

(2023) 02 PAT CK 0027

In the Patna High Court

Case No : Letters Patent Appeal No. 267 Of 2022

National Institute Of Technology

APPELLANT

Vs

Dr. Amjad Ali

RESPONDENT

Date of Decision : 04-02-2023

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14, 15

Citation : (2023) 02 PAT CK 0027

Hon'ble Judges : Ahsanuddin Amanullah, J; Harish Kumar, J

Bench : Division Bench

Advocate : Y.V. Giri, Sanjay Kumar Giri, Shekhar Singh

Final Decision : Disposed Of

Judgement

1. Heard Mr. Y.V. Giri, learned senior counsel along with Mr. Sanjay Kumar Giri, learned counsel for the appellant and Mr. Shekhar Singh, learned counsel for private respondent no.1.

2. The present Letters Patent Appeal under Clause 10 of the Letters Patent of High Court of Judicature at Patna has been preferred against the order dated 19.04.2022 passed in C.W.J.C. No. 23415 of 2019 by the learned Single Judge of this Court whereby the learned Single Judge has been pleased to set aside the order of removal dated 15.10.2019 of the respondent-writ petitioner from the post of Assistant Professor, Department of Humanities and Social Sciences and directed to reinstate him with continuity of service and salary for the intervening period, if he has not worked elsewhere.

3. Learned senior counsel appearing on behalf of the appellant has assailed the order, inter alia, mainly on the ground that when the High Court was of the opinion that there was violation of principles of natural justice at the level of the enquiry officer and the disciplinary authority in the present case, after quashing the order of removal, ought to have remitted the matter and permitted the disciplinary authority to proceed with the departmental enquiry from the stage at

which fault was noticed. In support of the aforesaid contention, he vehemently relied upon the judgment of the Hon'ble Supreme Court rendered in the case of Himachal Pradesh Electricity Board Vs. Mahesh Dahia (2017) 1 SCC 768.

4. The further contention of the learned senior counsel for the appellant, while assailing the order under appeal is that the respondent no.1-writ petitioner was appointed as Assistant Professor 'on contract' and for his proven misconduct he could have been removed from service merely by giving one month notice as charge of forgery was proved against the delinquent beyond doubt on the basis of the report of the Senior Divisional Commercial Manager of Railway, Danapur Division. He further submits that objection of personal bias of the enquiry officer could not be established only on the ground of he being the Member of the Board of the Governor of the National Institute of Technology, Patna (hereinafter referred to as 'NIT Patna'). He lastly submitted that the suggestion of the enquiry officer regarding quantum of punishment only reflects his concern about nature and gravity of offence.

5. On the other hand, Mr. Shekhar Singh, learned counsel for respondent no.1 submits that the order under appeal has been passed after taking into consideration the various irregularities committed in the departmental proceeding, apart from the fact that the impugned order of punishment suffers from non-application of mind, as there was no consideration of the explanation given by the respondent no.1-writ petitioner. He further submits that the order under appeal has taken note of the fact that an enquiry officer is supposed to be an independent adjudicator; however, the materials available on record suggests that enquiry officer has carried bias against respondent no.1, which fact is fortified from the enquiry report, wherein he recommended for exemplary punishment. It is also submitted that the learned Single Judge has rightly considered the fact that in absence of deposition of Senior Divisional Commercial Manager, ECR, Danapur, the contents of letter dated 26.02.2015, on the basis of which charge is said to have been proved, remained unestablished, as neither the Senior Divisional Commercial Manager, ECR, Danapur was examined nor the contents of the letter has been proved by oral evidence.

6. Before considering the contention of the learned senior counsel appearing on behalf of the appellant, it would be apt and proper to give the factual matrix of the case.

7. The respondent no.1 was appointed to the post of Assistant Professor (on contract) in the Department of Humanities and social Science at NIT, Patna vide letter no. NITP/4363/14 dated 17.09.2014 issued under the signature of the Registrar NIT, Patna. Pursuant to the aforesaid letter of appointment, the appellant submitted his joining on 30.09.2014 and subsequent to his joining he attended the International Conference for presenting his paper on 24-26.11.2014 at Aligarh Muslim University, Aligarh (U.P.). His visit was post facto approved vide office order dated 28.11.2014, issued by the Registrar, NIT, Patna.

