

(2019) 05 PAT CK 0004

In the Patna High Court

Case No : Letters Patent Appeal No. 226 Of 2018 In Civil Writ Jurisdiction Case
No. 9696 Of 2014

Jai Prakash Narayan Sinha

APPELLANT

Vs

State Of Bihar Through The Commissioner And Ors

RESPONDENT

Date of Decision : 10-05-2019

Acts Referred:

Civil Services (Classification, Control And Appeal) Rules, 1930 — Rule 49, 55, 55A
Bihar Board's Miscellaneous Rules, 1958 — Rule 167

Citation : (2019) 05 PAT CK 0004

Hon'ble Judges : Amreshwar Pratap Sahi, CJ;Anjana Mishra, J

Bench : Division Bench

Advocate : Binod Kanth, Amarendra Nath Verma, Saroj Kumar Sharma

Final Decision : Allowed

Judgement

1. Heard Shri Binod Kanth, learned Senior Counsel for the appellant and the learned counsel for the State.

2. The appeal questions the correctness of the impugned judgment dated 15th of January, 2018, whereby the learned single Judge has rejected the petition of the appellant holding that the procedure and the opportunity, as claimed, was both followed by the disciplinary authority while awarding punishment to the appellant in the disciplinary proceedings where the charge was of having misappropriated a certain amount as against some vouchers to the tune of Rs.8,975/-.

3. The background in which the punishment orders came to be challenged before the learned single Judge needs to be noted as the same has a reflection on the manner in which the proceedings were conducted by the respondents.

4. It appears that the appellant was placed under suspension on 17th of January, 2002 on the ground that while working as a Typist-cum-Clerk, he had attempted to encash 14 vouchers by forging the signatures of the then District Magistrate Mr. Arunesh Chawla. A charge-sheet was issued but, according to the appellant,

no such documents were supplied and the enquiry proceeded in a manner which was completely biased and without affording a fair opportunity to the appellant. As a matter of fact, the main contention was about the genuineness of the signature of the then District Magistrate on the said vouchers which was made the basis to proceed against the appellant.

5. The second show cause notice to the appellant was served on 11th of June, 2004, that was challenged by the appellant in CWJC No.10617 of 2004 and during the pendency of the said petition, the suspension order was revoked and final orders were passed by the District Magistrate, Jehanabad on 26th of May, 2005, whereby the appellant was removed from service.

6. The writ petition earlier filed was withdrawn with liberty to file a fresh writ petition challenging the said order and, accordingly, the appellant filed CWJC No.11311 of 2005 contending that the entire proceedings were in violation of Rule 55 of the Civil Services Rules, 1930 (hereinafter referred to as "the 1930 Rules") read with Rule 167 of the Bihar Board's Miscellaneous Rules. A learned single Judge of this Court allowed the writ petition and quashed the order of punishment on 26th of April, 2011.

7. The issues which were raised, including non-supply of the documents and particularly non-examination of the then District Magistrate or an opportunity to cross-examine, the Court allowed the writ petition recording the following findings:

"Considering the admission in the Counter Affidavit regarding non furnishing of document, non-examination of the then District Magistrate, who denied his signature on the vouchers and non- availability of proper opportunity to the petitioner to defend himself, it is sufficient for holding that the impugned order, dated 26.05.2005 was issued by the District Magistrate, Jehanabad in complete violation of the procedure laid down in Rule 55A of the Civil Service (Classification, Control and Appeal) Rules and Rule 167 of Bihar Board Miscellaneous Rule. The petitioner could not have been terminated from his service in a Departmental Proceeding without following the proper procedure as provided under the Rule. For such reasons I find that the impugned order is fit to be set aside. Accordingly, it is quashed. The matter is remitted back to the District Magistrate, Jehanabad for conducting the Departmental Proceeding afresh. Petitioner, in the meantime, will be allowed to join his service with all consequential benefits till the date the Departmental Proceeding is finally concluded and a proper order is passed. The Departmental Enquiry must be concluded within six months from the date of production/communication of this Order. With the aforesaid observations, this Writ Application is disposed of."

8. It is thereafter that the petitioner, who was directed to have been reinstated in service, failed to get any response as a consequence thereof, he filed a contempt application, being MJC No.3812 of 2012. The said contempt application was ultimately dismissed on 01.02.2013 as the respondents chose to pass a fresh

punishment order against the appellant but, at the same time, in order to observe compliance of the judgment of the High Court, they had reinstated him in service together with other benefits, which, according to the respondents, were available to the appellant.

9. When this fact was disclosed to the appellant about the passing of the fresh order, he filed writ petition, being CWJC No.7155 of 2013, that was permitted to be withdrawn with liberty to the appellant to file a departmental appeal. The appellant filed a departmental appeal challenging the order of punishment passed against him, which was dismissed by the Commissioner on 28th of March, 2014. Thereafter, the writ petition giving rise to the present appeal was filed contending that the orders impugned are not only in violation of the Rules but also clearly in teeth of the earlier judgment of the High Court, quoted herein above.

