
(2000) 03 PAT CK 0150
In the Patna High Court
Case No : C.W.J.C. No. 753 of 1996

Nawal Kishore Lal

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 14-03-2000

Acts Referred:

Bihar Service Rules, 1952 — Rule 97
Penal Code, 1860 (IPC) — Section 409, 420

Citation : (2000) 2 PLJR 369

Hon'ble Judges : Shiva Kirti Singh, J

Bench : Single Bench

Advocate : Banwari Sharma, Arvind Kr. II and Shiv Kr, for the Appellant;
Harswardhan Prasad and Ranjan Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Shiva Kirti Singh, J.—Through this writ application the Petitioner has sought quashing of order dated 19.12.1995 as contained in Annexure-10 by which the service of the Petitioner has been terminated. He has prayed for consequential reliefs for payment of salary etc. and for reinstatement in service.

2. The relevant facts of this case lie within a narrow compass and are not much in dispute. Petitioner was an Assistant and on that relevant time, he was working as an Accountant in the Directorate of State Lottery, Patna. On 29.6.1974, he was put under suspension on account of several charges relating to defalcation and embezzlement as well as dereliction in duty. On these charges a departmental proceeding as well as a criminal case was instituted. The criminal case under Sections 409 and 420 of the Indian Penal Code appears to have ended in acquittal in the year 1987 at the appellate stage. Allegedly the first enquiry report in the departmental proceeding was in favor of the Petitioner and his suspension was revoked on 19.6.1989. The departmental proceeding, however, remained pending and in the meanwhile, the Petitioner moved this Court through a writ petition bearing CWJC No. 11864 of 1993 seeking a

direction for payment of arrears of salary from the date of his suspension. The said writ application was disposed of by order dated 7.9.1994 (Annexure-I) wherein this Court noticed that as per order dated 19.6.1989, the revocation of suspension of Petitioner was made without any prejudice to the departmental proceeding going on against the Petitioner and accordingly, directed the Respondents to conclude the departmental proceeding expeditiously and preferably by 31.12.1994 and also to take a decision for payment in terms of Rule 97 of the Bihar Service Code.

3. Thereafter, by an order dated 25.4.1994 (Annexure-2) an enquiry officer was appointed to hold departmental enquiry against the Petitioner. The Petitioner was supplied with memo of charges and the related documents and was asked to submit his defense before the enquiry officer within a fixed time. The Petitioner participated in the enquiry and an enquiry report dated 29.10.1994 (Annexure-4) was submitted by the enquiry officer in which all the charges were found to have been substantiated against the Petitioner. By a letter dated 8.12.1994, the Joint Director, National Saving, Department of Finance, sent to the Petitioner a copy of enquiry report dated 29.10.1994 and asked for his comments. According to the Petitioner, he did not receive the letter dated 8.12.1994 and received only the subsequent order dated 31.12.1994 (Annexure-6) by which he was dismissed from service. The Petitioner challenged the aforesaid order of dismissal dated 31.12.1994 in this Court through a writ petition bearing CWJC No. 636 of 1995. The said writ application was disposed of by order dated 18.10.1995 (Annexure-7) whereby this Court remitted the matter back to the enquiry officer for submitting a fresh report after considering all the materials including the earlier explanation submitted by the Petitioner and after recording reasons for arriving at his findings in respect of the charges. The disciplinary authority was directed to pass a final order afresh in accordance with law. Through a letter dated 20.11.1995 contained in Annexure-8 the Petitioner was supplied with fresh enquiry report prepared by the enquiring officer. This enquiry report also disclosed that all the charges have been found proved against the Petitioner. By Annexure-8 the Petitioner was given a further notice to submit his defense version and explanation for consideration by the disciplinary authority. Accordingly, the Petitioner submitted his explanations on 30.11.1995 as contained in Annexure-9 and thereafter the impugned order of dismissal was passed on 19.12.1995.