8. It is the case of the appellant NIT, Patna that the respondent no.1-petitioner had submitted travel bill on 08.12.2014 for his travel from Rourkela to NIT Patna and further for attending the International Conference at Aligarh Muslim University, Aligarh, which was later on found to be not genuine. The aforesaid matter was placed in the meeting of the Board of Governors, and it has been resolved to issue show-cause notice to the respondent no.1-writ petitioner as to why disciplinary proceeding, including termination from the post of Assistant Professor (on contract) NIT, Patna may not be initiated against him for producing forged tickets. Thereupon, a show-cause notice was issued, which was duly responded by respondent no.1-writ petitioner.

9. Pursuant to the aforesaid resolution, a memorandum of charge was issued under the signature of Director, NIT, Patna in terms of Rule 14 of CCS (CCA) Rules, 1965. The article of charges containing three charges were communicated to the writ petitioner. In response to the memo of charge, the respondent no.1-writ petitioner requested to furnish documents i.e., tickets produced for reimbursement and confirmation letter dated 26.02.2015, however, the said documents were refused to be provided, but anyhow the respondent no.1-writ petitioner submitted his written statement in defence to the charges and he denied the charges by giving an exhaustive explanation in his defence. The enquiry was proceeded against respondent no.1-writ petitioner. In course of enquiry, the writ petitioner filed an application regarding act of mala fide and biasness of the enquiry officer with detailed averments. However, the enquiry was proceeded and report has been submitted, on the basis thereof the order of punishment has been passed removing the respondent no.1-writ petitioner from the service of NIT, Patna.

10. This Court after having heard the learned counsel for the parties and carefully gone through the order under appeal finds that if an order visits the public servant/temporary employee with any evil consequence or casts aspersion against his character or integrity, it must be considered to be one by way of punishment, no matter whether he was a mere probationer or a temporary servant and in such a situation if an enquiry officer is appointed, a charge-sheet submitted, explanation called for and considered, any order of termination of service made thereafter will certainly attract the due compliance of the procedure of departmental proceeding, in conformity with the principles of natural justice.

11. From the materials available on record, it would be evident that the enquiry officer, namely, Dr. Rajiv Sinha, was one of the members of the Board of Governors which had taken a decision to initiate a disciplinary proceeding including termination from the service of NIT, Patna for producing forged tickets and despite he being one of the Member of the Board of Governors became the enquiry officer and not only that though a serious allegation has been made by the respondent no.1-writ petitioner about his conduct of biasness by filing an application before the Director of NIT, Patna alleging therein his e-mail having been tampered with by the enquiry officer and as to how he was subjected to

biasness, but instead of changing the enquiry officer or much less of passing any order on the said application, the departmental enquiry proceeded and he completed the enquiry in a single day and a report has been submitted and all the charges stands proved against respondent no.1-writ petitioner and further as an enquiry officer he strongly recommended that an "exemplary punishment must be awarded to him for his misconduct".

12. From the aforesaid facts, reasonable apprehension of biasness cannot be ruled out. It would be relevant to observe that a judgment, which is the result of bias or want of impartiality is a nullity and the trial "coram non-judice". The test of real likelihood of bias is whether a reasonable person, in possession of relevant information, would have thought that bias was likely and whether the authority concerned was likely to be disposed to decide the matter only in a particular way. What is relevant is the reasonableness of the apprehension in that regard in the mind of the party. The proper approach for the judge is not to look at his own mind and ask himself, however honestly, "Am I biased?"; but to look at the mind of the party before him. The reliance may be taken of the judgement of the Hon'ble Supreme Court in the case of *Ranjit Thakur Vs. Union of India and others*, (1987) 4 SCC 611.