10. The essence of the arguments was that neither any opportunity was provided nor the material on which reliance was placed was made available to the appellant so as to enable him to defend himself vis-a-vis the allegation with regard to the forged signature of the then District Magistrate on the vouchers that was the fulcrum of the entire enquiry. It was also contended that the procedure prescribed having not being followed, the issuance of a letter on 28th December, 2011 could not fill in the gap of the procedure so prescribed inasmuch as the rules do not envisage of the issuance of any interrogatories or calling upon the delinquent to give in writing as to what questions he proposes to ask from a witness with regard to whom the questions regarding forgery of signatures are involved. It was the contention of the appellant that the issuance of the notice dated 28th of December, 2011 after the matter had been remanded by the High Court was not the correct procedure and it also did not ensure fairness of the enquiry, inasmuch as, the District Magistrate Mr. Arunesh Chawala, whose signature was sought to be relied upon as having been forged by the appellant, was never produced during the enquiry proceedings nor was his communication that was tendered to the department about the signatures being forged was ever supplied to the appellant.

11. It was also urged that the then Head Clerk, who is stated to have handed over the said vouchers and who was produced for examination, made a very vague statement and the appellant was made to sit outside without any opportunity to cross-examine him. This therefore resulted in serious prejudice to the appellant inasmuch as the evidence which formed the entire basis of the charge was never brought forward and, therefore, the charge was not proved by leading any such material evidence or providing an opportunity to the appellant to contest the proceeding.

12. It is in this background that Shri Binod Kanth, learned Senior Counsel for the appellant contends that the prejudice to the appellant is writ large on account of non-compliance of the procedure and not providing the relevant material in spite of repeated requests in writing by the appellant. In sum and substance, his

contention is that even assuming that the appellant did not give any response to the letter dated 28th of December, 2011, yet it was obligatory on the part of the respondents to have proved their own case by producing the District Magistrate and recording his statement as that was the essential evidence which could have led to the conclusion or otherwise as to whether the District Magistrate had put the signatures on the vouchers or not.

13. To the aforesaid contention on behalf of the appellant, the State urged that full opportunity was extended to the appellant who did not avail of the same and the letter dated 28th of December, 2011 was in compliance of the earlier judgment of the High Court, hence the appellant cannot complain that no opportunity had been afforded. It is urged by the learned counsel for the State that once the appellant had been called upon to provide his interrogatories with regard to any queries to be made from the then District Magistrate, then this was sufficient opportunity and having failed to avail of the same, no complain can be made of either any prejudice or unfairness in the enquiry proceedings. It is urged that the District Magistrate had written a letter on 10.12.2001 after having perused the vouchers that it did not bear his signatures. Followed by this, the appellant had been provided an opportunity to peruse the original vouchers and was also supplied the photostat copies of the said vouchers along with an opportunity to give his queries in writing but since he himself did not act upon it, it cannot be said that the enquiry authority had proceeded in violation of any procedure so as to cause any prejudice to the appellant.

14. Learned counsel has further submitted that the appellant had deposited the amount of Rs.8,975/- and in view of the findings recorded by the enquiry officer, the learned single Judge while proceeding to dismiss the writ petition has not committed any error so as to warrant any interference in this appeal. The contention therefore is that neither the punishment order nor the appellate order suffers from any infirmity and the punishment being in conformity with law does not call for any leniency in favour of the appellant.

15. Having considered the submissions raised, we may extract Rule 55 of 1930 Rules for ready reference.

"55. Without prejudice to the provisions of the Public Servants Inquiries Act, 1850, no order of dismissal, removal, compulsory retirement [or reduction] shall be passed on a member of a Service (other than an order based on facts which have led to his conviction in a criminal court or by a Court-Martial) unless he has been informed in writing of the grounds on which it is proposed to take action and has been afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges, which shall be communicated to the person charged together with a statement of the allegations on which each charge is based and on any other circumstances which it is proposed to take into consideration in passing orders on the case. He shall be required, within a reasonable time, to put in a written statement of his defence and to state whether he desires to be heard

in person. If he so desires or if the authority concerned so direct an oral inquiry shall be held. At that inquiry oral evidence shall be heard as to such of the allegations as are not admitted, and the person charged shall be entitled to cross-examine the witnesses, to give evidence in person and to have such witnesses called, as he may wish, provided that the officer, conducting the inquiry may, for special and sufficient reasons to be recorded in writing, refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and a statement of the findings and the grounds thereof.

