
(2016) 04 JH CK 0025
In the Jharkhand High Court
Case No : W.P.(S) No. 5357 of 2008.

Harinandan Rajak

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 05-04-2016

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2016) 2 AIRJharR 570 : (2016) 3 JBCJ 329 : (2016) 3 JCR 11 :
(2016) 3 JLJR 34

Hon'ble Judges : Pramath Patnaik, J.

Bench : Single Bench

Advocate : Saurabh Shekhar, Advocate, for the Appellant; Ravi Kerketta, J.C. to S.C. III (L & C), for the Respondent

Final Decision : Allowed

Judgement

Pramath Patnaik, J. - In the instant writ application, the petitioner calls in question the second show cause notice dated 01.10.2008 issued vide Annexure-10 to the writ application.

2. The brief facts, as disclosed in the writ application, is that while the petitioner was posted as Junior Engineer, Churchu Block, Hazaribagh, a memorandum of charge was issued to him and on that basis, a departmental proceeding was initiated and the inquiry officer was appointed. The inquiry officer after conducting the inquiry, submitted detailed enquiry reports, holding that the charges against the petitioner has not been established. After submissions of the inquiry report, the disciplinary authority sat over the matter but suddenly the impugned order dated 11.08.2003 was issued awarding multiple punishments.

Being aggrieved by the order of punishment the petitioner has approached in W.P. (S) No. 4310 of 2003. During pendency of writ petition, impugned order dated 11.08.2003 was modified vide office order dated 02.09.2003. However, this Court vide order dated 31.03.2008 has been pleased to quash the punishment

inflicted on the petitioner. After disposal of the aforesaid writ application, a decision has been taken by the respondent-authorities for issuance of the second show cause notice vide order dated 29.09.2008 vide Annexure-9 and thereafter, the petitioner has been issued second show cause notice on 01.10.2008 for submissions of reply within a period of 10 days as evident from Annexure-10 to the writ application.

3. Mr. Saurabh Shekhar, learned counsel for the petitioner submits that the decision of the respondent-authorities to issue second show cause notice after lapse of 6 years that too after the order passed by this Court in W.P.(S) No. 4310 of 2003 is unsustainable, illegal and tantamounts to circumventing the order passed by this Court in the aforesaid case. Learned counsel for the petitioner further submits that in the impugned second show cause notice, no reason has been assigned as to the difference or disagreement with the finding of the inquiry report by the disciplinary authority and in the second show cause the preliminary inquiry conducted by the Superintendent Engineer has been relied upon without giving opportunity to the petitioner on the same that being extraneous as the report of the High Level Committee, according to petitioner, was never placed in the course of departmental proceeding. Which assertion has never been denied on behalf of State. Therefore, no credence/importance should have been given to the said preliminary report.

During course of argument, learned counsel for the petitioner has submitted that the case is squarely covered by the decision of one Harinandan Singh v. State of Jharkhand and others in W.P.(S) No. 2977 of 2009 dated 22.06.2010.

4. Per-contra a counter-affidavit has been filed on behalf of respondents denying the averments made in the writ application. It has been submitted in the counter-affidavit that in compliance of the Hon"ble High Court order, the department has quashed the punishment order. Since this case is a serious defalcation case, a second show cause notice was asked to the petitioner containing the disciplinary authority is disagreement and difference of opinion.

5. Mr. Ravi Kerketta, J.C. to S.C III (L and C), on the other hand, has assiduously submitted that the issuance of second show cause notice to the petitioner is legal and justified. Since in the said show cause the reasons for disagreement/differing with the inquiry officer has been assigned.

6. After hearing learned counsel for the respective parties at length and on perusal of the documents on record, I am of the considered view that the show cause notice does not contain any disagreement with the report of the inquiry officer which has not found the petitioner's guilty. Moreover, the preliminary report of the Superintending Engineer which was never conducted in the presence of the petitioner, has been made the basis of second show cause. This Hon"ble Court in the aforesaid case has quashed the order of punishment in respect the Executive Engineer on the ground that the same has been passed by the disciplinary authority without issuance of show cause notice differing with the

inquiry report by which the petitioner and other persons have also been exonerated. Therefore, since the case of the petitioner is identical and similar to the aforesaid case, the petitioner is entitled to relief extended to Mr. Harinandan Singh (Supra). Under the aforesaid circumstances the ground taken by the authority or differing with the opinion by the inquiry officer cannot be said to be legal, just and proper.

Viewed thus, the impugned decisions for issuance of show cause notice vide Annexure-9 dated 29.09.2008 and the issuance of second show cause notice dated 01.10.2008 vide Annexure-10 are, hereby, quashed and set aside.

7. In the result, the writ petition stands allowed.