

(2016) 03 PAT CK 0057

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 723 of 2013

Md. Shamim Akhtar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 15-03-2016

Acts Referred:

Citation : (2016) 03 PAT CK 0057

Hon'ble Judges : S.P. Singh, J.

Bench : Single Bench

Advocate : Rajiv Kumar Verma, Sr. Advocate, Mrigank Mauli, Sanjay Kumar, Vinay Mistry, Sanket and P.K. Mishra, Advocates, for the Appellant; Anil Kumar Sinha, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

S.P. Singh, J.—1. The petitioner seeks quashing of the order, dated 21.2.2012, as contained in memo No. 2765 issued by the General Administration Department, Government of Bihar dismissing him from service.

2. The petitioner joined the Bihar Administrative Service on 2.6.1992. On 4.1.2004, he was posted as Block Development Officer, Palasi Block in the district of Araria, on which post he remained till 9.5.2005, before being transferred to Nagra Block. In the year 2009, he was departmentally proceeded for charges contained in Prapatra "Ka", dated 11.2.2009 (Annexure-5).

3. The charge, in short, was as under:

"(i) The petitioner deposited SGRY funds in PACS account by opening a new Account No. 13 dated 17.1.2004 instead of depositing the amount in a nationalized bank or a post office as per guidelines of the Central and the State Government;

(ii) The funds deposited in the Dehti PACS account were misused for which the petitioner was fully responsible."

On conclusion of the enquiry, the Enquiry Officer vide its report, dated 27.11.2009 found the petitioner guilty of violating government direction in depositing the SGRY funds in local PACS account instead of depositing the same in a nationalized bank or a post office. However, the Enquiry Officer absolved him of second charge that there was any misuse of government funds deposited in the PACS account in absence of adequate materials.

The Chief Secretary, Government of Bihar, by his order, dated 9.1.2010 insisted on a fresh enquiry to establish the charge that payment made to the beneficiaries under Indira Awas Yojana was mythical and to obtain representation from the identified beneficiaries with regard to non-payment to them.

4. In view of order, dated 9.1.2010 a supplementary/amended charge was framed vide memo No. 7431, dated 12.7.2010, as contained in Annexure-11. There were two allegations in the amended charge sheet as well, which were fundamentally the same as in the first charge sheet, dated 11.2.2009 (Annexure-5). The first charge again reiterated that fund was deposited with Dehti PACS, in violation of government circulars to deposit the same either in a nationalized bank or a post office. The second supplemental charge was that the petitioner used the funds for personal gain in connivance with the Manager, Dehti PACS and other intermediaries. This charge was substantially not much different from the earlier ones that the petitioner was responsible for misutilization of funds.

5. The petitioner filed his reply to the amended charge and a denovo enquiry was started. This time, the petitioner was held guilty of both the charges vide enquiry report, dated 26.3.2011 (Annexure-14). It is relevant to state that the amended charge No. 2 of Charge sheet, dated 12.7.2010 (Annexure-11) is substantially similar to Charge No. 2 of charge memo, dated 12.5.2009 (Annexure-5) which was held not proved by the first Enquiry officer.

6. On the basis of the second enquiry report, dated 23.1.2010 of Shri Brajesh Kumar, the then Block Development Officer, Palasi, the petitioner was issued second show cause notice vide letter No. 4908, dated 4.5.2011 (Annexure-15). The second show cause notice was dispatched to the petitioner only on 27.7.2011 without copy of the enquiry report. The petitioner made a protest to the same vide his letter dated 31.7.2011 (Annexure-16). As the petitioner did not receive any copy of the enquiry report, he obtained a copy thereof from the office of the Enquiry Officer on 21.9.2011 and submitted his response before the General Administration Department on 26.9.2011 (Annexure-17). Not being satisfied with the explanation of the petitioner, the disciplinary authority inflicted punishment of dismissal from service vide order, dated 21.2.2012, as contained in memo No. 2765 (Annexure-19).

7. The petitioner has assailed the impugned proceedings as well as order of punishment on number of grounds. He submits that prior to issuance of second show cause notice, the respondents had predetermined to punish and hold him

guilty, which is not permissible in law, in view of the decisions rendered in the case of *Oryx Fisheries Private Limited v. Union of India & Ors.*, reported in , (2010)13 SCC 427 and *Surendra Tiwari v. The State of Bihar & Ors.*, reported in , 2013(2) PLJR 251.

8. On merit of the case, the petitioner submits that he has been held guilty of misutilisation of funds on the enquiry report of one Brajesh Kumar, who in turn had relied upon the statements of three beneficiaries. He submits that the said beneficiaries were of different Panchayats with which the petitioner was not concerned and the allegation was of the period 2006, whereas the petitioner was transferred on 9.5.2005 to Nagra Block.

9. The petitioner submits that neither a copy of the enquiry report of Brajesh Kumar nor the statements of three beneficiaries which formed the basis for indicting him of the second charge, was ever supplied to him. He further submits that it is well settled by the Hon''ble Apex Court in the case of *Union of India v. S.K. Kapoor*, reported in , (2011) 4 SCC 589 that if any specific material is sought to be relied upon in departmental proceeding, a copy of the same must be served upon the delinquent so that he may have a chance to rebut the same.