This rule shall not apply where the person concerned has absconded or where it is for other reasons impracticable to communicate with him. All or any of the provisions of the rule may, in exceptional cases, for special and sufficient reasons to be recorded in writing be waived, where there is difficulty in observing exactly the requirements of the rule and those requirements can be waived without injustice to the person charged.

The full procedure prescribed in this rule not be followed in the case of a probationer discharged in the circumstances described in Explanation II to rule 49. In such cases, it will be sufficient if the probationer is given an opportunity to show cause in writing against the discharge after being apprised of the grounds on which it is proposed to discharge him and his reply duly considered before orders are passed."

16. A perusal of the said Rules leaves no room for doubt that an oral enquiry is clearly contemplated under the Rules and once the respondents were relying on the letter of the District Magistrate denying his signatures on the vouchers, then, in our opinion, it was imperative and obligatory on the part of the respondents to have followed the said Rules by firstly, providing a copy of the said letter to the appellant which admittedly was not done and, secondly, by at least attempting to produce the District Magistrate for certifying or otherwise, the contents of the vouchers and the signatures which were stated to be allegedly forged.

17. In our opinion, the District Magistrate did not have any statutory or constitutional immunity from appearing as a witness in respect of a document which is stated to be allegedly bearing his signature, which was denied by him. This being the specific charge, it was obligatory on the part of the respondents to have proved the said charge by either producing the District Magistrate or by giving a fair opportunity to the appellant to either question the correctness of the contents of the said document or the signatures of the District Magistrate which admittedly was not done. It is evident that the letter which was written by the District Magistrate denying his signatures was never supplied to the appellant. We do not find any special reasons existing that may have compelled the respondents not to examine the District Magistrate except for the fact that he was the highest officer of the district. There are no reasons as to why a copy of the letter dated 10.12.2001 of the District Magistrate denying his signatures was not supplied to the appellant.

18. In these circumstances, the procedure of fairness has been clearly violated and consequently, we are of the view that this aspect of the matter having been overlooked both by the disciplinary and the appellate authorities has been erroneously confirmed by the learned single Judge. The material on the basis whereof the appellant was sought to be punished by removal from service was therefore a relevant material which ought to have been proved or even provided to the appellant for being confronted for a reply from him.

19. The notice dated 28th of December, 2011 does not conform to the Rule or the rule of fairness inasmuch as the Rule does not indicate that an interrogatory would be a substitute of an oral enquiry. We find that the said procedure having been attempted by the respondents was only to avoid the statement of the District Magistrate in the enquiry proceedings, which does not appear to be justified. This therefore clearly violates the principles of natural justice more so in a case where the delinquent is sought to be punished with the severment of service. We also find that the procedure did not conform to the indications given in the judgment dated 26.04.2011 of the learned single Judge in the earlier round of litigation. The order of punishment has resulted in civil consequences and on facts we have found that denial of fair opportunity as well as non-supply of a relevant document has resulted in real prejudice. The mandate of a statutory provision engrained as a principle of natural justice has been violated. We find full support in our conclusions from the following judgments:

1. (1996) 3 SCC 364 (State Bank of Patiala Vs. S.K. Sharma)
2. (2006) 9 SCC 691 (Marwar Gramin Bank Vs. Ram Pal Chouhan)
3. 1995 Supp(3) SCC 212 (S.C. Girotra Vs. United Commercial Bank)
4. 1970 (1) SCC 479 (State of Punjab Vs. Dewan Chuni Lal)

20. We, therefore, do not find either the order passed by the disciplinary or appellate authority to be sustainable in law and for the same reasons, we do not find the impugned judgment of the learned single Judge liable to be sustained inasmuch as the learned counsel for the appellant is right in taking aid of the judgment as cited by him in the case of Kuldeep Singh Vs. Commissioner of Police and Others, reported in (1999) 2 SCC 10 (para 27, 32 and 42). It is by now well settled in a series of decisions right from Taylor vs. Taylor [(1876) 1 Chancery Division 426], followed by [1964] AC 40 (Ridge vs. Baldwin & Others) and AIR 1978 SC 851 (Mohindra Singh Gill and another vs. The Chief Election Commissioner, New Delhi and Others), that if the procedure prescribed is to be followed in a particular manner, then it cannot be deviated from that and accordingly any violation of such procedure would vitiate any action either administrative or quasi-judicial, particularly in disciplinary proceedings. As noted above, there were no exceptional circumstances to deviate from the prescribed process of examination of the District Magistrate or not providing a copy of the letter whereby the signature had been denied.

21. We, therefore, allow the appeal and set aside the impugned judgment dated 15.01.2018 as well as the order of punishment dated 17.01.2013 as well as the appellate order dated 28th of March, 2014. The appellant shall stand reinstated in service with all consequential benefits. The respondents to proceed accordingly treating him to be in service with salary, allowances and all emoluments admissible as per rules.