
(2016) 05 PAT CK 0024

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 19954 of 2014

K.C. Khanna

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 02-05-2016

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14

Citation : (2016) 4 PLJR 234

Hon'ble Judges : Mr. Hemant Gupta and Mr. Ahsanuddin Amanullah, JJ.

Bench : Division Bench

Advocate : Mr. Munna Pd Dixit (M.P. Dixit) and Mr. Sanjay Kumar Choubey, Advocates, for the Petitioners; Mr. S.D. Sanjay, Addl. S.G. and Ms. Kanak Verma, C.G.C, for the Respondents

Final Decision : Dismissed

Judgement

Mr. Hemant Gupta, J.—Challenge in the present writ petition is to an order dated 12th May, 2014, passed by the Central Administrative Tribunal, Patna Bench, Patna, in O.A. No. 1009 of 2012. By the aforesaid order, the challenge to the order of punishment of Censure awarded to the petitioner remained unsuccessful.

2. The petitioner was charge-sheeted on 23rd June, 2008 for major penalty under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter referred to as CCA Rules). The charge-sheet was on two grounds, viz. noncompliance of the order given by the competent authority and not furnishing the information within the stipulated time and the other was misbehaviour with the D.A.G. (Commercial) on 16.02.2005, when the petitioner was called by the officer in her chamber over the file regarding audit and accounts. The enquiry officer found both the charges were not proved. The finding of the enquiry officer was communicated to the petitioner but without any disagreement note. However, the disciplinary authority passed an order of punishment of stoppage of three increments for three years on 17.04.2009

recording disagreement with the finding of the enquiry officer on the second charge. The petitioner filed an appeal against the order of punishment. The appellate authority dismissed the appeal on 18th August, 2009.

3. The petitioner filed O.A. No. 363 of 2008 before the learned Tribunal challenging the orders of punishment. The Tribunal allowed the application finding that the order of the appellate authority is non-speaking and cryptic and, therefore, the matter was remitted to the Dy. C.A.G. of India to dispose of the appeal. It is thereafter the appellate authority imposed the penalty of Censure. It is the said order dated 12.11.2012, which was challenged by the petitioner before the Tribunal. Such challenge remained unsuccessful.

4. Learned counsel for the petitioner refers to the judgment of the Supreme Court in the case of Punjab National Bank v. Kunj Bihari Mishra 1998 (7) SCC 84 and U.B.T. Industries v. U.P. Financial Corporation 2003 (2) SCC 455 to contend that on account of absence of disagreement recorded by the disciplinary authority the order of punishment is vitiated.

5. We have heard learned counsel for the parties and find no merit in the present writ petition. The order of disciplinary authority disagreeing with the finding of the enquiry officer was passed on 17.04.2009. Such order was affirmed in appeal on 18.08.2009. In a challenge to the order passed by the disciplinary authority and that of the appellate authority, the Tribunal set aside only the order of the appellate authority on the ground that it is nonspeaking and cryptic order. The order passed by the disciplinary authority was not interfered with. At that time, the petitioner challenged the order of punishment on the ground that he has been charge-sheeted on similar allegation earlier which resulted into punishment dated 20th November, 2006. The Tribunal did not find any merit in the said argument but interfered with the order of punishment passed by the appellate authority alone. Once the Tribunal has not interfered with the order of punishment, the ground which was available to the petitioner at that time, cannot re-agitated at this stage.

6. Thus, the petitioner is barred to raise that issue constructively. Since the order of the appellate authority was alone set aside and the order of Censure has been passed by the appellate authority after remand, it is the legality of such order which could be examined by the Tribunal. The Tribunal by the order impugned found no merit in the said challenge.

7. The judgment in the cases of Kunj Bihari Mishra and U.B.T. Industries (supra) referred to by learned counsel for the petitioner, have no application to the facts of the present case in which the challenge to the decision of the disciplinary authority remained unsuccessful in the first round of litigation. Even otherwise, the petitioner is required to prove prejudice, if any, suffered by him on account of the procedure adopted by the disciplinary authority. Since the order of punishment is of Censure, it can only be said that any of the right has been jeopardised by the procedure adopted by the disciplinary authority.

8. Still further, Censure is a minor punishment. Such minor punishment can be imposed even without conducting any regular enquiry. Therefore, even if the disciplinary authority has not communicated reasons of disagreement at earlier stage, but minor punishment stands imposed, it cannot be said that any of the rights of the petitioner has been infringed in conduct of the disciplinary proceedings.

9. Consequently, we do not find any merit in the present writ petition. The writ petition is accordingly dismissed.

Ahsanuddin Amanullah, J. - I agree.