10. So far the first charge, that the petitioner deposited the SGRY funds in the PACS account instead of depositing the same in a nationalized Bank or a Post Office, in breach of the Government instructions, contained in letter No. 6748, dated 28.4.2004 of Rural Development Department, the petitioner submits that during his tenure there was no receipt of any guidelines in his office or instructions either from the State Government or the Central Government that the SGRY funds was to be deposited in a nationalized Bank or a post office. He submits that depositing the money with the Dehti PACS was practice prevalent based on the direction issued by the Deputy Development Commissioner, Araria vide memo No. 1736, dated 2.12.2000 (Annexure-2). In support of his submission that no instruction/guideline was received in his office from the Rural Development Department, he refers to R.T.I. information, dated 19.4.2014, contained in memo No. 661, furnished by the Director-cum-Public Information Officer, District Rural Development Authority, Araria (Annexure-21/A), as per which no such guidelines was received in the office of the District Rural Development Authority, Araria, in the year 2004.

11. On the other hand, learned counsel for the respondents have justified the impugned action. Learned counsel submits that the petitioner ought to have deposited the SGRY funds in a nationalized Bank or a Post Office as per guidelines of the Central and the State Government. He further submits that the second Enquiry Officer found him guilty, based on the statements of three beneficiaries. He further tried to convince the Court that even at the stage of second show cause, it is permissible for a disciplinary authority to arrive at a finding of guilt. In support of his submission, he relied upon a decision in the case of *S.N. Narula v. Union of India & Ors.*, reported in , (2011) 4 SCC 591.

12. At this stage, I would like to point out that the decision rendered in case of S.N. Narula (supra) was in different context and not relatable to the facts and circumstances of the present case and as such reliance placed by the respondents on the said decision is misplaced.

13. I have heard learned counsel for the parties.

14. The petitioner was posted as Block Development Officer of Palasi Block between 4.1.2004 to 9.5.2005. Initially, a charge sheet was issued on 9.5.2009 containing two charges. The first charge was that the petitioner deposited SGRY funds in local PACS in violation of government circular, as per which the fund was to be deposited in a nationalized bank or a Post Office. The second charge was that the fund was misused for which the petitioner was fully responsible. The first Enquiry Officer in his report, dated 27.11.2009 (Annexure-10) absolved him of second charge. Soon thereafter an amended charge containing substantially two similar charges was framed on 12.7.2010. The second enquiry report held the petitioner guilty of both the charges.

15. So far as first charge is concerned, I find that the petitioner deposited a sum of Rs. 16,00,000/- in local PACS between 17.9.2004 to 5.4.2005. The respondents have not been able to produce any documents on record to establish that any government instructions were received in the petitioner's office to the effect that SGRY funds was to be deposited in a nationalised Bank or a Post Office. On the other hand, the petitioner has brought on record memo No. 1736, dated 2.12.2000 issued by the Deputy Development Commissioner, Araria (Annexure-2) which permitted depositing of SGRY funds in PACS account. It is true that this Court would not go into the sufficiency or otherwise of the material on which the disciplinary authority recorded its finding, but there has to be some materials on which such findings has to be recorded. In the instant case, there is no such material, save and except the submission of the respondents that government instructions directed depositing of the money in a nationalized Bank or a Post office. In absence of legal material, I hold that the respondents have failed to substantiate that any such instructions/guidelines to deposit the SGRY funds in a nationalized bank or a post office was received in the petitioner's office or that he was in know how of any such information. As such, I hold that Charge No. 1 is not made out against the petitioner.

16. Coming to the second charge that the petitioner misused the government funds or misused the funds for his personal gain, as is the allegation in the amended charge, I find that the first Enquiry Officer exonerated him of the said charge. The second Enquiry Officer indicted him of the said charge on the report of one Brajesh Kumar, who in turn relied upon the statements of three beneficiaries. Admittedly, neither the enquiry report of Brajesh Kumar nor the statements of three beneficiaries were brought on record much less furnished to the petitioner. The law as decided in the case of Union of India v. S.K. Kapoor, reported in , (2011)4 SCC 589, mandates in paragraph 5 that if any specific material is sought to be relied upon in departmental proceeding, a copy of the

same must be served upon the delinquent so that he may have a chance to rebut the same.

17. Besides this, I find that the respondents at the stage of second show cause had already made up its mind to hold the petitioner guilty and to punish him. The aforesaid fact would appear from perusal of the second show cause notice, dated 4.5.2011, as contained in Annexure-15. It further appears that even prior to issuance of second show cause notice, necessary approval for dismissal of the petitioner was taken from the Hon"ble Chief Minister on 18.4.2011 (Annexure-18).

18. A decision to hold a person guilty and to inflict major punishment at the stage of issuance of second show cause notice renders the consideration of such reply an empty formality, which is impermissible in law in view of law laid down by the Hon"ble Apex Court in the case of Oryx Fisheries Private Limited (supra). The relevant extract of paragraph 31 of the judgment is quoted herein below for easy reference:

"31. It is of course true that the show-cause notice cannot be read hypertechnically and it is well settled that it is to be read reasonably. But one thing is clear that while reading a show-cause the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show-cause notice and prove his innocence. If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show-cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show-cause notice does not commence a fair procedure especially when it is issued in a quasi-judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence".

19. Situated thus, and in backdrop of the discussions made above, I find that the disciplinary authority has failed to produce relevant materials on record to establish the guilt of the petitioner. Besides this, the enquiry proceeding has been conducted in breach of well established norms and principles of law.

20. In the result, this writ application is allowed. The enquiry report, the findings of guilty recorded by the disciplinary authority, dated 26.3.2011 (Annexure-14) as well as consequential order of punishment dated 21.2.2012, as contained in memo No. 2765 (Annexure-19) are accordingly quashed. The petitioner would be reinstated in service forthwith with all consequential benefits including entire back wages right from the date of dismissal.