
(2020) 01 PAT CK 0273

In the Patna High Court

Case No : Letters Patent Appeal No. 259 Of 2018, Civil Writ Jurisdiction Case No. 10556 Of 2014

**Mokhtar Alam @ Md. Mokhtar Alam @APPELLANT@Hash State Of Bihar
And Ors**

Date of Decision : 18-01-2020

Acts Referred:

Bihar Civil Court Staff (Class III And Class IV) Rules, 2009 — Section 19, 20(4), 27
Bihar Government Servants (Classification, Control And Appeal) Rules, 2005 — Section 28
Constitution Of India, 1950 — Article 14, 235

Citation : (2020) 01 PAT CK 0273

Hon'ble Judges : Prabhat Kumar Singh, J; Hemant Kumar Srivastava, J

Bench : Division Bench

Advocate : Prabhakar Singh, Gyan Prakash Ojha, Piyush Lall

Final Decision : Dismissed

Judgement

1. Heard learned respective counsels of the appellant and the respondents.
2. This Letters Patent Appeal has been filed against the judgment dated 23.1.2018, passed by the learned Single Judge in C.W.J.C.No. 10556 of 2014, whereby he has dismissed the aforesaid C.W.J.C.No. 10556 of 2014. In the writ application, the petitioner/appellant had prayed for quashing Order No. 47/2014, issued vide Memo No. 574-75 dated 21.4.2014 of the District & Sessions Judge, Aurangabad (respondent no.6) in the light of the direction given vide Letter No. 18655/2014/Legal Cell/Legal-02/DP-2013 dated 16/18.4.2014 of the Registrar General, Patna High Court, Patna (respondent no.2).
3. Brief facts giving rise to the present appeal, are as follows:-

The appellant, who was then posted as a Bench Clerk in the office of the Presiding officer, Fast Track Court No. II, Aurangabad was proceeded against the charge of having demanded a sum of Rs.50,000/- for acquittal of the accused persons in Sessions Trial No. 1115 of 2009 from his mobile phone on the mobile phone of one Pankaj Sharma, son of the allegationist. Preliminary enquiry was

made by Sri Arun Kumar, the then Registrar Appointment, Patna High Court and the enquiry report was submitted before the Standing Committee. Considering the matter, the Standing Committee vide its minutes dated 8.5.2012 directed the District and Sessions Judge, Aurangabad to initiate disciplinary proceedings against the appellant. After holding the enquiry, the District and Sessions Judge submitted his enquiry report to the Standing Committee which was considered and turned down by it with direction to initiate disciplinary proceeding against the delinquent afresh in the High Court and appointed the then Registrar (Administration), Patna High Court as the Enquiry Officer while the then OSD of the Patna High Court was appointed as the Presenting Officer, on the charges that the appellant, while functioning as Bench Clerk in the Court of Sri Arun Kumar Sinha, ADJ, FTC II, Aurangabad had with an intent to gain illegal gratification entered into telephone conversation on 15.7.2009 by his mobile phone having Mobile no. 9955425802 to mobile no. 9470647435 with Pankaj Sharma, son of Sri Sitaram Mistry @ Sitaram Sharma, both accused in Sessions Trial No. 1115 of 2009 and called the said Pankaj Sharma at his residence and made demand of Rs.50,000/- as illegal gratification for ensuring their acquittal in Sessions Trial No. 1115/2009. During departmental proceeding, voice sample of the appellant was examined by the Forensic Science Laboratory (FSL) and it reported that voice recorded at the FSL and the voice sample of the appellant sent separately are probable similar. In the second enquiry report, the charges were held to be established and proved against the appellant and accordingly, the appellant was inflicted the punishment of dismissal from service with immediate effect by Order No. 47/2014, issued vide Memo No. 547-75 dated 21.4.2014 by the District & Sessions Judge, Aurangabad (respondent no.6), passed in pursuance of the direction given vide Letter No. 18655/2014/Legal Cell/Legal-02/DP-2013 dated 16/18.4.2014 of the Registrar General, Patna High Court (the respondent no.2).

