(2006) 01 PAT CK 0011

In the Patna High Court

Case No : CWJC No. 6175 of 2004

Parmanand Singh — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 18-01-2006

Acts Referred:

Civil Services (Classification, Control and Appeal) Rules — Rule 55

Citation : (2006) 2 PLJR 120

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—Heard learned counsel for the petitioner and the learned counsel for the State. In this writ petition, the petitioner is aggrieved by the order of punishment dated 15.2.2003 imposed upon him, contained in Annexure 1, in a departmental proceeding initiated against him. The petitioner filed a representation before the Commissioner and Secretary, Commercial Taxes, Bihar, Patna (respondent No. 2) against the said order of punishment (Annexure 1), which has been rejected vide order dated 19.4.2004, contained in Annexure 2, which has also been impugned in the present writ petition.

2. In short, the relevant facts are that on 29.8.2001 an explanation was called for from the petitioner with respect to the charge that 12 cheques received from Messrs Kalyanpur Cement on 27.7.2001 was deposited in the Government account after a month i.e. 29.8.2001, which caused loss of interest on the said amount. The petitioner submitted his reply, whereupon the authority prima facie not being satisfied placed him under suspension on 15.9.2001. On 13.12.2001, he was served with chargesheet (Annexure 6) and he submitted reply on 28.12.2001 (Annexure 7). The enquiry officer conducted the enquiry and submitted his report on 5.4.2002, whereupon the petitioner was served with a copy of the second show cause notice on 3.7.2002. The disciplinary authority on consideration of the enquiry report passed the impugned order of punishment.

3. Mr. Singh, learned Senior Counsel appearing for the petitioner has submitted that the perusal of the enquiry report (Annexure 8/A) would itself show that the enquiry officer conducted the enquiry behind the back of the petitioner without either examining any witness or exhibiting a document, if any, upon which he wanted to rely. Thus, according to the learned counsel for the petitioner, there has been gross violation of the principles of natural justice, besides the provisions, contained in Rule 55 of the Civil Services (Classification, Control & Appeal) Rules.

4. Mr. Dutta, learned Standing Counsel No. IV appearing for the respondents State authorities has submitted that perusal of the enquiry report itself would show that, in the facts and circumstances of the present case, no evidence was required to be taken. In fact, the enquiry officer has relied upon the reply received from the authority against whom the petitioner had alleged in his show cause that under his instruction he had not deposited the cheques. According to the learned Standing Counsel, it was the duty of the petitioner, who was a Statistical Clerk to ensure deposit of the cheques received soon after the receipt of the cheques, which has not been done and, as such, the State exchequer has been put to huge loss of interest.

5. According to the learned counsel for the petitioner, the petitioner completely denied the charges except with respect to receipt of two cheques, which, according to him, were received by him on 13.8.2001 and deposited in the account on 14.8.2001. As such, there was no lapses on the part of the petitioner. Apart from this, learned counsel for the petitioner has contended that in view of the plea of the petitioner that on the instruction of the higher authority, the cheques were not deposited in the account, it was incumbent upon the enquiry officer to examine the higher authority and non-examination of the said authority has denied the opportunity of cross-examining him by this petitioner.

6. Mr. Dutta, learned Standing Counsel No. IV after going through the enquiry report has fairly submitted that it is true that the said authority was not examined but, at the same time, the petitioner never requested for examining the said authority nor raised any objection. As such, according to him, there is no infirmity in the impugned order.

7. I am unable to appreciate the said submission of the learned Standing Counsel. Bare reading of the enquiry report shows that the procedure followed by the enquiry officer is unknown to law settled with respect to holding of departmental enquiry. There cannot be any dispute that there can be a case where no evidence may be required to be taken at the enquiry stage, but it can only be where the charge is admitted. Once the delinquent denies the charge, in my opinion, the enquiry officer is bound to consider his defence and examine the relevant evidence, documentary as well as oral. This having not been done in the present case, vitiates the impugned order of punishment as being violative of the principles of natural justice, besides the provisions contained in Rule 55 of the Civil Services (Classification, Control & Appeal) Rules.

8. This writ petition is, thus, allowed. The impugned orders, contained in Annexures 1 and 2, are quashed. However, this order shall not come in the way of the authority from proceeding further in the matter, in accordance with law and complying with the rules of natural justice.