

(1997) 04 PAT CK 0021
In the Patna High Court
Case No : C.W.J.C. No. 9263 of 1996

Parma Nand Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 09-04-1997

Acts Referred:

Civil Services (Classification, Control and Appeal) Rules — Rule 49A
Constitution of India, 1950 — Article 14, 142

Citation : (1997) 04 PAT CK 0021

Hon'ble Judges : N. Pandey, J

Bench : Single Bench

Advocate : S.N. Jha and Arun Kumar Singh, No. 2, for the Appellant;
Kameshwar Kumar, for the Respondent

Final Decision : Allowed

Judgement

N. Pandey, J.—This writ petition has been filed for quashing the order of the Disciplinary Authority, dated 4.9.1996 (Annexure-1) whereby Petitioner has been awarded with punishment of reduction in rank.

2. It appears, at the relevant time, the Petitioner was posted as Block Development Officer, Sisban in the district of Siwan. On 30.4.1996, vide order contained in Annexure 2, he was placed under suspension in contemplation of the departmental proceeding under the provisions of Rule 49A of the Civil Services (Classification, Control & Appeal) Rules. Thereafter, under the orders of the Joint Agriculture Secretary, dated 3.5.1986, memo of charges were served with the Petitioner, who in turn also filed show cause. The matter was examined and ultimately the Conducting Officer submitted his report on 2.3.1997 (Annexure-9) holding that the Petitioner was not found guilty of any of the charges. He further submitted that Nazir and Head Assistant of the Block office were found guilty of such charges. Therefore, a request was made to the Disciplinary authority to exonerate the Petitioner of the charges.

3. Thereafter, the Disciplinary authority, by his letter contained in Annexure-11,

asked the Conducting Officer to reconsider his report with reference to the relevant documents and evidence of the left over witnesses. The Conducting Officer, therefore, again examined the materials and submitted his fresh report dated 8.7.1988 as contained in Annexure 14. At this stage also, for most of the charges, he recommended that the Petitioner was not found guilty and reiterated his earlier stand that it was Nasir and Head Assistant who can be held responsible.

4. It would appear from the materials brought on the record that no order was passed by the disciplinary authority and ultimately, on 24.10.1995, vide letter contained in Annexure 17, the Bihar Public Service Commission, in reply to the letter of the Agriculture Department, dated 29.5.1991, communicated its concurrence with regard to the proposed punishment of reduction in rank against the Petitioner.

5. As would appear from the letter contained in Annexure 18, the Petitioner was served with a second show cause notice with respect to the charges for which departmental proceeding in question was carried out. Admittedly, thereafter on 6.8.1996, the Petitioner filed his show cause denying charges and also pointed out the findings recorded by the Conducting Officer in his reports contained in Annexures 9 and 11, whereby he had held that the Petitioner was not guilty of such charges.

6. Dr. Jha, learned senior Counsel appearing for the Petitioner, contended that the impugned order, has been passed by the authorities without examining the reports of the Conducting Officer as well as second show cause filed by the Petitioner. He contended that even a bare reference to the second show cause, the inquiry report, it would reveal that barring one or two, for all the charges, the Conducting Officer has held that the Petitioner was not guilty. He pointed out that for such charges, Nazir and Head Assistant can be held responsible, but not the Petitioner. Of course for one or two charges, the Conducting Officer was of the view that if the Petitioner was vigilant and had taken precaution, the same could have been prevented. Submission is that a bare reference to the impugned order would reveal that Disciplinary authority has in fact held the Petitioner guilty for all the charges and, therefore, order for reduction in rank was recorded.

7. Mr. Jha contended that undisputedly, the Disciplinary authority had full option to differ with the findings recorded by the Conducting Officer, but while doing so, it was essential on his part to assign reasons with reference to the relevant materials on the record, after due opportunity to the Petitioner. But unfortunately, in this case, none of such steps have been taken. He next contended that even a bare reference to the request letter to the Commission, disclosing mind for concurrence with regard to decision of the Government to revert the Petitioner from the original post, it would appear that issuance of show cause notice etc. on 12.7.1996 was completely an eye wash. Because even before extending such opportunity and serving a copy of inquiry report, the Respondents had already decided to impose the punishment in question.

According to the learned Counsel, such an action of the authority was quite arbitrary and smacks mala fide design in order to punish the Petitioner.

8. It was next contended that otherwise also punishment awarded to the Petitioner is wholly disproportionate to the alleged misconduct committed by him. Therefore, the impugned punishment of reduction in rank in the facts and circumstances is uncalled for. Submission is that such arbitrary order is violative of provisions of Article 14 of the Constitution. In support of such submission, reference was made to certain decisions of the apex Court in the case of Bhagat Ram Vs. State of Himachal Pradesh and Others, ; Ex-Naik Sardar Singh Vs. Union of India (UOI) and Others, , and B.C. Chaturvedi Vs. Union of India and others, .

9. Learned Counsel contended that applying the principles laid down in the abovementioned cases, it can be safely held that in the instant case, there is an element of arbitrariness in awarding such a severe punishment.

10. There is no dispute that in the first inquiry report, Petitioner was completely exonerated of the charges. But on the second time, on verification of the matter, although there is no finding of misappropriation or defalcation but certainly a finding has been recorded that in case the Petitioner was vigilant, such offence could not have been committed by his subordinates. Therefore, it cannot be urged that Petitioner was fully absolved of the charges. True it is that having regard to the findings recorded by the Conducting Officer, punishment of reduction in rank smacks arbitrariness. Therefore, it can be safely held that the impugned penalty is disproportionate to the gravity of misconduct and thus violative of provisions of Article 14 of the Constitution.

11. I am conscious about certain pronouncements of the apex Court that High Court while exercising power of judicial review cannot normally substitute its own conclusion on penalty and impose some other penalty. But it is well known that if the punishment imposed by the disciplinary authority shocks conscience of a Court, it would be appropriate to mould the relief either directing the disciplinary authority to reconsider the penalty imposed or to shorten the litigation, the Court may also, in exceptional and rare cases, Impose appropriate punishment with cogent reasons in support thereof. Reference in this regard can be usefully made to a recent decision of the apex Court in the case of B.C. Chaturvedi Vs. Union of India and others, .

12. There is no doubt that in the abovementioned case, it has been held by the apex court that the High Court too can exercise power of review, which is inherent in every court of plenary jurisdiction. It was held that power to do complete justice also inheres in every court not to speak of a court of plenary jurisdiction. It was further held that very fact that there is no parallel to Article 142 of the Constitution relating to a High Court, can be no ground to think that it cannot do complete justice.

13. Therefore, in view of the aforesaid judgment, there is no doubt that in exceptional circumstances, this Court can also impose appropriate punishment

but in the case before the Supreme Court, the disciplinary proceeding against the concerned employee was pending for several years and ultimately the matter had gone to the stage of appeal before the Supreme Court. There is no dispute that in this case also there had been some delay but it was due to the order of the disciplinary authority to the Conducting Officer to submit a fresh report.

14. Therefore, having regard to harsh and arbitrary punishment, I set aside the impugned order with a direction to the disciplinary authority to reconsider the matter so that the penalty may not be disproportionate to the gravity of misconduct.

15. In the result, this writ application succeeds to the extent indicated above. But in the facts and circumstances of this case, there shall be no order as to costs.