
(2011) 10 PAT CK 0008
In the Patna High Court
Case No : CWJC No. 5519 of 2003

Mahendra Prasad Sharma

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 13-10-2011

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2012) 2 PLJR 655

Hon'ble Judges : Mihir Kr. Jha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mihir Kr. Jha, J.—Heard counsel for the parties. In this writ application the petitioner a retired Government servant has assailed his order of punishment dated 18.3.2003 withholding 25 per cent of his pension for a period of ten years on the ground of certain alleged misconduct committed by him during his active service period.

2. Learned counsel for the petitioner while assailing the impugned order of punishment has submitted that the same has been passed not only on the mere ipse dixit of the higher Authorities but also by choosing to discriminate the petitioner between the same set of persons who were facing identical allegation. In this regard, he has explained that the petitioner was a Section Officer and therefore, the allegation against him that he alone had been responsible for issuance of a transfer order of 46 Medical Officers in disobedience/defiance of the order of the Chief Minister, who had only approved transfer of only one out of 46 Medical Officers was wholly incorrect, inasmuch as, such order of chain transfer of 46 medical officers was issued after approval of all the concerned Authorities up to the level of departmental Secretary. He has also submitted that when no other person except the petitioner has been subjected to departmental inquiry, much less punished in any manner, the order of punishment against the petitioner by holding him only guilty for the alleged misconduct would be wholly

unfair and in fact also discriminatory.

3. Per contra, learned counsel for the State has submitted that it was the petitioner who had created the situation for issuance of an illegal order of transfer of 46 Medical Officers, inasmuch as, he had failed to inform the higher Authorities as with regard to there being no approval of the Chief Minister for transfer of remaining 45 Medical Officers. Learned counsel for the State has also submitted that in any event the charges against the petitioner were found to be proved by the Inquiry Officer and as such, this Court is not required to go into the other aspect as with regard to discrimination in the matter of initiating departmental proceeding and/ or inflicting punishment specially when the departmental Minister himself had exonerated the other officers and had found the petitioner alone prima facie guilty, whereafter the petitioner was suspended and subjected to departmental proceeding in which charges were proved against him. He would also explain that the punishment of withholding of 25% pension of the petitioner for a period of ten years in the facts and circumstances of this case can also be not held to be disproportionate keeping in view the seriousness of allegations against him.

4. In the considered opinion of this Court the contention raised by learned counsel for the petitioner as with regard to discrimination is fit to be accepted. From the perusal of the records, it is clear that the petitioner was a Section Officer and the allegation against him on which he was placed under suspension and subjected to a departmental enquiry was that he was party to issuance of an illegal order of transfer of 46 Medical Officers because there was approval of the Chief Minister for transfer of only one of them. Mr. C.K. Anil, the Inquiry Officer, in his inquiry report dated 10.10.2001 (Annexure-9) has, however, held the petitioner guilty in isolation by looking into the departmental files and holding that the defence of the petitioner that he had acted as per oral instruction of the Deputy Director was incorrect. Such report of the Inquiry Officer in fact has also been approved by the disciplinary authority whereafter the petitioner has been subjected to punishment of withholding of his 25% of his pension.

5. This Court however on appreciation of materials on record finds the whole approach of the Inquiry Officer and the disciplinary authority to be not only erroneous but in fact perverse. The petitioner was at best a Section Officer and above him were at least three officials in the rank of Deputy Director, Additional Secretary and the Secretary. The order of the Chief Minister in file as with regard to approval of transfer of only one of the 46 Medical Officers could not have therefore gone unnoticed only by the petitioner. Mr. R.K. Khandelwal, the Deputy Director, in fact on 16.9.1999 had given his separate note which in fact is not based on the so-called impressions created by the petitioner in his notes recorded in the concerned file. As a matter of fact Mr. Ashok Kumar Chaudhary, the then departmental Secretary, also had accepted in the same file that the issuance of transfer order was a mistake jointly committed by all the authorities including himself. In that view of the matter, the petitioner alone could not have

been held guilty for the solitary charge of issuance of an illegal order of transfer nor could have been singled out for inflicting punishment.

6. It has to be also kept in mind that the departmental Minister in his note dated 27.10.1999 having noticed aforesaid aspects had clearly recorded that the alleged human error could have been possible only at one stage but when all the authorities right from the Section Officer to the Departmental Secretary at different stages had committed such error the same was definitely done by way of well hatched conspiracy. The only aspect on which the Departmental Minister agreed or in fact had acceded to the recommendation of departmental Secretary was that whereas he had directed for issuance of warning to all other Officers, but in respect of the petitioner he had directed to place him under suspension for being subjected to Departmental proceeding holding him to be the sole person allegedly responsible for issuance of transfer order. That however does not seem to be correct approach, inasmuch as, if there was a combined decision and a conspiracy to transfer 46 Medical Officers in which every officer from the level of Section Officer to the Departmental Secretary had played their role while defying the order of the Chief Minister, either the neck of each and every one of them including the petitioner should have been caught hold of or even the petitioner could have been let off alike others by issuing a warning instead of victimizing him who in fact was the lowest rank employee in the decision making process.