4. Mr. Prabhakar Singh, learned counsel appearing for the appellant submits that the entire departmental proceedings is void ab initio as the appellant was earlier exonerated by the Enquiry Officer after conducting full fledged enquiry in accordance with the law, but the Standing Committee of the High Court, having disagreed with the findings, directed for initiation of fresh departmental proceeding to be conducted in the High Court itself. Thereafter, on the conclusion of the departmental proceedings, charges were held to be proved against the appellant. Learned counsel submits that from perusal of Order No.47/2014 of the District and Sessions Judge, Aurangabad it is evident that the learned District and Sessions Judge has passed the aforesaid order of dismissal of the appellant in pursuance of communication vide Letter dated 16th/18th April, 2014 of the Registrar General, Patna High Court in which it has been held that "the Hon'ble Court have been pleased to resolve to impose punishment of dismissal from service upon delinquent Shri Md. Mokhtar Alam". Learned counsel submits that thus, the Appellate Authority, i.e., the Hon'ble Court, becoming the Disciplinary Authority, has taken away the appellant's right to appeal. It is further submitted

that in such a situation, the appellant is not entitled to challenge the order of his dismissal under review, as the dismissal order has not been passed by the Disciplinary Authority, rather the same has been passed by the Appellate Authority. He submits that there is no provision of revision or review under the Bihar Civil Court Staff (Class III and IV) Rules, 2009, therefore the appellant has been left with no other option. He submits that as per Rule 19 of the aforesaid Rules, it is the District and Sessions Judge who has got the jurisdiction to proceed against the delinquent employee departmentally, and not the Standing Committee of the High Court. In support of the submission, learned counsel for the appellant relies on the decisions in the case of *KR Deb Vs. The Collector of Central Excise, Shillong*, reported in AIR 1971 SC 1447 and *HL Gulati Vs. Union of India and others*, reported in (2015) 12 SCC 408.

5. On the other hand, Mr. Piyush Lall, learned counsel appearing for the respondents submits that the Appellate Authority has the powers to act as Disciplinary Authority and order of punishment in departmental proceeding does not get vitiated if the same is passed by the Appellate Authority exercising the powers of the Disciplinary Authority in case the right of review and /or revision is available to the delinquent employee notwithstanding his right of appeal against such order of punishment having been taken away. It is the case of the respondents that in view of sub Rule (4) of Rule 20 read with Rule 27 of the Bihar Civil Court Staff (Class III and IV) Rules, 2009, all procedures for holding Departmental proceeding, imposition of penalty, disposal of appeal etc, shall be governed by such statutory Rules as are applicable for the employees concerned. At this juncture, he refers to Bihar Government Servants (Classification, Control & Appeal) Rules, 2005, Rule 28 whereof provides procedure for revision. He has further submitted that the Disciplinary Authority or the Appellate Authority, acting as Disciplinary Authority as above, has the power to direct for a fresh enquiry on receipt of enquiry report, provided he finds that the enquiry conducted by the Enquiry Officer suffers from serious and incurable defects in procedure to hold the enquiry. He has further submitted that since there is provision of revision under Rule 28 of the Bihar CCA Rules, 2005, the appellant can take resort to the remedy of revision. He further submits that though an authority lower than the appointing authority cannot take any decision in the matter of disciplinary action, but there is no prohibition in law that the higher authority should not take decision or impose the penalty as the primary authority in the matter of disciplinary action. Mr. Pyush Lall, learned counsel representing the respondents has further denied the appellant's claim that any discrimination or material prejudice has been caused to him amounting to violation of Article 14 of the Constitution. In support of the submission, he relies on the decisions in case of *Balbir Chand Vs. Food Corporation of India Ltd. and others*, reported in (1997) 3 SCC 371. Learned counsel further submits that the appellant in his reply to second show cause notice admitted his guilt to the charges against him in no uncertain terms and therefore on the basis of the said admission the only question remained for the Disciplinary Authority was to consider the nature of

