
(2002) 05 PAT CK 0074
In the Patna High Court
Case No : C.W.J.C. No. 3866 of 2000

Girish Kumar

APPELLANT

Vs

Managing Director, Bihar State Marketing Board and Others

RESPONDENT

Date of Decision : 24-05-2002

Acts Referred:

Citation : (2002) 05 PAT CK 0074

Final Decision : Allowed

Judgement

Aftab Alam, J.—The Petitioner is an employee of the Bihar State Agriculture Market Board ("the Board" in short). At the material time he held a Class III post and worked as Accounts Clerk in the Agricultural Produce Market Committee, Khagaria. He was subjected to a disciplinary action on certain charges. In the departmental enquiry the charges were duly proved and established. On the basis of the enquiry report he was given a second show cause notice in which it was proposed to give him the punishment of dismissal from service. After considering the Petitioner's reply to the second show cause notice the Managing Director of the Board gave him certain punishments (other than dismissal from service) under office order No. 8 dated 29.3.2000 (Annexure-18). This writ petition has been filed against the aforesaid order of punishment, dated 29.3.2000.

2. By the impugned order the Petitioner was demoted to a Class IV post and was also transferred to the Market Committee, Latehar.

3. Mr. Bibhuti Pandey, learned Sr. Counsel appearing in support of this writ petition first tried to persuade the Court that the charges against the Petitioner were unfounded and that the departmental enquiry held into the charges suffered from various irregularities. However, having failed in his endeavour to make the Court see eye to eye with him on this issue, Mr. Pandey submitted that in any event the punishment of demotion had no sanction in law and the impugned order was, therefore, liable to be set aside at least with regard to the punishment given to the Petitioner. In this regard learned Counsel stated that the

Petitioner had entered into the service on a Class III post. It was not a case where after first being appointed against a Class IV post he was later promoted to a Class III post. It was, therefore, not open to the disciplinary authority to put him down to a Class IV post by giving the punishment of "demotion". On this issue Mr. Pandey appears to be on firm grounds.

4. In matters of conduct, discipline and control, the employees of the Board are governed by the provisions contained in Chapter X of the Bihar State Agriculture Market Board Employees' Service Regulation, 1978. Regulation 157 enumerates the punishments and Sub-regulation 3 provides for the following punishment:

(III) KAALMAN VETAN MAIN NIMNTAM BINDU PAR YA NIMNTAR PRAKRAM PAR CHYUTI

5. As may be seen Sub-regulation 157(iii) is in two parts; the first part relates to putting the delinquent at the lowest point in the pay-scale. The second part of the regulation states NIMNTAR PRAKARAM PAR CHYUTI. The Hindi word Prakaram is defined in the Oxford Hindi-English dictionary (fifth impression, 1999) as follows:

Step, place.

1. Order, Sequence, 2 Stage (of progress, or process) 3. a sequential process.

The same dictionary defines the word CHYUTI as follows:

1. a falling; a flowing out or down 2. a falling short or failing 3. discharge, dismissal, demotion 4. want, lack.

6. The relevant part of the Sub-regulation would, therefore, mean demoting the delinquent to the lower, order, sequence or stage. The question therefore arises whether in the case of the Petitioner his demotion from a Class III to a Class IV post may be said to be covered by the second part of Sub-regulation (iii) of Regulation 157 of the Board's Service Regulation. The answer to this question is provided in the negative by a decision of the Supreme Court in Nyadar Singh Vs. Union of India (UOI) and Others, In that decision the Supreme Court considered the true scope and ambit of the punishment enumerated at Sub-rule (vi) of Rule 11 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. Rule 11 (vi) of the CCS (CCA) Rules, 1965 is as follows:

(vi) reduction to a lower time-scale of pay, grade, post or service which shall ordinarily be a bar to the promotion of the Government servant to the time scale of pay, grade, post or service from which he was reduced, with or without further directions regarding condition of restoration to the grade or post or service from which the Government servant was reduced and his seniority and pay on such restoration to that grade, post or service.

7. It is thus to be seen that the provision of CCS (CCA) Rules was far wider than the provision of Regulation 157(iii) of the Board's Service Rules. In connection with Rule 11 (vi) of CCS (CCA) Rules the Supreme Court held that in awarding

the punishment under that rule the disciplinary authority could not demote the delinquent to a post on which he was never appointed and the punishment could be only used to put back the delinquent on the post originally held by him and from which he had gone up to higher post(s) on the basis of promotions. The ratio of Nayadar Singh fully applies to the facts of this case and, therefore, the punishment of demotion of the Petitioner to a Class IV post must be set aside.

8. The matter is remitted to the Managing Director of the Board to pass a fresh order on the question of punishment. It is made clear that the transfer of the Petitioner to Latehar Bazar Samiti remains uninterfered with. It is expected that the Managing Director will pass a fresh order in the light of this judgment within two months from the date of receipt/production of a copy of this order in his office.

9. In the result, this writ petition is allowed to the extent indicated above but with no order as to costs.