
(2013) 09 PAT CK 0043

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 6358 of 1998

Parmeshwar Bhagat, Assistant Manager (Now dismissed)
Bihar State Financial Corporation

APPELLANT

Vs

The Bihar State Financial Corporation and Others

RESPONDENT

Date of Decision : 11-09-2013

Acts Referred:

Constitution of India, 1950 — Article 136, 226

Citation : (2013) 4 PLJR 786

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Advocate : Anil Jayaswal, for the Appellant; Raj Nandan Prasad, for the Respondent

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—The present writ petition filed under Article 226 of the Constitution of India was preferred for quashing of order contained in memo No. 1305 dated 14.8.1997 (Annexure-6 to the writ petition) issued by the Respondent No. 3/Managing Director, Bihar State Financial Corporation (hereinafter referred to as "B.S.F.C."), whereby, in a departmental proceeding the petitioner was awarded with the punishment of "dismissal from service". The petitioner has further prayed for quashing of communication dated 21.4.1998 (Annexure-10 to the writ petition), whereby, the petitioner was intimated regarding dismissal of his appeal, which was preferred against order of his dismissal from service. The petitioner has also prayed for quashing of memo No. II/J/GC/96-97/125 dated 19.7.1996 contained in Annexure-1 to the writ petition, whereby charges were served against him. Short fact of the case is that on allegation of misconduct committed some time in the year 1981, the petitioner was served with charge sheet vide memo. No. II/J/GC/96-97/125 dated 19.7.1996 (Annexure-1 to the writ petition). The petitioner was proceeded for two charges, which are as follows:--

1-The petitioner in collusion with the promoter of M/s. Durga Metals, Dalsingsarai, submitted wrong report dated 5.3.81 for effecting 2nd release of fund, wherein he misled the Corporation for having checked the bill/voucher of the relevant expenditure made by the concern without disclosing the source of purchase of plant and Machineries, mode of payment, their bill and voucher in a bid to cause wrongful loss to the Corporation.

2-The petitioner intentionally, concealed to mention about the specific examination of bill/voucher and money receipt against alleged purchase of plant and machinery worth Rs. 69,400/- as per trial balance dated 3.3.81 as there were no bill/money receipt available on record because of the fact that all the machineries were being brought from an existing similar unit at Barh owned by Sri Birendra Prasad, S/o. Sheo Lal Sah, who is said to be a close relative of Sri Lalan Kumar, Promoter of aforesaid unit.

2. After concluding enquiry the conducting officer submitted its report dated 6.12.1996 wherein it was found that both charges, which were inter linked were proved and petitioner was held guilty by the conducting officer. The report of conducting officer has been brought on record as Annexure-3 to the writ petition. The disciplinary authority communicated the enquiry report to the petitioner for his response, which was replied by him, and finally, the disciplinary authority i.e. Managing Director by its order dated 14.8.1997 awarded the punishment of "dismissal from service". Against the order of dismissal, petitioner preferred an statutory appeal under regulation No. 40 of the Bihar State Financial Corporation (Staffs) Regulation, 1965 before the Board of Directors. The appeal of the petitioner was rejected and communicated vide letter dated 21.4.1998 whereby petitioner was intimated that Board of Directors in its meeting held on 28.3.1998 had considered the appeal and dismissed the same.

3. Sri Anil Jayaswal, learned counsel for the petitioner at the very outset has argued that almost in similar situation and for similar charge one Sri Chandra Shekhar Prasad, who was Branch Manager was put under suspension and proceeded departmentally whereas petitioner at the relevant time was Senior Assistant at Darbhanga Branch. He submits that the Branch Manager had approached this court by filing a writ petition vide C.W.J.C. No. 2983 of 1996 and the said writ petition was allowed on 21st March, 1997 by a single bench of this court. Keeping in view the fact that charge No. 1 against Chandra Shekhar Prasad, Branch Manager was in relation to an incidence of 1981 and charge No. 4 was related to the year 1988, this court had quashed the departmental proceeding against the Branch Manager. However, in case of petitioner for the charges of 1981 he was inflicted with the punishment of "dismissal from service". He submits that keeping in view the fact that charge was a stale charge, there was no reason for initiating departmental proceeding after such a long time, and as such, on this ground alone both order of punishment and order of appellate authority are liable to be set aside. In support of his argument that on stale charges departmental proceeding may not be initiated, learned counsel for the