13. This Court is also conscious of the fact that this is not the case of the NIT, Patna that the respondent no.1 had not travelled from Rourkela to Patna on 28.09.2014, Patna to Aligarh on 26.11.2014 and Aligarh to Patna on 28.11.2014. The only case of the NIT is that the three E tickets claimed by respondent no.1-writ petitioner were found to be not genuine on the basis of the report of the Senior Divisional Commercial Manager, ECR, Danapur. However, neither the Senior Divisional Commercial Manager, ECR, Danapur appeared before the enquiry officer as prosecution witness nor the content of the report produced before the enquiry officer has ever been proved by the oral evidence.

14. The Learned Single Judge has rightly relied upon the judgement rendered by the Hon'ble Supreme Court in the case of *Roop Singh Neg Vs. Punjab National Bank and Others* (2009) 2 SCC 570. It would be apt to quote para. 14, 15 and 23 of the judgment.

14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.

"15. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the enquiry officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. The appellant being an employee of the Bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.

23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof."

15. The appellant has also not denied this fact that the document on the basis of which the charges are said to have been found proved have not been furnished to respondent no.1-writ petitioner despite the demand made by him. In this regard, the learned Single Judge has rightly taken note of the judgment of the Hon'ble Supreme Court in the case of Kashinath Dikshita Vs. Union of India and Others, reported in (1986) 3 SCC 229 wherein it has rightly held that the meaning of reasonable opportunity of showing cause against the action proposed to be taken is that the Government servant is afforded a reasonable opportunity to defend himself against the charges on which enquiry is held. The delinquent should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him, therefore, failure of the enquiry officer to examine the Senior Divisional Commercial Manager, ECR, Danapur and to furnish to the respondent no.1, the copies of the documents such as the report of the Senior Divisional Commercial Manager, ECR, Danapur during the enquiry must be held to have caused prejudice to respondent no.1 in making his defence at the enquiry.

16. In view of the aforesaid discussions made herein above we are of the view that when a departmental enquiry is conducted against the delinquent, it cannot be done in a casual manner. The enquiry proceeding cannot be conducted with a close mind that in no circumstance the delinquent goes unpunished, the rule of natural justice are required to be observed and ensure that a delinquent is treated fairly in proceeding, which may culminate in imposition of punishment, including dismissal/removal from service. The learned Single Judge has also taken note of the law laid down by the Hon'ble Supreme Court with regard to the conduct of enquiry officer in conducting a departmental enquiry, as has been enunciated in the case of State of Uttar Pradesh and Others Vs. Saroj Kumar Sinha, (2010) 2 SCC 772. The relevant paragraph would 27, 28 and 30 thereof.

"27. A bare perusal of the aforesaid sub-rule shows that when the respondent had failed to submit the explanation to the charge-sheet it was incumbent upon the inquiry officer to fix a date for his appearance in the inquiry. It is only in a case when the government servant despite notice of the date fixed failed to appear that the inquiry officer can proceed with the inquiry ex parte. Even in such circumstances it is incumbent on the inquiry officer to record the statement of witnesses mentioned in the charge-sheet. Since the government servant is absent, he would clearly lose the benefit of cross-examination of the witnesses. But nonetheless in order to establish the charges the Department is required to produce the necessary evidence before the inquiry officer. This is so as to avoid the charge that the inquiry officer has acted as a prosecutor as well as a judge.

28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

30. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service."

17. Now coming to the order of removal and from perusal thereof it clearly shows that there is no discussion or any consideration of the submissions/explanation of the respondent no.1-writ petitioner save and except that the explanation was found to be unsatisfactory and there is every reason to believe and accept the

report of the enquiry officer, which prima facie suggests non-application of mind by the disciplinary authority. Though, it is well settled that if a disciplinary authority accept the finding recorded by the enquiry officer no detail reasons are required to be recorded in the order imposing punishment. However, that does not completely absolve the disciplinary authority to discuss and consider the explanation, which in the present case is mandatorily required, as the respondent no.1-writ petitioner has also alleged mala fide against the enquiry officer and the allegation is not only for the sake of allegation, rather substantive facts have been brought on record, which necessitates the careful consideration and the finding was also required to be recorded at the level of the disciplinary authority but the order of removal is silent on every aspect. It is only a narration of facts based on the report of enquiry officer.

