

(1996) 11 PAT CK 0002
In the Patna High Court
Case No : L.P.A. No. 930 of 1995

Madheshwar Prasad

APPELLANT

Vs

The Bihar State Co-operative Marketing Union Ltd. and
Another

RESPONDENT

Date of Decision : 19-11-1996

Acts Referred:

Citation : (1997) 1 PLJR 73

Hon'ble Judges : D.P. Wadhwa, C.J;R.M. Prasad, J

Bench : Division Bench

Advocate : Ganesh Pd. Singh and Abhimanyu Sharma, for the Appellant; P.K. Shahi, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal is directed against the order dated 26.6.1995, passed in C.W.J.C. No. 13339 of 1993 by the learned Single Judge dismissing the said writ petition on merit.

2. The Petitioner, who was an employee of the Biscomaun was initially proceeded against in a departmental proceedings with respect to the charge of his unauthorised absence from 7.10.1978. It was alleged that in the entire Puja holidays and the working days preceding and following, the Depot had remained closed and whatever despatches of Pool Fertilizers were to be effected from Kursela Ware House could not be made, which had caused serious loss to Biscomaun. It was further alleged that he delayed in handing over charge to his successor, which further amounted to insubordination and disobedience. In course of the disciplinary proceeding Anr. charge was added that while he was incharge of Kursela Depot, the Petitioner defalcated a sum of Rs. 88,206.98 by showing heavy shortage of Fertilizers.

3. Besides the departmental proceeding, a criminal case was also instituted in respect of the said charge of the defalcation by manipulating heavy shortages of

fertilizers also. In the criminal case however, the police submitted final form stating that the allegation was based on a mistake of fact. The departmental proceeding however, continued, in which he was found guilty of the charges and was finally punished with the order of dismissal from service, which was impugned in the writ petition.

4. It was submitted by the learned Counsel for the Petitioner that in view of the finding recorded by the Enquiry Officer in the report (annexure-9) and considering the scope of the appellate jurisdiction as also in view of the finding recorded by the learned Single Judge, in the impugned order passed in the connected writ case with respect to unauthorised absence, he does not assail the said finding in this appeal; However, the learned Counsel submitted that the impugned order of dismissal is bad in law, as no charge with respect to the alleged defalcation of a sum of Rs. 88,206.98p. was framed and the Petitioner was not given adequate opportunity to meet the same, yet the enquiry officer has found him guilty with respect to the said charge also and the disciplinary authority passed the order of dismissal, impugned in the writ case on the basis of the finding of the Enquiry Officer (annexure-9) in utter violation of the principle of natural justice. It was further submitted that even the finding of the Enquiry Officer with respect to the alleged defalcation cannot be sustained. As such, according to him, the order of dismissal which is based on both grounds, one of which is unsustainable being violative of the principle of natural justice is bad in law inasmuch as, one does not know as to whether the severe punishment of dismissal would have been maintained or else a lesser punishment would have suffice on the first charge. It was thus, submitted by the learned Counsel for the Petitioner that the learned Single Judge committed error in not considering that if the dismissal is based on the grounds and one of those ground is not sustainable the order is liable to be struck down. In support of this, the learned Counsel placed reliance on the decision of the Apex Court in the case of Smt. S.R. Venkataraman Vs. Union of India (UOI) and Another, .

5. On the other hand, Mr. Sahi, learned Counsel appearing for the Respondents submitted that there is no illegality in the order in as much as, from the very perusal of the enquiry report as well as annexure-5 it would appear that the Petitioner was given adequate opportunity to defend also against the charge relating to defalcation of Rs. 88,206.98 P. and only thereafter he has been found guilty of the said charges. It was also submitted by Mr. Sahi that in fact, the charges relating to unauthorised absence itself was sufficiact to impose the punishment of dismissal of the Petitioner from service. Further, it was submitted that the learned Single Judge in the impugned order has considered this aspect and on being satisfied, did not find any substance in the said submission advanced on behalf of the Petitioner.

6. We are unable to accept the submission of the learned Counsel for the Petitioner. The finding with respect to the first charge relating to unauthorised absence resulting in serious loss to the Biscomaun has not been assailed in this

appeal. In a case of disciplinary proceeding the delinquent is entitled for reasonable opportunity of showing cause against the action proposed to be taken in regard to him, which has manifestly to be in accordance with the rules/regulations framed. The constitutional Bench of the Supreme Court in the case of State of Orissa Vs. Bidyabhushan Mohapatra, held that;

the Court in a case in which an order of dismissal of a public servant is impugned, is not concerned to decide whether the sentence imposed, provided it is justified by the rules, is appropriate having regard to the gravity of the misdemeanour established. The reasons which induce the "punishing authority, if there has been an enquiry consistent with the prescribed rules, are not justifiable; nor is the penalty open to review by the Court. If the High Court is satisfied that if some but not all of the findings of the Tribunal were "unassailable" the order of the Governor on whose power by the rules no restrictions in determining the appropriate punishment are placed, was final, and the High Court had no jurisdiction to direct the Governor to review the penalty for as we have already observed, the order of dismissal passed by the competent authority on a public servant, if the conditions of the Constitutional protection have been complied with, is not justifiable.

It was further held that;

...if the order may be supported on any finding as to substantial misdemeanour for which the punishment can lawfully be imposed, it is not for the court to consider whether that ground alone would have weighed with the authority in dismissing the public servant.

7. No rule has been brought to our notice, which imposes any restriction in determining the appropriate notification with respect to different nature of charges.

8. In our opinion, the decision of the Supreme Court in the case of Smt. Venkataraman v. Union of India and Anr. (supra) has no application to the facts of the present case. The question involved in the said case was completely different. In the said case the Appellant was ordered to be retired prematurely in public interest. The relevant record of the public servant, however, did not reveal that the compulsory retirement was in public interest. This fact was conceded by the learned Government Counsel. The Supreme Court thus, held;

...it will be an error of fact when a public body is prompted by a mistaken belief in the existence of a non-existent fact or circumstances.

xx xx xx xx

...an administrative order based on reasons of fact, that do not exist must be held to be infected with an abuse of power, and must be set aside.

9. In view of the law laid down in the case of State of Orissa v. Vidya Bhushan Mohapatra (supra) we do not find any infirmity in the impugned order of the

learned Single Judge and no interference with the order impugned in the writ case is warranted even if it is assumed that the Petitioner was not given reasonable opportunity with regard to the second charge as the finding with respect to the first charge relating to unauthorised absence is sufficient for the dismissal of the Petitioner from service.

10. Moreover, on perusal of annexure-5 and the enquiry report we do not find any infirmity in the finding of the learned Single Judge that there is no substance in the submission in respect of the allegation relating to defalcation, which did not form part of the initial charge. As such, we do not find it to be a fit case for any interference with the impugned order, passed by the learned Single Judge.

The appeal is thus, dismissed, but without costs.