4. In this writ application there is no direct challenge to the enquiry report contained in Annexure-8A dated 16.1.1995. The submissions advanced on behalf of the Petitioner are three fold. Firstly, that after service of enquiry report and after considering Petitioner's comment with regard to same, a second show cause notice should have been given to the Petitioner in view of law laid down by the Supreme Court in the case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., . Secondly, it was submitted that the impugned order of dismissal appears to be a formality inasmuch as there is no detailed discussion of the materials given by the Petitioners in his show cause or explanation submitted

after receipt of the enquiry report and lastly, it was submitted that in the facts of the case, the punishment of dismissal from service is too severe and disproportionate to the charges leveled against the Petitioner.

5. The first submission advanced on behalf of the Petitioner, in my view, is wholly misconceived and based upon reading something more in the judgment of the Apex Court in the case of Managing Director, ECIL (supra) than what has been held therein. In the aforesaid case, the Apex Court reiterated the law laid down in Md. Ramzan Khan's case 1991(1) SCC 518 and held as follows:

That when the enquiry officer is not the disciplinary authority the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges leveled against him. That right is a part of employee's right to defend himself against the charges leveled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his Innocence and is a breach of the principles of natural justice.

6. After reiterating the law as noticed above, the Apex Court answered some further questions and one of them related to the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee. This was answered by holding that in such case the Court should cause the copy of the report to be furnished, if not already available to the aggrieved employee and then come to the conclusion whether non-supply of the report had caused any prejudice and whether it would make no difference to the ultimate findings and the punishment or not. The final order of punishment should be interfered with only if the Court comes to a finding that non-furnishing of the report would have made a difference to the result in the case. The later part of the judgment has been noticed only to highlight the fact that as per law laid down by the Apex Court principles of natural justice cannot be used to set aside an order of punishment unless the breach of rules of natural justice, if at all such breach be there, has caused prejudice to the concerned employee.

7. So far as the facts of the case are concerned, Annexure-8 does not disclose that the disciplinary authority at all reached to any conclusion with regard to charges against the Petitioner prior to furnishing the Petitioner with a copy of the enquiry report. Hence, no fault can be found with the procedure adopted in this case and the submission on behalf of the Petitioner that subsequently after considering Petitioner's objections to the enquiry report, the disciplinary authority was required to give a second show cause notice with regard to the punishment has no substance and is not at all supported by the judgment of the Apex Court, noticed above.

8. The second submission on behalf of the Petitioner is also based upon a misconception that while passing an order of punishment on the basis of an

enquiry report which is against a delinquent employee and which report has been accepted by the disciplinary authority after noticing the objections of the employee, still the disciplinary authority is required to give reasons in support of an order of punishment against the concerned employee. The situation where an enquiry report is in favor of the concerned employee but still the disciplinary authority proposes to take action against the delinquent employee stands on a different footing and there the disciplinary authority may be required to indicate the reasons for taking a different view but in a case where the enquiry report gives reasons for holding the charges to be established, the law does not require recording of further reasons by the disciplinary authority while passing the order of punishment. The rules of fairness would require that the disciplinary authority should apply his mind to the objections to the report submitted by the delinquent employee and such application of mind should normally be apparent from the order of punishment itself. In this case, the impugned order of punishment clearly shows such application of mind and hence, the second submission on behalf of the Petitioner is also found to be without any merit.

9. Although in this case the enquiry report is not directly under challenge but an attempt was made to advance an argument specially with regard to charge No. 3 which also has been found as proved in the enquiry report (Annexure-8A) that with regard to the said charge there were certain explanations furnished by the Petitioner in his explanation against the enquiry report contained in Annexure-10 and on that basis, the disciplinary authority should have differed from the finding of the enquiry officer. In view of such submission I perused the charges against the Petitioner and findings in relation to them given by the enquiry officer and in my view, it is not a case where the charges have been held to be proved without any material so as to require any interference by this Court.

10. So far as the last submission on behalf of the Petitioner is concerned, I have looked into the charges against the Petitioner. They relate to serious financial irregularities and have a direct bearing upon the integrity of the Petitioner. The charges disclose not only dereliction of duty but also corruption in official actions. Hence, in the facts of the case it cannot be held that the order of dismissal passed against the Petitioner is too severe or disproportionate to the charges leveled and found against him.

11. In view of aforesaid discussions and findings, I find no merit in this application and the same is accordingly dismissed but in the facts of the case without any costs.