
(2007) 08 PAT CK 0131
In the Patna High Court
Case No : C W J C No. 10590 of 2001

Hira Lal Choudhary

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 21-08-2007

Acts Referred:

Citation : (2007) 08 PAT CK 0131

Final Decision : Allowed

Judgement

Navaniti Prasad Singh, J.—The present writ application seeks to quash the order passed by the Disciplinary Authority inflicting major punishment on the petitioner by order dated 27.05.1996. The punishment, which survives, is reduction in the pay scale to the basic initial pay of the post of Junior Engineer, thus, depriving him of twenty two years of increment and for the period during which he remained under suspension, about five years, apart from subsistence allowance, no other payment to be made.

2. The ground for seeking judicial review to challenge the said punishment order are basically two folds. Firstly, it is urged that when the Enquiry Officer submitted a report favourable to the petitioner to the Disciplinary Authority who chose not to disagree with the report but found a new charge from the proceedings and without any further show cause in this regard held the petitioner guilty and asked the petitioner to show cause against penalties indicated therein. Such procedure was contrary to law and clearly shows that authority had prejudged the issue vitiating the penalty order. Secondly, even the penalty order is a totally non-speaking order merely noting that on review of the material the show cause having been found unsatisfactory, penalty was being imposed. This, apart from showing that the authorities had prejudged the issue, shows that their mind set was predetermined and in absence of reasons thereof, the order could not be sustained. In fine, it is submitted that the proceedings are vitiated as a matter of law.

3. State has filed a counter affidavit and the material and basic facts are not in

dispute. With consent of parties, this writ application is being disposed of at the stage of admission itself.

4. In 1979, petitioner was appointed as Junior Engineer in the Advance Planning Division, Giridih under the Department of Water Resources (Irrigation), Government of Bihar. In 1989, he was promoted to Junior Selection Grade by virtue of first time bound promotion granted. While posted at Khagaria, on 02.04.1991, he was put under suspension. On 10.02.1992, while in suspension, the petitioner was served chargesheet. Petitioner submitted detailed reply and sought for evidence which was to be relied on by the Department. The proceedings were then taken up but no order was being passed, as such, petitioner and some others moved this Court against suspension and this Court vacated the suspension by order dated 13.03.1996 passed in CWJC No. 67 of 1996 and analogous cases. Soon thereafter on 20.03.1996, petitioner was served with a second show cause notice (Annexure-7). This notice is significant as this is the foundation for petitioner's challenge. Along with this notice, copy of enquiry report dated 14.12.1993 was also provided to the petitioner.

5. This so-called second show cause notice dated 20.03.1996 (Annexure-7) clearly stated that the enquiry report received by the Disciplinary Authority held petitioner not to be guilty on any charge but when the same was reviewed at the Government level from the proceedings as noted therein, it was found that the petitioner was guilty of preparing several bills in an irregular manner for Rs. 2,000/- and they were so prepared on wrong orders of the Executive Engineer which was not binding on the petitioner. Government, thus, found petitioner guilty of this charge and, as such, the petitioner was required to show cause as to why in view of the finding of guilt, punishment as noted therein and imposed subsequently, be not imposed.

6. It would thus, be seen that though this is a second show cause, it first disagrees with the enquiry report inasmuch as the enquiry report totally exonerated the petitioner but the Disciplinary Authority found something to charge the petitioner with. It may specifically be mentioned here that the charge for which the petitioner was found to be guilty in this alleged second show cause notice was not a charge for which he was proceeded against nor was it in issue before the Enquiry Officer. It was totally a new charge. Secondly, it would be seen that even before the said charge was disclosed to the petitioner, petitioner had already been found guilty thereon. Thirdly, it was not the decision of the Disciplinary Authority to find him guilty but that of the Government and fourthly even without grant of opportunity, the punishment proposed to be inflicted for the guilt already found was indicated.

7. Before proceeding further, suffice to say that this itself clearly shows that punishment was a forgone conclusion. Petitioner had already been condemned on a charge not disclosed to him and without giving him an opportunity of hearing even though he had been exonerated by the Enquiry Officer. The mind set of the Government and the Disciplinary Authority is clear. The petitioner

immediately submitted his detailed reply to the said alleged second show cause on 26.03.1996 protesting that there was no such charge ever framed against him and also objected that without granting him any opportunity, he had already been adjudged guilty. He further contended that even this charge clearly shows that he had acted under positive directions of the superior and, as such, he could not be held guilty for he could not disobey or disregard orders of superior officers at the risk of being charged with insubordination. Petitioner also tried to impress that this new charge was a charge which was made against another Junior Engineer but not against the petitioner at the very initial stage of the proceeding.

8. That on 22.04.1996, he petitioner's suspension was revoked pursuant to orders of this Court as noted above and subsequently by order dated 27.05.1996, the impugned order of punishment was issued. The impugned order does not discuss anything but merely states that the matter having been examined, Government was of the view that the show cause was unacceptable and punishment had to be imposed.

9. It is first submitted that the alleged second show cause itself is vitiated inasmuch as once the Disciplinary Authority chose not to accept the report of the Enquiry Officer then it was incumbent on the Disciplinary Authority to disclose to the petitioner the reasons for its disagreement and give an opportunity to the Petitioner to show cause and persuade the Disciplinary Authority not to disagree or deviate from the findings of the Enquiry officer. This not having been done, the rule, as enunciated by the Apex Court in the case of Punjab National Bank and Ors. v. Kunj Behari Misra since reported in (1998) SCC 84 was clearly violated. Secondly, it was submitted that this show cause itself shows that even without granting any opportunity to the petitioner to explain the new charge being sought to be levelled, the petitioner was found guilty which violated the basic principles of natural justice and shows predetermined mind of the authorities to impose punishment. The ultimate order of punishment was challenged on the ground that the so-called second show cause notice being vitiated, the order of punishment passed consequent thereto stood vitiated automatically and secondly even the order of punishment by itself could not stand because it was a totally non-speaking order.

