
(2007) 12 JH CK 0005
In the Jharkhand High Court

Namo Narayan Dubey

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 13-12-2007

Acts Referred:

Citation : (2008) 2 JCR 245

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.K. Merathia, J.—Heard the parties.

2. Petitioner has challenged the order dated 23.1.1998, awarding punishment of reduction in pay scale from Rs. 1400-2300/-to Rs. 1200-1800/-. It is further ordered that during suspension period he will not get anything further except the subsistence allowance though the suspension period will be counted for pensionary benefits. It is further ordered that Rs. 42,490/-, defalcated by the petitioner, will be realized from his leave salary and gratuity.

2. It is submitted on behalf of the petitioner that a criminal case was also filed with regard to charge No. 1 for defalcation of Rs. 23,475.67 and with regard to charge No. 3 for defalcation of Rs. 1,000/-, but subsequently after a full dress trial, petitioner was acquitted on 21.2.2002. It is further submitted that regarding charge No. 2 the disciplinary authority said that though Rs. 6,440/- was ultimately deposited but there was a case of temporary defalcation. Regarding charge No. 4, the enquiry officer found that the same was not fully proved but the disciplinary authority found that the petitioner defalcated Rs. 3180/-. Regarding charge No. 5, the enquiry officer found that it is difficult to arrive at any conclusion in absence of the verification of the accounts fully by special team but the disciplinary authority found that petitioner defalcated Rs. 14766.85. It is further Submitted that a show cause notice was issued to the petitioner on 19.1.1998 simply reiterating the charges, and without indicating the

grounds for differing with the enquiry report. Moreover, though 15 days time was given to file show cause but the impugned order of punishment was passed on 23.1.1998.

2.1 There is no dispute that disciplinary authority can differ with the findings of the enquiry officer but then he is require¹ to issue a show cause notice indicating the grounds on which he differs, but it appears from the show cause notice dated 9.11.1998 (Annexure 4) that the charges were simply reiterated without indicating reasons for differing from the findings of the enquiry officer. Further it appears that 15 days time was allowed for filing reply, but the order was passed on 23.1.1998. Moreover, subsequently petitioner has been acquitted with regard to charges No. 1 and 3 after a full dress trial.

3. It is informed that petitioner retired in 1998 and therefore, I am not inclined to remit the matter back. In the facts and circumstances, noticed above, the order of punishment cannot be sustained, which is, accordingly, set aside. This writ petition is allowed. However, no costs.