
(2008) 01 PAT CK 0161
In the Patna High Court
Case No : LPA No. 1049 of 1999

Komal Tiwary

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 29-01-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 16(1)

Citation : (2008) 2 PLJR 363

Hon'ble Judges : S.K. Katriar, J; Kishore K. Mandal, J

Bench : Division Bench

Advocate : Shashi Anugrah Narain and Chakradhari Sharan Singh, for the Appellant; Jawahar Pd. Karan for the State, for the Respondent

Final Decision : Allowed

Judgement

S.K. Katriar and Kishore K. Mandal, JJ.—This appeal has been preferred in terms of Clause 10 of the Letters Patent of the Patna High Court. The writ petitioner (the appellant herein) is aggrieved by the order dated 5.8.1999, passed in CWJC No. 10197 of 1997 (Komal Tiwari vs. The State of Bihar & Ors.) whereby the writ petition has been dismissed, and the order of his dismissal from service as a Constable has been upheld. We shall go by the description of the parties occurring in the writ petition. The writ petitioner was a Constable in the Bihar Police Force. He was involved in an occurrence which had taken place on 12/13.5.1993, and allegations had been levelled against him for impersonating as a member of an escort party assigned the duty of checking ticketless travellers. He was not a member of the escort party, but he was in police uniform without the badges, and was found extracting money from a ticketless traveller as well as ill-treating and beating him. Learned inquiry officer submitted his report, wherein the charges were found to have been proved, and he was consequently ordered to be dismissed from service. He preferred appeal, which was dismissed by the order dated 5.6.1995 (Annexure-3), passed by the Deputy Inspector General of Police (Rail), Patna. The petitioner's review petition has also

been rejected by the order dated 27.6.1997, passed by the Inspector General of Police (Rail), Patna. It is further stated therein that the order rejecting the review application was not communicated to the petitioner.

1.1) The petitioner had also been subjected to criminal proceedings on identical charges and has been acquitted by judgment dated 25.6.1997 (Annexure 4).

1.2) Aggrieved by the order of the departmental authorities, the petitioner preferred the aforesaid CWJC No. 10197 of 1997, which has been dismissed by a learned Single Judge of this Court leading to the present appeal.

2. While assailing the validity of the order of the learned departmental authorities, learned counsel for the petitioner submits that the discussion in the report of the learned inquiry officer, as well as in the order of the learned disciplinary authority, are perfunctory and unsatisfactory. The order of the appellate authority is far worse. He relies on the decision reported in Vijay Chandra Thakur Vs. The State of Bihar and Others, . He next submits that the orders of the learned disciplinary authority and the learned appellate authority are also products of non-application of mind. He relies on the following reported judgments:-

(i) 1979 S.C. 1622 (paras 17 & 18); (Gurdial Singh Fijji vs. State of Punjab and Others),

(ii) Chandradip Sinha Vs. State of Bihar and Others, ,

(iii) Arun Kumar Vs. State of Bihar, .

2.1) The order of the learned appellate authority does not at all assign reasons in support of the conclusions. He has relied on the following reported judgments:-

(i) The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another, ,

(ii) 1983 PLJR 92 (paras 7 to 10); (Dr. Rabindra Nath Singh vs. The State of Bihar & Ors.),

(iii) The Manager, Government Branch Press and Another Vs. D.B. Belliappa, .

2.2) He next submits that the petitioner has on identical charges been acquitted by the criminal court, and the genesis of the occurrence has been disbelieved which knocks the bottom out of the departmental proceedings.

2.3) He lastly submits that disproportionate punishment has been inflicted on the petitioner. He has maintained a good track record of service, a factor not considered by the departmental authorities. He relies on the judgment reported in (1986)3 SCC 107 (at page 107); Ram Chander vs. Union of India and Others.

3. Learned Additional Advocate General has supported the impugned action. He submits that the departmental authorities are not required to pass a detailed judgment which is not the requirement in law. The requirement of law is met if

the departmental authority briefly indicates the reasons in support of the conclusion. He relies on the following judgments:

(i) Arvind Kumar Vs. The Nalanda Gramin Bank and Others, ,

(ii) Vijay Shankar Kasaip Vs. State of Bihar and Others, .

3.1) He next submits that the proceedings before the criminal court and the departmental authorities stand on fundamentally different footing and are parallel proceedings. He relies on the judgment reported in Nelson Motis Vs. Union of India and another, .

4. There is no need to examine the detailed facts and circumstances, nor there is the need to go into the detailed submissions advanced by learned counsel for the parties, in view of the nature of the order which we are going to pass.

