petitioner comes under S.C. Category and two posts of the said category is still lying vacant. The petitioner is claiming regular promotion to the post of the District Dairy Development Officer, which he was holding on officiating basis since 2001 though the petitioner is entitled for promotion on regular basis since 1999 itself. Since the Rule has already been framed on 12.07.2012, known as Jharkhand Dairy Technical Cadre (Recruitment, Promotion and Service Conditions) Rule, 2012 and 6 years' time bound is fixed for next higher promotion by Rule 3 (ii) of the said Rule and as the petitioner was appointed in the year 1992 and completed six years regular service, the petitioner is claiming regular promotion to the post of the District Dairy Development Officer in the year 1998 itself, which has not been given to the petitioner till date. It is being submitted that earlier, the validity of the punishment of censure is for three years but, now the new Circular has come

into existence, which has been approved by the Cabinet and accordingly, the Personnel and Administrative Reforms Department has issued Circular on 02.09.2014, which says the validity of the punishment loses its force after one year, meaning thereby the validity of punishment of censure is only for the period of one year either from the date of charge sheet or from the date of punishment order and admittedly, in terms of the charge sheet issued to the petitioner on 11.06.2012, the validity comes to an end on 11.06.2013 or if the order of punishment is to be taken into consideration i.e. 29.06.2013, the validity of punishment of censure comes to an end after 1 year i.e. 28.06.2014 and in that event of the matter, the petitioner is entitled for promotion, since the juniors to the petitioner have been granted promotion, which is evident from the Circular dated 02.09.2014 (Annexure-16).

11. Counter affidavit has been filed on behalf of the respondents to the amended writ petition repelling the contentions made in the writ application. It has been, inter alia, submitted in the counter affidavit that the petitioner, who was appointed as Laboratory Supervisor in the year 1992, was given first financial upgradation on 02.01.1999 and the officer whose name is appearing at Serial No. 11 of the gradation list and to whom the petitioner has been claiming to his junior, is, in fact, very much senior to the petitioner. The said officer joined on 15.10.1979 and got regular promotion on 01.08.1985 even before joining of the petitioner while the petitioner joined in the year 1992. The petitioner after getting his first promotion on 02.01.1999 being a Scheduled Caste candidate became senior to the officer appearing at serial No. 11. The referred gradation list in which the officer appearing at serial No. 11, is junior to the petitioner was a non-gazetted (Class-III) staff and both of them were Class-III staffs, but on promotion of the officer, whose name appeared at serial No. 11 of the said gradation list of Class-III staff to Class-II staff (gazetted post), the petitioner became junior to him, so after getting promotion, the said officer is no more junior to the petitioner. Photo-copy of the order dated 20.08.1996 and the notification dated 01.12.2012 have been enclosed as Annexure-A and B to the counter affidavit. It has been further submitted that since the petitioner has worked on officiating basis for the period from 2001 to 29.06.2013 in the pay-scale of Class-III, in the light of the Finance Department directives contained in Memo No. 2975, dated 11.10.2007 (Annexure-C to the counter affidavit), regular promotion to the petitioner cannot be given with retrospective effect. It has further been submitted that by virtue of the Resolution dated 26.11.2013 and in the light of the Finance Department directives vide the said resolution, the officiating arrangements have been stopped. Since the petitioner has never been promoted to Class-II post therefore, question does not arise for reversion of the petitioner and accordingly, he has been posted to the original post of the Dairy Technical Officer. It has further been submitted that after the notification of the said recruitment rules, the case of the petitioner along with others were also taken up by the Departmental Promotional Committee on 29.11.2012 and in the departmental proceeding, sealed cover procedure was adopted with regard to the

petitioner, which would be evident from the minutes of the meeting of the D.P.C. dated 29.11.2012 (Annexure-G to the counter affidavit).

12. Heard Mr. Saurav Arun, learned counsel for the petitioner and Ms. Nehala Sharmin, learned J.C. to G.P. I in W.P.(S) No. 4755 of 2010 and Mr. Arup Kr. Dey, J.C. to G.P. II in W.P.(S) No. 3969 of 2014 appearing for the respondents-State.

13. After hearing the learned counsel for the respective parties at length and on perusal of the documents, it appears that the punishment of censure, which has been imposed upon the petitioner vide order dated 29.06.2013 has lost its force after expiry of one year in view of the Circular of the Government dated-02.09.2014 (Annexure-16), therefore, there is absolutely no impediment to consider the case of the petitioner for promotional post, if the petitioner comes within the zone of consideration. So far as the officiating pay is concerned, the same is to be examined as per Rule 103 of the Jharkhand Service Code. In this respect, regarding officiating pay, it would be apposite to refer to the decision rendered by the Hon"ble Supreme Court in the case of Rai Sudhir Prasad v. State of Bihar and others reported in (2004) 13 SCC 25.

14. In view of the reasons stated in the foregoing paragraphs, the writ petition (W.P. (S) No. 4755 of 2010) is disposed of with a direction to the respondents to consider the case of the petitioner for promotion to the Class II post of the District Dairy Development Officer along with other eligible candidates for which the petitioner comes within the zone of consideration in accordance with the Rules within a period of six months from the date of receipt of the copy of the order and the respondents shall also consider the payment of the officiating pay to the petitioner, which is envisaged under Rule 103 of the Jharkhand Service Code within the aforesaid period.