
(2003) 07 PAT CK 0074

In the Patna High Court

Case No : C.W.J.C. Nos. 10604 and 13940 of 2002

Madan Sharma and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-07-2003

Acts Referred:

Citation : (2003) 07 PAT CK 0074

Final Decision : Allowed

Judgement

R.S. Garg, J.—Heard learned counsel for the parties.

2. As both the Officers/Petitioners are facing the same predicament and the same punishment orders they have approached to this Court inter alia submitting that the order of dismissal contained in Annexure-10 in both the cases deserve to be quashed and the Department be directed to reinstate them with all consequential benefits.

3. It is not in dispute before me that Madan Sharma was posted as Assistant Engineer while Gurubax Singh was posted as Executive Engineer. Finding a foul play on their part, a chargesheet was issued and an enquiry was ordered. Each of the petitioner was placed under suspension. During course of the enquiry each of the petitioner requested to the authorities that the report of the Flying Squad be made available to them for making their effective representations and proposing proper defences. Each of the petitioner submits that the respondents have relied upon the report of the Flying Squad but did not supply the copy of the same to either of the petitioner, therefore, the enquiry was tainted and violated the principles of natural justice. The petitioners contend that after the full-fledged enquiry, the Enquiry Officer gave a clean-chit to each of the petitioner and exonerated them but the Disciplinary . Authority without giving any show cause notice to each of the petitioner differed from the opinion/findings of the Enquiry Officer and vide Annexure-G, letter dated 22-2-1997, after recording its disagreement proposed the punishment. According to the petitioners, this second show cause notice proposing punishment is bad and illegal because before taking

a different view, the petitioners were not given opportunities to support the findings recorded by the Enquiry Officer.

4. Learned counsel for the respondents in each of the writ application have submitted that the report of the Flying Squad was the generating point but hereafter a full chargesheet was issued and sufficient opportunities were given to each of the petitioner and therefore, the full material was brought on the record in the enquiry and as such the non-supply of the said report was of no consequence. Regarding Annexure-G it is contended that each of the petitioner filed a detailed representation inter alia submitting that the findings tentatively recorded in Annexure-G were illegal and the Disciplinary Authority had no reason or authority to record findings other than what were already recorded by the Enquiry Officer. It is also contended by them that a fair perusal of Annexure-G would make it clear that the Disciplinary Authority has given detailed reasons for recording its disagreement and has also given reasons for proposing such punishment.

5. Each of the party has relied upon the judgment of the Supreme Court in the matter of the Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, to contend in support of its own pleadings and arguments.

6. In the said matter of Kunj Bihari Mishra the Supreme Court was considering certain Service Rules qua the departmental enquiry. The Supreme Court in the said matter observed that under Regulation 6, it was open to the Disciplinary Authority either to appoint an Enquiry Officer for conducting enquiry or to itself conduct the enquiry. It was further observed that when the enquiry is conducted by the Enquiry Officer, his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with the decision of the the Disciplinary Authority. It is the Disciplinary Authority which can impose the penalty and not the Enquiry Officer. It was further observed that it will be most unfair and iniquitous that where the charged Officer succeeds before the Enquiry Officer he is deprived of representing to the Disciplinary Authority before the authority differs with the Enquiry Officer's report and, while recording a finding of guilt, imposes punishment on the Officer. The Supreme Court also observed that the principles of natural justice will have, therefore, to be read into Regulation 7(2). It was observed that whenever the Disciplinary Authority disagrees with the Enquiry Authority on any article of charge then before it records its findings it must record its tentative reasons for such disagreement and give to the delinquent Officer an opportunity to represent before it records its findings.

7. In the present matter undisputedly the Enquiry Officer exonerated each of the petitioner, Each of the petitioner was entitled to feel satisfied and contend that in view of the report of the Enquiry Officer no action would be taken against him or either of them. If the Disciplinary Authority was of the opinion that the findings recorded by the Enquiry Officer were wrong and he was entitled to record independent/separate findings then before recording such findings, the tentative

reasons for disagreement ought to have been supplied to the delinquent Officer with an opportunity to submit his case that the findings recorded by the Enquiry Officer were in accordance with law, were based on records and there was no scope to take a different view.

