
(2008) 06 JH CK 0010
In the Jharkhand High Court

Jivraj Birthuar

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 10-06-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Citation : (2008) 3 JCR 299

Hon'ble Judges : R.R. Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.R. Prasad, J.—This writ application has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of the notification (Annexure-3) as contained in Memo. No. 4167 dated 25.8.2006 issued by respondent No. 4, whereby three increments have been withheld with cumulative effect and that apart, it has also been ordered that the petitioner shall not be posted in the area falling within the working category.

2. Learned Counsel appearing for the petitioner submits that the petitioner while was posted as Range Officer in the State Trading Division, Gaya, he was served with a letter, contained in Memo No. 1887 dated 15.5.1997, communicating therein that a departmental proceeding has been initiated against him under Rule 55 of Civil Services (Classification, Control and Appeal) Rules, 1930 for the charges contained in the memo of the imputation of charges and was asked to submit his reply within four weeks and the charges, which contained in the memo of imputation of charges, are as follows:

(a) Mr. Birthuar is often found absent unauthorizedly from his Head Quarters.

(b) In spite of having categorically direction issued by the Regional Chief Conservator of Forest to relieve Mr. Ramashanker Singh In-charge Forest Guard pursuant to his transfer order but the petitioner has delayed the relieving of Mr. Ramashanker Singh.

(c) There is an arrangement to send the employee of the forest during the loading and transportation of forest goods in order to ensure the protection of forest produced. But the Regional Chief Conservator of Forest has found on 14.1.1996/15.1.1996 that the petitioner has not sent the employee forest guard in the truck which was carrying on the forest produced in spite of the fact that there were four foresters/forest guard posted at 2Rajauli Logging-cum-Depot Range.

(d) On 12.1.1996 two trucks belonging to Rajauli Logging-cum- Depot Range were burnt during transportation of forest produced. Since few days before the aforesaid incident, i.e. 4.12.1995 one truck was burnt at a place which is 10 (ten) Km. from Hazaribagh and therefore the petitioner should have taken more than precaution for transportation of goods by taking help of the Home Guard from the local administrative but the aforesaid step was not taken by the petitioner.

(e) The Regional Chief Conservator of Forest during his inspection dated 14.1.1996/15.1.1996 has found that the work of felling of trees and coppicing was not satisfactory since the work relating to coup was left in the hand of daily charges and the munsis.

(f) The last charge against the petitioner is that he does not submit his diary in time as a result of which his working is not being assessed properly. Considering the aforesaid charges constituted against the petitioner are (a) unauthorized absence from the duty (b) non-compliance of the order of the higher authorities (c) not sincere for his duty (d) failure to protect the property of the department.

3. Pursuant to that, the petitioner submitted reply (Annexure- 2) and also participated in the proceeding but all on a sudden, the order, as contained in Annexure-3, was communicated to him whereby the Disciplinary Authority imposed punishment by withholding three increments with cumulative effect and that apart, it was also ordered that the petitioner shall not be posted in the area falling within the working category, though before inflicting punishment the petitioner was never served with second show-cause notice and as such, the punishment awarded being a major punishment and is punitive in nature, the Authorities were statutorily required in terms of the provisions as contained in Article 311(2) of the Constitution of India to furnish second show-cause notice before awarding major punishment and, therefore, the impugned order, as contained in Annexure-3, is fit to be quashed on this score only.

4. A counter affidavit has been filed on behalf of respondent Nos. 2, 3 and 4, wherein it has never been denied that before awarding punishment second show-cause notice was not served upon the petitioner, however, it was submitted that when the charges levelled against the petitioner got proved, the punishment of withholding of three increments was awarded which can never be said to be a major punishment and as such, the Disciplinary Authority can never be said to have infringed any constitutional or statutorily provision and in that view of the

matter, the impugned order needs not be interfered with by this Court.

5. Having heard learned Counsel for the parties, it does appear that a departmental proceeding was initiated against the petitioner in terms of the provisions of Civil Services (Classification, Control and Appeal) Rules for certain charges to which the petitioner also submitted his reply and seems to have participated in the proceeding. Thereupon, the charges as per the respondents, having been proved, punishment was awarded whereby three increments were withheld with cumulative effect, but that punishment was awarded without affording opportunity by way of second show-cause notice.

6. It be noted that as per the terms of Rule 55 of Civil Services (Classification, Control and Appeal) Rules, any major punishment such as dismissal, removal, compulsory retirement or reduction in rank is passed, the same is required to be passed after following the procedure as laid down in Rule 55 of Civil Services (Classification, Control and Appeal) Rules, whereas in a case when the punishment, mentioned in Clauses 1,2, and 4 of Rule 49, is passed, a procedure, as laid down under Rule 55-A of the said rules, needs to be followed. Here in the instant case, punishment of withholding of three increments with cumulative effect has been awarded which would always be associated with the evil consequence and as such, it amounts to the punishment. This proposition finds support from a decision rendered in a case of Bengali Prasad Sinha v. State of Bihar and Ors. reported in 1996 (1) BUR 59 wherein his Lordship by placing a reliance of a case decided by Hon''ble Supreme Court in the case of Awadh Kishore Tiwari (since deceased) by L.Rs. Vs. Damodar Valley Coporation, Calcutta and another, , has held that withholding of an increment with cumulative effect is a major punishment and the same cannot be inflicted without holding the departmental proceeding.

7. That being the situation, the impugned order inflicting punishment of withholding of three increments with cumulative effect, without affording any opportunity by way of second show-cause notice of making representation of the penalty proposal, certainly appears to have been passed in derogation of the constitutional provision. Accordingly, it is set aside. However, it would always be open for the Disciplinary Authority to issue second show-cause notice to the petitioner and on reply being submitted, the Authority may pass order in accordance with law within a reasonable time. In the result, this application is allowed.