7. Thus, this Court would find no rationale or justification for holding only the petitioner guilty for the alleged misconduct and consequently the impugned order cannot be sustained. True it is that the concept of equality guaranteed under Article 14 of the Constitution of India cannot be strictly made applicable in the case of punishment but the other facet of Article 14 namely action being arbitrary could still vitiate the impugned order of punishment, inasmuch as, if there are more than one person responsible for committing same misconduct, the neck of only one person cannot be caught hold while leaving others.

8. The Apex Court had also taken the same view in the case of The Director General of Police and Others Vs. G. Dasayan, as also in the case of Tata Engineering and Locomotive Co. Ltd. Vs. Jitendra Pd. Singh and Another, wherein it was laid down that the parity in dealing the delinquent with the same Act of misconduct and inflicting the same punishment is the basic requirement of fair play and reasonableness.

9. In the case of State of U.P. and Ors. vs. Raj Pal Singh, reported in J.T. 2001 Suppl. (1) SC 44, the Apex Court had held that:--

It is undoubtedly open for the disciplinary authority to deal with the delinquency and once charges are established to award appropriate punishment. But when the charges are same and incident, then to deal with the delinquents differently in the award of punishment, would be discriminatory.

10. Yet again in the case of Anand Regional Co-op. Oil Seedsgrowers Union Ltd. Vs. Shaileshkumar Harshadbhai Shah, , the Apex Court had held as follows:-

There is, however, another aspect of the matter which cannot be lost sight of. Identical allegations were made against seven persons. The management did not take serious note of misconduct committed by six others although they were similarly situated. They were allowed to take the benefit of the voluntary retirement scheme.

The first respondent might not have opted therefore. However, having regard to the peculiar facts and circumstances of this case, he should be, in our opinion, treated as a similar footing. In view of the fact that the first respondent has succeeded in the Labour Court and the learned Single Judge as also the Division Bench; we are of the opinion that having regard to the overall situation, the interest of justice would "be subserved if the award of the Labour Court dated 31.1.2003 as affirmed by the High Court is substituted by a direction that the first respondent shall also be given the benefit of voluntary retirement scheme from the month in which the other workmen were given the benefit thereof.

11. Again the Apex Court in the case of State of Jharkhand and Others Vs. Tata Cummins Ltd. and Another, had held that:-

It is true that delinquent officers similarly situated should be dealt with similarly and, thus if the charges against the employees are identical, it is desirable that they be dealt with similarly.

12. The same principle of law in a more erudite manner has been laid down by the Apex Court in the case of Man Singh Vs. State of Haryana and Others, in the following words:--

We may reiterate the settled position of law for the benefit of the administrative authorities that any act of the repository of power whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair-minded authority could ever have made it. The concept of equality as enshrined in Article 14 of the Constitution of India embraces the extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equals have to be treated equally even in the matter of imposing liability upon him. Equals have to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of "fair play" and reasonableness.

13. Thus from the aforesaid binding precedents of the Apex Court it becomes clear that there can be no varying standard in inflicting punishment for the same misconduct. In the present case, it is also more than clear that the petitioner being a Section Officer was, not alone responsible for issuance of transfer order, inasmuch as, the same was issued only after the approval of the higher authorities including the Deputy Director, Additional Secretary and the Departmental Secretary. It is curious to note that none others were even

subjected to departmental proceeding and in fact let off by issuing a warning to them whereas the petitioner was inflicted punishment of withholding of 25 per cent pension.

14. Thus for the reasons recorded above the impugned order of punishment cannot be sustained and is, accordingly, quashed. In normal circumstances, this Court could have given liberty to initiate a proceeding against all the guilty officials as found in the note of departmental minister dated 27.10.1999 but keeping in view that the matter is quite old and most of those officers alike the petitioner have already retired from service with a punishment of warning for the same misconduct, the whole episode must be brought to an end by directing the respondents to reconsider the quantum of punishment of the petitioner by also inflicting same punishment of warning or censure as done in the case of others. This exercise, however, must be completed within a period of three months from the date of receipt/ production of a copy of this order so that the continued agony of the petitioner, a retired Government servant comes to an end and his 25 per cent pension so withheld till now is restored. In the result, this application with the aforesaid observations and directions to the extent indicated above is allowed. There would be however, no order as to costs.