8. The Supreme Court in the matter of Punjab National Bank (supra) has very categorically observed that it will be most unfair and iniquitous that where the charged officer succeeds before the Enquiry Officer, he is deprived of representing to the Disciplinary Authority before that Authority differs with the Enquiry Officer's report and while recording a finding of guilt, imposes punishment on the officer. These key words would make it very clear that before an independent finding is recorded, the delinquent Officer must have an opportunity. It must be read from the observations of the Supreme Court that while recording a finding of guilt a punishment cannot be imposed on an Officer/delinquent, if the Enquiry Officer had recorded findings in favour of the delinquent officer. It would also appear from the said judgment of the Supreme Court that the Disciplinary Authority must record its tentative reasons for such a disagreement and give to the delinquent Officer an opportunity to represent before it records its findings. The key words "before it records its findings" are to be read in juxtaposition with the opportunity of hearing. If an opportunity of hearing is not afforded and straightway disagreement is recorded and the punishment is proposed then such a procedure would run contrary to the principles of natural justice and would be in the teeth of the judgment of the Supreme Court in the matter of Kunj Bihari Mishra.

9. Learned counsel for the petitioners has also relied upon a Division Bench judgment of this Court in the matter of Jai Kumar Singh v. The State Bank of India and Ors. (L.P.A. No. 792/1999, decided on 1-2-2000). The observations made by the Division Bench in the said matter would be useful to quote.

"6. We notice from the order of the disciplinary authority dated 12th September, 1999 (Annexure-11 to the writ petition) that he called upon the appellant only to show cause why the proposed punishment should not be inflicted upon him. Counsel for the appellant, therefore, submitted, relying upon the aforesaid judgment of the Supreme Court, that no opportunity was given to the appellant to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. There was, therefore, no scope for the appellant to represent that the finding of the enquiry officer was justified in the facts and circumstances of the case and that the reasons for disagreement as recorded in the order were not adequate to disturb the finding recorded by the enquiry officer. All that the notice provided was that the appellant should represent against the proposed punishment.

Counsel for the Bank, on the other hand, contends that even if the appellant was called upon only to show cause why the proposed punishment should not be inflicted upon him, he could in his representation before the disciplinary authority contend that the findings of the enquiry officer were justified and there was no

good reason to disagree with the aforesaid findings. We are of the view that the submission urged on behalf of the respondent-Bank cannot be accepted. The law has been clearly laid down by the Supreme Court in the aforesaid judgment that an opportunity to represent must be given against the tentative reasons recorded by the disciplinary authority while disagreeing, with the findings of the enquiry officer. This was not done in the instant case and, therefore, we are of the opinion that the matter should be remitted to the disciplinary authority for further action in accordance with law."

10. Learned counsel for the petitioners has also relied upon the single Judge judgment of this Court in the matter *Ranjan Kumar v. Nalanda Gramin Bank* (2003 (1) BLJ 448). In the said matter on almost similar facts, this Court observed that a composite notice recording independent findings and proposing punishment would be illegal. In view of the binding precedents and settled law I am obliged to hold that the orders of termination/punishment passed by the Disciplinary Authority are illegal and cannot be sustained. Annexure-10 in each of the writ application is quashed. The matters are remitted to the Disciplinary Authority for issuing a notice to each of the petitioner that it proposes to revise the findings recorded by the Enquiry Officer. Each of the petitioner would be given proper opportunity of hearing to make his case before the authority. If the authority is still of the opinion that it has to record its reasons then it shall be free to do so. At this stage it would also be necessary to record that the question of non-supply of the Flying Squad's report was raised by the counsel for each of the petitioner but it was later on given up finding that if the report of the Flying Squad is supplied to them then the findings recorded by the Enquiry Officer will have to be set aside and the enquiry may proceed afresh. In view of this predicament learned counsel for the each of the petitioner had given up that argument.

11. The petitions are allowed.

12. Each of the petitioner would report back on duty. If the departmental authorities are still of the opinion that during pendency of these enquiry proceedings they must continue to be under suspension then they may pass necessary orders. It is made clear that the enquiry is not to be re-opened but would commence from the notice stage to be issued by the Disciplinary Authority proposing to record its tentative reasons of recording independent findings.