18. This Court also cannot lose sight of the fact that the respondent no.1-writ petitioner has categorically stated in his explanation as to from whom and how he got the tickets, in question, and for that he has already paid the charges through the Net-banking. His averment and the fact of his joining and attending the International Conference has never been doubted for which he submitted his bill for travelling allowance. However, the appellant NIT, Patna has failed to consider that he might have been cheated at the hands of the travelling agent and in any view of the matter the order of punishment of of removal is certainly disproportionate to the charges said to be proved, which shocks the conscience of this Court and on this score also the order of removal was not justified and proper. In the considered opinion of this Court, in the facts and circumstances of the present case, even if the charges are presumed to have been fully proved, at best, only inflicting of minor punishment can be justified and held to be commensurate/proportionate to the charges/guilt proved.

19. Having taken note of the entire gamut of the case in hand this Court finds no error in the order/judgment passed by the learned Single Judge of this Court, except to the extent whereby the learned Single Judge has failed to consider that there was violation of principles of natural justice at the level of the enquiry officer as well as disciplinary authority, apart from the fact of mala fide, hence after quashing the order of removal, the matter ought to have been remitted, permitting the disciplinary authority to have proceeded with the departmental enquiry from the stage of appointment of independent and impartial enquiry officer and proceed thereafter.

20. Learned senior counsel appearing on behalf of the appellant has rightly relied upon the judgment of the Hon'ble Supreme Court in the case of Himchal Pradesh State Electricity Board Limited Vs. Mahesh Dahiya (2017) 1 SCC 768. It would be relevant to quote para. 31 and 32 of the aforesaid judgment.

"31. Both the learned Single Judge and the Division Bench have heavily relied on the fact that before forwarding the copy of the report by the letter dated 2-4-2008 the disciplinary authority-cum-whole-time members have already formed an opinion on 25-2-2008 to punish the writ petitioner with major penalty

which is a clear violation of the principles of natural justice. We are of the view that before making opinion with regard to punishment which is to be imposed on a delinquent, the delinquent has to be given an opportunity to submit the representation/reply on the enquiry report which finds a charge proved against the delinquent. The opinion formed by the disciplinary authority-cum-whole-time members on 25-2-2008 was formed without there being benefit of comments of the writ petitioner on the enquiry report. The writ petitioner in his representation to the enquiry report is entitled to point out any defect in the procedure, a defect of substantial nature in appreciation of evidence, any misleading of evidence both oral or documentary. In his representation any inputs and explanation given by the delinquent are also entitled to be considered by the disciplinary authority before it embarks with further proceedings as per statutory rules. We are, thus, of the view that there was violation of principle of natural justice at the level of disciplinary authority when opinion was formed to punish the writ petitioner with dismissal without forwarding the enquiry report to the delinquent and before obtaining his comments on the enquiry report. We are, thus, of the view that the order of the High Court setting aside the punishment order as well as the appellate order has to be maintained.

32. In view of the above discussion, we are of the view that present is the case where the High Court while quashing the punishment order as well as appellate order ought to have permitted the disciplinary authority to have proceeded with the inquiry from the stage in which fault was noticed i.e. the stage under Rule 15 of the Rules. We are conscious that sufficient time has elapsed during the pendency of the writ petition before the learned Single Judge, the Division Bench and before this Court, however, in view of the interim order passed by this Court dated 31-8-2015 [H.P. SEB v. Mahesh Dahiya, SLP (C) CC No. 15656 of 2015, order dated 31-8-2015 (SC), no further steps have been taken regarding implementation of the order of the High Court. The ends of justice would be served in disposing of this appeal by fixing a time-frame for completing the proceeding from the stage of Rule 15.”

21. Accordingly, the present Letters Patent Appeal stands disposed of without interfering in the order passed by the learned Single Judge by which the order of removal of the writ petitioner from service has been quashed and set aside and all consequential benefits have been allowed. However, this Court would modify the order of the learned Single Judge to the extent that liberty is given to the disciplinary authority to proceed with the departmental enquiry from the stage of appointment of independent and impartial enquiry officer and proceed thereafter in accordance with law and the observations made in this order, especially at paragraph no.18.