petitioner has relied on a judgment of the Apex Court reported in *The State of Madhya Pradesh Vs. Bani Singh and another*, It has further been argued by Sri Jayaswal that disciplinary authority i.e. Managing Director though has passed an order imposing severe punishment of "dismissal from service", the disciplinary authority has not assigned any reason for inflicting the punishment and on this ground also the order is liable to be set aside. He further submits that order of appellate authority i.e. Annexure-10 is also no order in the eye of law in view of the fact that no reason has been assigned while rejecting the appeal. He submits that orders inflicting punishment and rejecting the appeal without assigning reason is not sustainable in the eye of law. On this very point he has relied on a judgment of the Apex Court reported in *Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others*,). He has specifically referred to paragraph No. 20 and 21 of the said judgment, which are quoted hereinbelow:--

20. Unless the rule expressly or by necessary implications excludes recording of reasons, it is implicit that the principles of natural justice or fair play does require recording of reasons as a part of fair procedure. In an administrative decision, its order/decision itself may not contain reasons. It may not be the requirement of the rules, but at the least, the record should disclose reasons. It may not be like a judgment. But the reasons may be precise. In *S.N. Mukherjee v. Union of India*, the Constitution Bench of this Court surveyed the entire case law in this regard, and we need not burden the judgment to reiterate them once over and at page 614, para 40 it held that except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-Judicial functions is required to record the reasons for its decision. In para 36 on pp. 612-13 it was further held that recording of reasons ... excludes chances of arbitrariness and ensures a degree of fairness in the process of decision making. The said principle would apply equally to all decisions and its applications cannot be confined to decisions which are subject to appeal, revision or judicial review. "It is not required that the reasons should be as elaborate as in the decision of a court of law." The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons. If the appellate or revisional authority disagrees, the reasons must be contained in the order under challenge.

21. Thus it is settled law that the reasons are harbinger between the mind of the maker of the order to the controversy in question and the decision or conclusion arrived at. It also excludes the chances to reach arbitrary, whimsical or capricious decision or conclusion. The reasons assure an inbuilt support to the conclusion/decision reached. The order when it affects the right of a citizen or a person, irrespective of the fact, whether it is quasi-judicial or administrative fair

play requires recording of germane and relevant precise reasons. The recording of reasons is also an assurance that the authority concerned consciously applied its mind to the facts on record. It also aids the appellate or revisional authority or the supervisory jurisdiction of the High Court under Article 226 or the appellate jurisdiction of this Court under Article 136 to see whether the authority concerned acted fairly and justly to mete out justice to the aggrieved person.

4. Sri Jayaswal has further argued that though conducting officer has concluded in its report regarding establishment of both the charges against the petitioner, the conducting officer has given its report without any cogent evidence. He submits that during the departmental enquiry not even a single witness was examined but only on the basis of some note sheets the conducting officer has recorded its finding, which is not sustainable in the eye of law. He submits that in absence of any cogent evidence enquiry report submitted in the departmental proceeding is liable to be simply ignored. In support of his argument he has referred to Virendra Prasad Singh "Gautam" Vs. State of Bihar and Others, and Nand Lal Ram Vs. State of Bihar and Others, . He submits that of-course the conducting officer has not examined any witness but in the departmental proceeding while conducting preliminary enquiry statement of one Sri Ram Baran Rai was got recorded and same has been relied upon in the departmental proceeding, whereas during the departmental enquiry said Ram Baran Rai was not examined, and as such, the petitioner was restrained from drawing attention or cross-examining the said witness. On aforesaid grounds, it has been prayed to allow the writ petition.