5. We have perused the inquiry report as well as the order of the learned disciplinary authority. The learned Additional Advocate General is right in his submission that the requirement of assigning reasons in both has been followed. The learned inquiry officer discussed the materials on record and recorded reasons in support of the conclusion that the charges have been proved. Learned disciplinary authority has also discussed the matter and has rather satisfactorily recorded reasons while imposing the order of punishment.

6. The order of the learned appellate authority leaves much to be desired. It is a brief order and may be reproduced hereinbelow:-

We are of the view that the appellate order does not disclose the reasons in support of dismissal of the appeal. Has he to be reminded that an appeal is a forum of facts and, therefore, the learned appellate authority is duty bound to examine all issues of facts and law. He cannot move on the crutches of the inquiry report or the order of the disciplinary authority. The appellate order must indicate that the learned appellate authority has considered and applied his mind to all the materials on record, and has briefly recorded his reasons to accept or reject the contentions.

7. Learned Additional Advocate General is right in his submission that the departmental authorities are not required to write orders akin to judgments of courts. But the learned appellate authority has failed to make the distinction between an order disclosing application of the mind supported by reasons indicated briefly, on the one hand, and a case like the present one which shows non-consideration of the materials on record, non-consideration of the contentions advanced by the parties, non-application of the mind, and complete absence of reasons. He has only recorded the conclusions.

8. Learned Additional Advocate General has put considerable emphasis on the statements made in the order of the learned appellate authority, wherein it is stated that the contentions set out in the memorandum of appeal are without substance. The statements made in the charge-sheet, or the written statement,

or the written submissions, or the grounds taken in the memorandum of appeal, cannot take the place of proof. Evidence must be led by the parties, and has to be critically examined by the departmental authorities. There is not the slightest indication of any attempt to analyse the evidence on record in relation to the charges, nor the contentions have been examined, nor reasons have been recorded in support of the conclusions. In other words, such an approach as has been canvassed by the learned Additional Advocate General, and is discernible from the appellate order, only speaks of abdication of quasi-judicial duties and functions by the appellate authority.

9. Learned counsel for the petitioner has rightly relied on the judgment of the Supreme Court in *The Siemens Engineering Co. of India Ltd.* (supra). The relevant portion of paragraph-6 is reproduced hereinbelow for the facility of quick reference:-

"Before we part with this appeal, we must express our regret at the manner in which the Assistant Collector, the Collector and the Government of India disposed of the proceedings before them. It is incontrovertible that the proceedings before the Assistant Collector arising from the notices demanding differential duty were quasi-judicial proceedings and so also were the proceedings in revision before the Collector and the Government of India. Indeed, this was not disputed by the learned counsel appearing on behalf of the respondents, it is now well settled that where an authority makes an order in exercise of a quasi-judicial function, it must record its reasons in support of the order it makes. Every quasi-judicial order must be supported by reasons. That has been laid down by a long line of decisions of this Court ending with *N.M. Desai vs. Testeels Ltd.*, C.A. No. 245 of 1970 decided on 17.12.1975 (SC). But, unfortunately, the Assistant Collector did not choose to give any reasons in support of the order made by him confirming the demand for differential duty. This was in plain disregard of the requirement of law. The Collector in revision did give some sort of reason but it was hardly satisfactory. He did not deal in his order with the arguments advanced by the appellants in their representation dated 8th December, 1961 which were repeated in the subsequent representation dated 4th June, 1965. It is not suggested that the Collector should have made an elaborate order discussing the arguments of the appellants in the manner of a court of law. But the order of the Collector could have been a little more explicit and articulate so as to lend assurance that the case of the appellants had been properly considered by him. If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of an order is, like the principle of *audi alteram partem*, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law. The Government of India also failed to give

any reasons in support of its order rejecting the revision application. But we may presume that in rejecting the revision application, it adopted the same reason which prevailed with the Collector. The reason given by the Collector was, as already pointed out, hardly satisfactory and it would, therefore, have been better if the Government of India had given proper and adequate reasons dealing with the arguments advanced on behalf of the appellants while rejecting the revision application. We hope and trust that in future the Customs authorities will be more careful in adjudicating upon the proceedings which come before them and pass properly reasoned orders, so that those who are affected by such orders are assured that their case has received proper consideration at the hands of the Customs authorities and the validity of the adjudication made by the Customs authorities can also be satisfactorily tested in a superior tribunal or court. In fact, it would be desirable that in cases arising under Customs and Excise laws an independent quasi-judicial tribunal, like the income tax Appellate Tribunal or the Foreign Exchange Regulation Appellate Board-is set up which would finally dispose of appeals and revision applications under these laws instead of leaving the determination of such appeals and revision applications to the Government of India. An independent quasi-judicial tribunal would definitely inspire greater confidence in the public mind."

