
(1998) 11 PAT CK 0077
In the Patna High Court
Case No : C.W.J.C. No. 3781 of 1996

Faiyaz Ahmad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 06-11-1998

Acts Referred:

Civil Services (Classification, Control and Appeal) Rules — Rule 55

Citation : (1999) 1 PLJR 34

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : Medani Kant Jha, for the Appellant; G.P. Roy and S.K. Sinha, for the Respondent

Final Decision : Allowed

Judgement

Aftab Alam, J.—In case after case one comes across such basic and gross errors in holding disciplinary proceedings that one can not help thinking that the Government officials have forgotten how to conduct a disciplinary proceeding against a delinquent employee. What is worse is that they do not seem to learn or even to listen when this Court explains, step by step, the legally correct procedure to be followed in holding a disciplinary proceeding. The result is that delinquent Government employees facing grave charges and who should apparently be thrown out of the Government employment without any loss of time are allowed to continue in employment for long years at considerable expense of time and money to be borne by the State. The case in hand is one such illustration.

2. The Petitioner, a class III employee in the Water Resources Department of the Government, seeks to challenge order No. 18, dated 18.2.1996 (Annexure 1) issued by the Deputy Secretary to the Government dismissing him from service on certain charges. The order has been passed on the basis of an enquiry report, dated 23.8.1995 submitted by the Chief Engineer cum Enquiry Officer along with his letter dated 25.8.1995 (Annexure 35).

3. It may be noted here that the Petitioner earlier came to this Court on a number of occasions. It appears that there was some controversy concerning the payment of subsistence allowance to the Petitioner for the period of his suspension while the proceeding was under way. According to the Petitioner he was not being paid even the subsistence allowance by the Respondent authorities and he, therefore, found it difficult to properly defend himself in the disciplinary proceeding and to appear before the departmental enquiry. The Respondent authorities, on the other hand maintained, that the Petitioner was not being paid subsistence allowance because he failed to join at the place as directed by the competent authority.

4. It is not needed to go into the controversy and for the purpose of this case suffice it to say that earlier the Petitioner was dismissed from service by order, dated 18.6.1994 (A copy of this order is made Annexure 12 to the present writ petition). The earlier order of dismissal was passed on the basis of an enquiry report, dated 21.4.1994 (a copy of the enquiry report is at Annexure 13 to the present writ petition). At that stage, the Petitioner came to this Court in CWJC No. 6564/1994, challenging the order of dismissal, dated 18.6.1994 which was marked as Annexure 1 to that writ petition. From the counter affidavit filed on behalf of the Respondent authorities in that case it came to light that the order of dismissal was passed on the basis of the enquiry report, dated 21.4.1994 which was marked as Annexure "F" to the counter affidavit. That writ petition was allowed and the order of dismissal was quashed with a direction to the authority to hold a fresh enquiry giving the Petitioner an opportunity to file his show cause in connection with the charges against him. This Court also indicated the manner in which the enquiry was to be held. It is also significant to note that this Court also quashed both the order of dismissal, dated 18.6.1994 and the enquiry report, dated 21.4.1994. The relevant portion from that order may be reproduced here:

It appears that under some confusion the Petitioner did not participate in the departmental proceeding. The charge against the Petitioner are very serious. In my view, in the ends of justice, an opportunity should be given to the Petitioner in the departmental proceeding to file his show cause and if the charges are denied, to adduce evidence in support of his denial.

Accordingly, this writ application is allowed. The enquiry report contained in Annexure "F" and the order of dismissal contained in Annexure 1 are hereby quashed. Now the disciplinary authority shall either direct the same very inquiring officer to proceed further with the enquiry de novo or shall appoint any person as inquiring officer for the purposes of the said enquiry. The Petitioner is directed to file his show cause before the enquiry officer within a period of one month from today. I may, however, observe that if it is not possible to file a detailed show cause and the Petitioner wants copies of the relevant documents which have got bearing on the charges, then in the show cause he may keep his right reserved for filing a further show cause and if the Petitioner applies for the

copies of the relevant documents, the same should be supplied to him unless it is not bulky. If the documents are bulky one, the Petitioner may be given right to make inspection thereof in the departmental proceeding after filing of the show cause.

