
(2020) 02 JH CK 0059
In the Jharkhand High Court
Case No : W.P.(S) No. 4445 of 2018

Dhairya Nandan Prasad

APPELLANT

Vs

State of Jharkhand And Ors

RESPONDENT

Date of Decision : 04-02-2020

Acts Referred:

Civil Services (Classification, Control and Appeal) Rule, 1973 — Rule 55
Jharkhand Pension Rules, 2000 — Rule 43B

Citation : (2020) 02 JH CK 0059

Hon'ble Judges : Dr S. N. Pathak, J

Bench : Single Bench

Advocate : Satish Chandra Jha, Vijay Shankar Jha, Anuj Barman

Final Decision : Allowed

Judgement

The petitioner has approached this Court with a prayer for quashing the Resolution bearing Memo No. 681 dated 27.02.2015 issued under the signature of Under Secretary to the Government, Drinking Water and Sanitation Department, Govt. of Jharkhand, whereby and whereunder, punishment of deduction of 10 % pension of the petitioner in terms of Rule 43 (b) of the Pension Rule has been passed against the petitioner. Further, prayer has been made to refund the pension amount along with interest and any other relief to the petitioner, in accordance with law.

As per the factual matrix, the case of the petitioner lies in a narrow compass. The petitioner was working in Deogarh Circle as Superintending Engineer and work for execution of Deogarh Water Supply Scheme was taken up in the light of work order No. 5456 dated 30.11.2007 issued by Engineer-in-Chief of Drinking Water and Sanitation Department in favour of a contractor namely IVRCL, Hyderabad. When the petitioner was posted as Superintending Engineer, Water Board Urban Development Department, Govt. of Jharkhand at Ranchi, a show cause notice was issued to him vide letter No. 4282 dated 05.09.2011 enclosing Memo of Charge and preliminary enquiry report, with a direction to submit his

reply in connection with Memo of Charge, failing which ex-parte decision will be taken.

On 10.10.2011, the petitioner submitted his reply, denying the charges levelled against him and prayed for exonerating him from all the charges. The respondents dissatisfied with the reply, initiated a departmental proceeding against the petitioner in terms of Rule 55 of Civil Services (Classification, Control and Appeal) Rule, 1973. It is specific case of the petitioner that after the conclusion of the departmental proceeding, the petitioner was found guilty of the charges and as the petitioner was superannuated on 31.10.2013, proceeding under Rule 43 B of the Pension Rule was initiated based on the enquiry report and petitioner was inflicted with major punishment of withholding of 10 % pension. Being aggrieved by the same, the petitioner has been constrained to knock the door of this Court.

Mr. Satish Chandra Jha, learned counsel assisted by Mr. Vijay Shankar Jha, learned counsel appearing on behalf of the petitioner submits that entire departmental proceeding has been concluded without following the procedures of law as the same stands vitiated as Enquiry Report itself is perverse and also the principles of natural justice have not been adhered to. Learned counsel further argues that in the entire departmental proceeding, nowhere it has been shown that petitioner was given ample opportunity to examine the witness and also documents relied upon by the Enquiry Officer was never supplied to him. Learned counsel further argues that even the Enquiry Officer travelled beyond his jurisdiction, which is impermissible in the eyes of law. Assailing the impugned order, learned counsel submits that nowhere, it was found by the Enquiry Officer that the petitioner is held guilty of grave misconduct neither anywhere, it is stated that what losses were caused to the State Exchequer while coming to a finding of guilt. Learned counsel lastly argues that impugned order is not tenable in the eyes of law and as such, liable to be quashed and set aside.

Per contra, counter-affidavit has been filed. Mr. Anuj Barman, learned counsel for the respondents vehemently opposes the contention of the learned counsel for the petitioner and submits that every opportunity was afforded to the petitioner. The petitioner had participated in the Enquiry /Departmental Proceeding and even second show cause was issued to him. The reply of the petitioner was not found satisfactory and he was found guilty of charges by the Enquiry Officer. Learned counsel further argues that considering the Enquiry Report and after issuance of second show-cause, Disciplinary Authority has passed the impugned order under Rule 43 (b) of the Pension Rule as the petitioner was superannuated. There is no illegality in the impugned order.