(Emphasis added)

9.1) A Division Bench of this Court had the occasion to follow the same in the case of Dr. Ravindra Nath Singh (supra). Para-10 of the judgment is reproduced hereinbelow for the facility of quick reference:-

"The impugned order manifests that in this case not only there has been abdication of power to consider in favour of the Vigilance Department, but nothing is decipherable from the impugned order to convince me that there has been at all an application of the mind either by the authority, who has imposed the punishment or on the part of the Vigilance Department. No reasons have been assigned as to why the show cause reply is unsatisfactory. Giving of reasons in support of order which affects a person is also a basic need of the principles of natural justice (See- The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another,). The error of law is apparent on the face of the impugned order. There is no scope but to quash the said order as contained in Annexure-1. The petitioner is entitled to the consideration of the show cause by the Disciplinary Authority and the application of the mind of the said authority before imposing any punishment under rule 55-A of the Rules. The authority is required further to give reasons in support of the said order."

9.2) Learned counsel for the petitioner has also relied upon the judgment of the Supreme Court in The Manager, Government Branch Press and Another (supra). The relevant portion of Para-24 of the judgment is reproduced hereinbelow for the facility of quick reference:-

"The giving of reasons", as Lord Denning put it in *Breen vs. Amalgamated Engineering Union*, (1991)1 All ER 114, is one of the fundamentals of good administration", and to recall the words of this Court in *Khudiram Das Vs. The State of West Bengal and Others*, , in a Government of laws "there is nothing like unfettered discretion immune from judicial review-ability". The executive, no less than the judiciary, is under a general duty to act fairly. Indeed, fairness founded on reason is the essence of the guarantee epitomized in Articles 14 and 16(1)."

10. It is thus manifest on a perusal of the authoritative pronouncements of the Supreme Court that all authorities exercising quasi-judicial functions must conform to the principles of natural justice and are duty bound including the appellate authority with which we are presently concerned, to ensure that their order must disclose consideration of all materials on record, consideration of the contentions advanced before him, and acceptance or rejection of one or the other supported by reasons. This should not be taken to mean that they are expected to produce orders akin to judgments of courts. One of the most important factors warranting this proposition of law is that their orders are subject to challenge before superior courts and are unable to examine the validity of the reasons or the circumstances which weighed with the authorities while passing the order. The learned appellate authority in the present case has brought about such a situation and has to be set aside.

11. We must also deal with the contention advanced on behalf of the petitioner that the genesis of the occurrence has been disbelieved by the criminal court and, therefore, the departmental proceedings should have been terminated. We regret our inability to accede to the submission. Departmental proceedings and criminal trial are parallel proceedings and the two stand on fundamentally different footing. The result of one cannot be allowed to influence the other, inter alia, for the reason that the standard of proof for the two proceedings are different, in a criminal trial, the prosecution must prove the guilt beyond all reasonable doubts. Preponderance of probabilities is the standard of proof in departmental proceedings. Learned Additional Advocate General has relied rightly on the judgment in *Nelson Motis (supra)*, para-5 of which is reproduced hereinbelow for the facility of quick reference:-

"So far the first point is concerned, namely, whether the disciplinary proceeding could have been continued in the face of the acquittal of the appellant in the criminal case, the plea has no substance whatsoever and does not merit a detailed consideration. The nature and scope of a criminal case are very different from those of a departmental disciplinary proceeding and an order of acquittal, therefore, cannot conclude the departmental proceeding...."

12. Before we part with the records, we must bring it to the notice of the Director General of Police, Bihar, and other authorities of the Bihar Police Force that, in view of the pattern of litigations coming up before this court, the departmental proceedings in the Police Department are quite often conducted in a perfunctory manner. Subject to exceptions, no effort is made by the inquiry

officer, by the disciplinary authority, by the appellate authority, or the revisional authority, to consider the materials on record, and assign reasons to accept or reject one or the other piece of evidence and the contentions. It speaks of a general propensity towards abdication of essential duties and functions in departmental proceedings, perhaps to avoid the work involved in it. This state of affairs must be avoided.

13. In the result, this appeal is allowed. We disagree with the orders of the learned appellate authority and the learned revisional authority, as well as the order of the learned writ court. The matter goes back to the learned appellate authority to dispose of the memorandum of appeal in accordance with law and the observations made hereinabove.

13.1) Let a copy of this judgment be handed over to Mr. Jawahar Prasad Karn, learned Additional Advocate General-IX, to transmit the same to the Director General of Police, Government of Bihar, Patna, for remedial measures. Let a copy of the judgment be handed over to Mr. P.K. Shahi, learned Advocate General, inviting attention of the State Government to the judgment of the Supreme Court in Siemens Engineering and Manufacturing Co. of India Ltd. (supra), which emphasizes the importance of creation of independent quasi-judicial and specialized tribunals. The relevant portion of the judgment is reproduced and underlined in paragraph 10 hereinabove.