

(2009) 03 JH CK 0104
In the Jharkhand High Court

Hrinandan Singh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 05-03-2009

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2009) 2 JCR 328

Hon'ble Judges : Ajit Kumar Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajit Kumar Sinha, J.—In the instant writ petition the petitioner prays for following reliefs:

(i) For issuance of an appropriate writ, order or direction for quashing the notification dated 15.10.2003 as contained in notification No. 5081(5) issued under the signature of the respondent No. 3 whereby and whereunder it has been directed to recover Rs. 57598 1.00 from the retiral benefit of the petitioner which is 20% of the total excess withdrawal amount.

(ii) For issuance of an appropriate writ, order or direction for releasing the entire retiral benefits like the amount of G.P.F., Group Insurance, Gratuity, Leave Encashment and other dues along with interest.

(iii) For issuance of an appropriate writ, order or direction commanding upon the respondents to forthwith fix and finalize the pension and pay the same to the petitioner.

(iv) For the issuance of an appropriate writ, order or direction directing the respondents to release the arrears of subsistence allowance for the period of suspension which the petitioner is entitled to get in pursuant to the notification dated 13.11.2002 as contained in notification No. 4987(5) issued under the signature of the respondent No. 3

2. The main contention raised by the petitioner is that notification dated 15.10.2003 is liable to be set aside since he was exonerated from all the charges by the Enquiry Officer who conducted the enquiry and submitted the report. The learned Counsel for the petitioner Mr, S.N. Prasad further submits that issuance of second show cause notice is a must when the disciplinary authority differs from the report of the enquiry officer which had exonerated the petitioner from all the allegation and thus the respondent No. 3 could not have imposed the punishment without Issuing a second show cause notice. He has further contended that there is a total noncompliance of mind and no reasons have been assigned as to how and why it has differed from the findings/report of the enquiry officer. He has also submitted that the allegation was against two persons and the other Junior Engineer has already been exonerated vide an order passed by this Honble Court on 31.3.2008. He has also referred to and relied upon Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, and 2003 (3) JCR 55 (Jh) Bachcha Prasad Pathak v. State of Jharkhand and Ors.. The aforesaid case law are on the proposition that where the report of the enquiry officer is in favour of the delinquent officer but when the disciplinary authority proposes to differ with the conclusion and or report of the enquiry officer, the delinquent officer is entitled to be given an opportunity of being heard and a show cause must be issued. It was also held that difference of opinion and the points of difference must be communicated to the delinquent and it. was in this background that the order of the disciplinary authority was held to be unsustainable.

3. The Hon'ble Supreme Court in (2006) 9 SCC 440 (Lav Nigam v. ITI Ltd.) has also referred to and relied upon Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, and Yoginath D. Bagde Vs. State of Maharashtra and Another, and has reiterated the same proposition while upholding it and at paragraph 13 it has held as under:

12. We have already quoted the extracts from the show-cause notice issued by the disciplinary authority. It is clear that no notice at all was given before the disciplinary authority recorded its final conclusions differing with the finding of fact of the inquiry officer. The notice to show cause was merely a show-cause against the proposed punishment. In view of the long line of authorities, the decision of the High Court cannot be Sustained. The appeal is accordingly allowed and the decision of the High Court is set aside.

4. I have considered the pleadings and the rival contentions and the law in this regard is well settled. The cardinal principles of natural justice mandates that there should be an application of mind and reasons has to be assigned, more so, when the disciplinary authority differs from the report/finding of the enquiry officer which is in favour of the delinquent officer. It is also well settled that a fresh notice should also be given which is termed as second show cause notice in case of any difference of opinion by the disciplinary authority. In the instant case the impugned order dated 15.10.2003 is strangely based on enquiry report which

exonerates the petitioner. It does not even assign any reason for the difference of opinion and the grounds thereto as to why the disciplinary authority did not agree with the findings of the enquiry officer and its report. The impugned order is clearly against the well settled principles of natural justice, illegal, arbitrary and thus violative of Article 14 of the Constitution of India.

5. This writ petition is accordingly allowed and the impugned order dated 15.10.2003 is quashed.