punishment to be imposed and as the charge stood proved on admission, therefore, the plea of violation of principles of natural justice is not tenable. He argued that it is settled law that plea of violation of Natural Justice is to be examined on the principle of actual prejudice caused due to such violation and order of punishment cannot be set aside on a mere claim of the delinquent employee of such a violation without him establishing actual prejudice caused on account of the same. He further submits that it is a settled law that having regard to admitted facts if only one view or conclusion is possible, the same stands as an exception to the principles of Natural Justice. He submits that the power of the High Court over the subordinate judiciary including its staffs, under Article 235 of the Constitution, is a constitutional power vested to ensure its independence being a basic feature of the Constitution and thus this power can be independently exercised to hold departmental proceedings against the employees of subordinate judiciary and to impose punishment on them cannot be limited by any Rule or even Legislation. Reliance is placed on the decisions in the case of *Rajendra Singh Verma Vs. Lt. Governor (NCT of Delhi)*, reported in (2011) 10SCC 1 paragraphs 98, 191 & 192 and *Renu and others Vs. District and Sessions Judge, Tis Hazari Courts, Delhi* and another, reported in (2014) 14 SCC 50. It is further submitted on behalf of the respondents that the appellant, in his reply to second show cause notice, admitted his guilt to the charges levelled against him in no uncertain terms, and therefore, on the basis of the said admission the only question remained for the Disciplinary Authority was to consider the nature of punishment to be imposed and as the charge stood proved on admission, therefore, the plea of violation of Natural Justice is not tenable.

6. Having heard the contentions of the parties, I went through the impugned judgment as well as the original records. I am of the view that the Appellate Authority, acting as the Disciplinary Authority, has the power to direct for a fresh enquiry.

In the case of *Balbir Chand (supra)*, Hon'ble Apex Court has held that an authority lower than the appointing authority cannot take any decision in the matter of disciplinary action. But there is no prohibition in law that the higher authority should not take decision or impose the penalty as the primary authority in the matter of disciplinary action. On that basis, it cannot be said that there will be discrimination violating Article 14 of the Constitution or causing material prejudice. In the instant case, enquiry report of the District and Sessions Judge, Aurangabad submitted vide letter no. 31 dated 3.10.2012, was found to be having certain shortcomings and procedural flaws therein. In this background, after finding the enquiry having been conducted in slip shod manner, it was resolved that the enquiry report was not acceptable and the disciplinary proceeding against the delinquent employee be initiated afresh in the High Court. Thereafter, the then Registrar (Administration), Patna High Court was appointed the enquiry officer, whereas the then OSD, Patna High Court was appointed as the Presenting Officer. It further appears that pursuant to the direction of the Standing Committee, the appellant appeared in the departmental proceedings, but

he did not raise any objection to the decisions of the Standing Committee, as such, he cannot challenge the said decision of the Standing Committee or the punishment imposed on him. In this regard, reliance is placed on the decisions in the case of Kishan Lal Vs. State of J & K, reported in (1994)4 SCC 422 and Sohan Singh & others Vs. The General Manager, Ordinance Factory, Khamaria Jabalpur and others, reported in 1984(Suppl) SCC 661.

7. With respect to the claim of the appellant that he did not admit his guilt to the charges, rather it was his mercy petition in which he had stated this fact, I am of the view that this plea of the appellant is noted to be rejected in view of Annexure 19, wherein, in no uncertain terms, the appellant has admitted his guilt to the charges levelled against him and the same admission was made during the departmental proceedings itself. It is well settled that once delinquent admits the charge and his defence is disbelieved by the authorities, any procedural lapses of any nature in departmental proceedings is inconsequential and does not vitiate order of punishment. In the case in hand, the appellant has admitted his guilt to the charges during the departmental proceedings. Reference can be made on the decision of this Court in case of Mahesh Prasad Singh Vs. The State of Bihar and others, reported in 2010(2) PLJR 597. Besides, learned counsel for the appellant has placed reliance on the decisions made in case of KR Deb (supra) and HL Gulati (supra). However, on going through these decisions, I find that the facts and circumstances of these cases are entirely different and distinguishable from the facts emerging in the case of the appellant. In the instant case, the appellant has admitted the charges in the departmental proceedings, which is not the position in the aforementioned decisions. Thus, the ratio of law decided in these decisions will not come in the aid of the appellant.

8. Considering the submissions of the parties discussed above as well as the pronouncements of law in the aforesaid cases, I do not find any infirmity in the writ court judgment dated 23.1.2018, as such, the instant appeal being bereft of merit, is dismissed accordingly.