10. In my view, the contentions, as raised by the petitioner, must be accepted. Firstly, the question which came up before the Apex Court in the decision of Punjab National Bank and Ors. (supra) squarely was that where the regulations did not specifically state that when the Disciplinary Authority disagrees with the finding of the Enquiry Officer and records its own reason and also records its own finding on such charge it is required to give a hearing to the Delinquent Officer before finding him guilty and imposing the punishment. The Division Bench of three Hon'ble Judges of the Apex Court, while overruling some earlier judgments, came to clear conclusion that when an enquiry is conducted, the Enquiry Officer's report is not final or conclusive and the disciplinary proceeding do not stand concluded. It stands concluded by the decision of the Disciplinary

Authority. It is the Disciplinary Authority which can impose the penalty. When the Disciplinary Authority differs with the view of the Enquiry Officer and proposed to come to a different conclusion, there is no reason why an opportunity of hearing could not be granted. It would be most unfair and iniquitous that where the charged officer succeeds before the Enquiry Officer, he is deprived of opportunity of representing to the Disciplinary Authority before that Disciplinary Authority differs with the Enquiry Officer's report and records a finding of guilt. In the opinion of the Apex Court, in any such situation, the charged officer must have an opportunity to represent before the Disciplinary Authority before final finding of guilt is recorded and punishment imposed. It, therefore, held that principles of natural justice have to be read in the regulation and as a result thereof whenever the Disciplinary Authority disagrees with the Enquiry Authority on any Article of Charge then before it records its own finding on such charge, it must record its tentative reason for such disagreement and give the Delinquent Officer an opportunity to represent before it records its finding. An opportunity, in other words, is to be given to the delinquent to be able to persuade the Disciplinary Authority not to differ and to accept the report.

11. Here, in the present case, nothing of this sort was done. Exoneration by Enquiry Officer was disregarded and a new charge framed. What is worse is that without any notice, petitioner was found guilty on self-assumed facts. In my view, this was totally negation of the rule of law as enunciated in the case of Punjab National Bank and Ors. (supra) which vitiates all further actions. This also clearly shows that it was not merely the decision of the Disciplinary Authority but this finding of guilt came from much superior source in the Government and there were some superior persons reviewing the matter as well. This establishes malice in law as held by the Apex Court in the judgment since reported in the case of Smt. S.R. Venkataraman Vs. Union of India (UOI) and Another, .

12. Now coming to the question of order of punishment which has been impugned on the ground that it is vitiated firstly because the alleged second show cause itself stands vitiated and secondly because it is non-speaking in nature. So far as the first ground is concerned, it needs no elaboration. So far as the second ground is concerned, the Apex Court in the judgment since reported in the case of Union of India (UOI) Vs. Mohan Lal Capoor and Others, , in paragraph-28 has clearly held as to what are reasons. Reasons are the link between facts found and the decision taken. This is a very important link and it is this link the validity whereof is challenged before appellate forum or in course of judicial review. If the reasons are missing or the link between facts found and the decision is missing, the order is non est even though from the order, it is apparent that the authorities applied its mind. It has also been held by the Apex Court in the case of Mahindra and Mahindra Ltd. v. Union of India and Anr. since reported in AIR 1979 SC 498 wherein even though the Apex Court found that there was application of mind inasmuch as the MRTP Commission while striking down certain clauses in a dealership agreement, it upheld the validity of certain clauses but while doing so in neither case, it gave any reason in support thereof

and it is on that ground, the order of the Commission was struck down even though it was apparently an ex parte order where the petitioner refused to participate in the proceedings before the Commission. In the present case, the situation is not different. The order of punishment is a totally non-speaking order and does not behove of the administrative authority who is exercising quasi judicial functions. In words of the Apex Court, in the case of Mahindra and Mahindra Ltd. (supra) the order had a sphynx-like face which goes ill with the judicial process and even though it was an ex parte order, it did not absolve the Commission from the obligation to give reasons in support thereof (paragraph-24 the reports).

13. Thus, having found that the respondents were predetermined to find petitioner guilty and impose penalty, punishment being a foregone conclusion, the question is what is to be done now after ten years. The authorities were dutybound to hear the petitioner before they could proceed to hold him guilty. No such opportunity was provided. Will a post-decisional hearing be of any help in the matter especially when it is clearly apparent from the alleged second show cause notice and the order of punishment that it was not merely the opinion of the Disciplinary Authority but an opinion formed on review of the entire matter by the Government that the petitioner was held guilty and punished even without show cause notice? In my view, remitting the matter in the facts of this case, would not meet the ends of justice especially when the second show cause notice itself admits that petitioner had acted pursuant to directions issued by his superior and not on his own volition. In this connection, I may refer to the judgment of the Apex Court in the case of K.I. Shephard and Others Vs. Union of India (UOI) and Others, s). The Apex Court dealt with somewhat similar situation and held thus:

There is no justification to throw them out of employment and then give them an opportunity of representation when the requirement is that they should have the opportunity referred to above as a condition precedent to action. It is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose.

14. In view of the aforesaid, I hold that the impugned order of punishment dated 27.05.1996 cannot be sustained and is quashed. The writ petition is allowed.