Be that as it may, having gone through the rival submissions of the parties, this Court is of the considered view that the case of the petitioner needs consideration. Admittedly, in a Departmental Proceeding, the provisions of natural justice has to be adhered to. The argument of the counsel for the petitioner has nowhere been countered on the point of examination of witnesses

and also on the point of supplying the documents. It is a well settled law that even if the petitioner has not asked for the documents on which the Enquiry Officer is relying upon has to be supplied to the petitioner. In absence of the documents, no findings can be derived as no opportunity was given to the petitioner to come to defend his case.

The Hon'ble Apex Court in case of "State of U.P. vrs. Satrugan Lal & Anr., reported in (1998) 6 S.C.C. 651. Their Lordships observed that:

"This paragraph of the written statement contains an admission of the appellant that copies of the documents specified in the charge sheet were not supplied to the respondent as the respondent had every right to inspect them at any time. The assertion clearly indicates that although it is admitted that the copies of the documents were not supplied to the respondent and although he had the right to inspect those documents, neither were the copies given to him nor were the records made available to him for inspection. If the appellate did not intend to give copies of the documents to the respondent, it should have been indicated to the respondent in writing that he may inspect those documents. Merely saying that the respondent could have inspected the documents at any time is not enough. He had to be informed that the documents of which the copies were asked for by him may be inspected. The access to record must be assured to him."

Failure on the part of the respondents to supply the documents certainly caused prejudiced to the charged employee and failure in giving reasonable opportunity of hearing in the departmental proceeding amounts to violation of cardinal principle of natural justice. The Hon'ble Apex Court in case of "Tirlok Nath vrs. Union of India", reported in 1967 SLR 759 (SC) had clearly held that:

"Had he decided to do so, the documents would have been useful to the appellant for cross-examining the witnesses who deposed against him. Again had the copies of the documents been furnished to the appellant he might, after perusing them, have exercised his right under the rule and asked for an oral inquiry to be held. Therefore, in our view the failure of the Inquiry Officer to furnish the appellant with copies of the documents such as the F.I.R. and the statements recorded at Shidipura house and during the investigation must be held to have caused prejudice to the appellant in making his defence at the inquiry."

Further, the Hon'ble Apex Court in case of "State of Punjab vrs. Bhagat Ram", reported in A.I.R. (1975) 1 SCC 155 had held that:

" The State contended that the respondent was not entitled to get copies of statements. The reasoning of the State was that the respondent was given the opportunity to cross-examine the witnesses and during the cross-examination the respondent would have the opportunity of confronting the witnesses with the statements. It is contended that the synopsis was adequate to acquaint the respondent with the gist of the evidence.

The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the government servant is afforded a reasonable opportunity to defend himself against the charges on which inquiry is held. The government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the government servant. Unless the statements are given to the government servant he will not be able to have an effective and useful cross-examination."

Further, the Hon'ble Apex Court in case of "Kashinath Dikshita vrs. Union of India and Ors., reported in (1986) 3 SCC 229 has held thus:

"When a government servant is facing a disciplinary proceeding, he is entitled to be afforded a reasonable opportunity to meet the charges against him in an effective manner. And no one facing a departmental enquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to him. In the absence of such copies the concerned employee cannot prepare his defence, cross-examine the witnesses, and point out the inconsistencies with a view to show that the allegations are incredible.

Admittedly, the petitioner was denied the opportunity to defend himself in absence of those documents. From the Enquiry Report, it also appears that nowhere it is finding of the Enquiry Officer that what grave misconduct has been committed by the petitioner neither it has been held that what loss has been caused to the State Exchequer. In proceeding under Rule 43 b of the Pension Rule, two ingredients have to be looked into while passing the impugned order and in absence of two ingredients i.e. (i) petitioner having held guilty of grave misconduct in a departmental proceeding by the Enquiry Officer (ii) loss to the State Exchequer has been caused. Since the aforesaid two ingredients have not been pointed out by the Enquiry Officer or the Disciplinary Authority, the impugned order as contained in (Annexure-1) dated 27.02.2015 is violative of principles of natural justice and as such, is hereby quashed and set aside. Since the petitioner has already superannuated in the year, 2013, it would not be proper to remit the matter back to the respondents for reconsideration. Accordingly, the respondents are directed to refund the amount, which has been recovered, if any, from the pension of the petitioner, within a period of six weeks' from the date of receipt of a copy of this order.

Resultantly, writ petition stands allowed.