

(2001) 02 PAT CK 0049
In the Patna High Court
Case No : C.W.J.C. No. 7991 of 1996

Mazhar Imam Afroj

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-02-2001

Acts Referred:

Citation : (2001) 02 PAT CK 0049

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—In this writ petition, the petitioner has assailed the validity of the order of disciplinary authority, contained in Annexure-1, as well as the order of the appellate authority, contained in Annexure-2, whereby and whereunder the disciplinary authority has inflicted major penalty of dismissal from service and the same has been affirmed by the appellate authority as well.

2. It appears that the matter came up before this Court earlier also on two occasions and lastly by the order dated 1.12.1995 passed in C.W.J.C. No. 4831/95 the matter was remanded to the appellate authority for fresh consideration and exercise of its independent judgment. It appears that on the said remand, the appellate authority has passed the impugned order, contained in Annexure-2.

3. Learned Counsel for the petitioner has raised short questions to assail the validity of both the impugned orders. He has submitted that admittedly, the petitioner was not given second show-cause notice before the impugned order imposing major penalty was passed against him. As such, he has been denied of reasonable opportunity and the action of the authority is in complete violation of the principles of natural justice in view of Saw settled in this regard in numerous decisions. He has referred to the decision in the case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., .

4. Mr. Jaiswai, learned Counsel appearing for the Corporation, has submitted that the appellate authority in the impugned order has not found it to be necessary

on considering the totality of the circumstances of the case and the manner of its course specially the nature of the charge, the evidence available and the fact that the petitioner not only had the opportunity but did actually make the appeal followed by an application in this Court and finally had full opportunity during the personal hearing to argue it.

5. This Court fails to appreciate the said submission of the learned Counsel for the Corporation. In view of the law settled, the second show-cause notice before imposition of major penalty is essential and non-compliance of it violates the order of the disciplinary authority as well as the appellate authority on this ground alone. Whether a duty arises in a particular case to issue a show-cause notice before inflicting a penalty does not depend on the authority's satisfaction that the person to be penalised has no defence but on the nature of the order proposed to be passed.

6. The Apex Court in the case of *The Board of High School and Intermediate Education, U.P. and Others Vs. Kumari Chitra Srivastava and Others*, , though dealing with the case relating to cancellation of examination repelled the similar argument advanced on behalf of the appellant that it would amount to casting the heavy burden to comply with the rules of natural justice and observed as follows

Principles of natural justice are to some minds burdensome but this price a small price indeed has to be paid if we desire a society governed by the rule of law" and accordingly, dismissed the appeal filed on behalf of the Board.

7. In the instant case, it has also been argued by the learned Counsel for the petitioner that for the same charge a criminal case was also instituted against the petitioner in which final form was submitted to the Court of Special Judge on 22.1.1991 stating that no charge-sheet could be submitted for lack of sufficient evidence against the accused-persons and as such, the petitioner was exonerated from the charge by the Court dealing with the said criminal case and the proceedings was dropped. It has also been submitted that in view of law settled by the Apex Court in the case of *Govt. of Andhra Pradesh and Another Vs. C. Muralidhar*, , a departmental proceedings itself could not have continued when the criminal case for same charge was dropped by the Court. The petitioner, if would have been given second show-cause notice, he would have brought the said fact to the notice of the disciplinary authority but great injustice has been done by the denial of the second show-cause notice to the petitioner.

8. Learned Counsel for the Corporation has, however, with reference to Annexure-5, submitted that it is true that the petitioner could not be sent up to Court for prosecution owing to insufficient evidence but in the final form (Annexure-5), it is mentioned that there is sufficient evidence to prove grave misconduct on the part of the accused which included the petitioner, as they failed to perform their duties with absolute integrity and devotion to duty. Hence, the case was referred to the Department for initiating regular

departmental action. Accordingly, it is submitted by the learned Counsel for the corporation that this case shall not be covered by the principles decided by the Apex Court in the case of Government of Andhra Pradesh and Anr. v. C. Muralidhar (supra).

9. There may be some substance in the submission of the learned Counsel for the Corporation but this was the reason why all the more the petitioner ought to have been given second show-cause notice and on consideration of which the disciplinary authority could have taken final decision in the matter in accordance with law.

10. Accordingly, the impugned orders of the disciplinary authority, contained in Annexure-1, and of the appellate authority, contained in Annexure-2, in my opinion, cannot be sustained and they are thus quashed.

11. In the result, the writ application is allowed and the matter is remitted back to the disciplinary authority for taking further action in the matter in accordance with law after giving second show-cause notice against the proposed punishment to the petitioner within one month of the receipt/production of a copy of this order. If such opportunity is granted to the petitioner, he shall file his show cause in pursuance to the said notice within a month thereafter and the disciplinary authority shall pass final order afresh without being prejudiced by the earlier order within two months of filing of the show cause by the petitioner in accordance with law.

12. It is, however, made clear that if no second show cause notice is issued within the aforesaid time, the petitioner will be emitted for reinstatement and payment of all back wages.