It is needless to say that in the departmental proceeding after the same becomes ready for evidence, first the State will be asked to adduce evidence and thereafter the delinquent Government servant shall be given opportunity to adduce evidence in support of his case. Thereafter the enquiry officer shall submit his report before the disciplinary authority, which shall pass order thereupon in accordance with law after supplying a copy thereof to the Petitioner. Since the Petitioner was earlier under suspension and the charges are very serious, I do not find any reason why during the pendency of the departmental proceeding the Petitioner be not suspended by the State Government.

5. According to the Petitioner on 3.5.1995 he filed his showcause in connection with the charges before the Dy. Secretary to the Government who was the Petitioner's disciplinary authority. On the same day he filed another petition asking for certain documents for filing a detailed show cause. It is stated on behalf of the Petitioner that he was neither given any copies of the documents nor intimation concerning the departmental enquiry and in that circumstance he was prevented from appearing before the enquiry officer.

6. The Respondents, however, have to tell a different story. According to their case the Petitioner did not appear before the Chief Engineer, the enquiry officer appointed to investigate into the charges against him, despite repeated reminders and a number of notices issued to him.

7. It is not needed here to examine the reason for the Petitioner's non-appearance before the departmental enquiry and whether or not his non-appearance could be justified as being due to valid reasons. What, however, is to be examined is the action taken by the Enquiry Officer and the manner in which the enquiry proceeded. It appears from the enquiry report, dated 23.8.1995 (if it can be so called) that after the Chief Engineer failed to secure the Petitioner's participation in the proposed enquiry he gave up all attempts to hold an enquiry. In that report he simply stated that as the Petitioner had persistently refused to appear in the enquiry it was no longer possible for him to hold an enquiry. In those circumstances he once again sent the earlier enquiry report, dated 21.4.1994 which according to him was based on the materials on the record. He does not seem to have been deterred by the fact that the enquiry report having been quashed by this Court was not in existence in the eyes of law and it is on the basis of this report that the order, dated 8.2.1996 was passed once against dismissing the Petitioner from service.

8. The so called enquiry report as contained in Annexure 35 is not only contrary to the provisions of Rule 55 of the Civil Services (Classification, Control and Appeal) Rules but is also in the teeth of the specified direction given by this

Court in its order, dated 6.4.1995 passed in CWJC No. 6564/1994. It is, therefore, impossible to sustain either the report, dated 23.8.1995 or the order of dismissal passed on that basis on 8.12.1996. The impugned order of dismissal as contained in Annexure 1 and the so called enquiry report as contained in Annexure 35 are accordingly quashed.

9. I fail to comprehend the manner in which the enquiry officer has proceeded in this case. He is a high officer in the rank of Chief Engineer and one should expect him to know the legal position concerning departmental proceedings. I do not wish to say anything about his comments regarding the Petitioner's non participation in the departmental enquiry. Assuming that all his comments were correct, that would only justify the enquiry officer to proceed ex parte against the delinquent. I fail to appreciate why the disciplinary authority or the enquiry authority always seem to consider themselves helpless against a non-co-operative delinquent employee and why should they always seek his co-operation in holding a departmental enquiry. The law is well established on the point that if a delinquent employee acts unreasonably and fails to participate in the departmental enquiry, it is always open to the enquiry officer to proceed ex pane against him after recording his reasons in the proceedings book. In that case, however, the enquiry officer is not absolved from completing the departmental enquiry as required under Rule 55 of the Civil Services (Classification, Control and Appeal) Rules and as explained in the earlier order of this Court in CWJC No. 6564/1994.

10. This disciplinary proceeding has been allowed to linger on for far too long and it is high time that some responsible authority should pay proper attention to this matter and examine its expeditious conclusion in accordance with law.

11. In order to facilitate an early conclusion of the enquiry, the Petitioner is directed to appear before the Secretary of the Department with a copy of this order by December 15,1998. The Secretary will have the records of the case examined and will take appropriate steps to ensure that the departmental proceeding against the Petitioner is concluded in accordance with law within six months from the date of his appearance. In case the Petitioner is willing to participate in the enquiry he would be allowed all opportunity and will be furnished the necessary documents etc., in accordance with law. In case, however, the Petitioner unreasonably refuses to participate in the enquiry, it will be open to the authority to proceed ex parte alter recording his reasons in the proceedings book.

12. It will be open to the disciplinary authority to put the Petitioner under suspension but he will be entitled to his salary for the period from the date of the issuance of the dismissal order till today which should be paid to him within one month from the date of his appearance before for Secretary of the Department.

13. In the result, this writ petition is allowed subject to the observations and directions made above.