5. Sri Raj Nandan Prasad, learned counsel for respondents has vehemently opposed the prayer of the petitioner. He submits that the petitioner was proceeded departmentally for serious misconduct. He further submits that in the departmental proceeding full opportunity was provided to the petitioner, and thereafter, order of punishment has been passed. Sri Prasad has argued that while exercising power of judicial review this court is required only to examine as to whether in decision taking process in the departmental proceeding any illegality or irregularity has been committed or not. He submits that at this stage it is not required to examine the case on merit. While referring to averment made in counter affidavit he has argued that while the petitioner was posted in Darbhanga Branch as Senior Assistant, he examined the books of accounts in 1981 for effecting second release of fund to M/s. Durga Metals, Dalsingsarai, Samastipur to the tune of Rs. 75,000/- wherein irregularities were detected. The detail of unit, M/s. Durga Metals, Dalsingsarai, Samastipur is as follows:

6. The unit defaulted in payment of the dues of the Corporation and the matter was placed before the Advisory Committee meeting held on 30.8.84/22.11.84. The agenda item No. 232 placed before the Advisory Committee meeting scheduled to be held on 30.8.84 speaks that assets of the unit were intact. However, the meeting of the Advisory Committee scheduled to be held on 30.8.1984 was held on 22.11.84 wherein the Committee decided to initiate legal

action to recover the dues of the Corporation. Sri Raj Nandan Prasad further submits that during the massive drive of valuation of assets of each and every unit of the Corporation, this unit too was inspected by the officials of the Corporation on 30.11.95 wherein it was found that no machinery was available at the site. The valuation of land and building was worked out to be Rs. 0.67 lakhs. The site of the unit, M/s. Durga Metals, Dalsingsarai, Samastipur, was inspected by Sri P.K. Jha, Dy. Manager (G&V) on 14.5.96 and he submitted a detailed report dated 20.5.96. During the course of inspection, Sri Jha met Sri Ram Baran Rai who was having the key of the premises and he informed that the machines on which the release of fund was made by the Corporation were returned back to Barh after the release of fund. Sri Ram Baran Rai also recorded his statement dated 15.5.96 in this respect. He submits that thereafter Annexure-1 was issued on 19.7.1996 and a regular departmental proceeding was initiated against the petitioner. He has argued that since no illegality or irregularity was committed in the departmental proceeding, petitioner may not be entitled to get any relief.

7. Besides hearing learned counsel for the parties, I have also perused the materials available on record. On perusal of charges it is evident that both charges, which were interlinked were in relation to an incident which had occurred some time in the month of March, 1981. From the averments made in the counter affidavit itself particularly in its paragraph No. 4 it is evident that such omission or commission was noticed by the authority at least in the year 1984, and even thereafter, no sincere efforts were taken by the respondents to initiate any action against the petitioner. After lapse of about more than 15 years from the alleged misconduct, departmental proceeding was initiated after issuance of memo of charge dated 19.7.1996. From the enquiry report i.e. Annexure-3 it is evident that the conducting officer had noticed that Branch Manager was also facing enquiry for the said omission and commission. Once the departmental proceeding against the Branch Manager namely, Chandra Shekhar Prasad was itself quashed on the ground of stale charge by order dated 21.3.1997 passed in CWJC No. 2983 of 1996, there is no reason to allow the order of punishment against the petitioner to continue. Learned counsel for the petitioner has rightly argued that in a case of stale charges no departmental proceeding was required to be initiated. In the case of Bani Singh (Supra) on the ground of charges which were about 10 years old, the departmental proceeding was set aside by the Central Administrative Tribunal and the Apex Court has approved the same, which has been noticed in paragraph No. 4 of its judgment. It would be appropriate to quote paragraph No. 4 of The State of Madhya Pradesh Vs. Bani Singh and another, , which is as follows:--

4. The appeal against the order dt. 16-12-1987 has been filed on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and laches and should have allowed the enquiry to go on to decide the matter on merits. We are unable to agree with this contention of the learned Counsel. The irregularities which were the subject-matter of the enquiry is said to have taken place between the years 1975-1977. It is not the case of the

department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April, 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal.

8. Similarly, on examining the enquiry report it is evident that before the conducting officer the petitioner had taken a plea that he was not conversant with the procedure of examining the books of accounts since the petitioner was Senior Assistant. The conducting officer accepting the plea of the petitioner in its report had categorically observed that the petitioner was holding post of Senior Assistant and he was not conversant with the procedure of examining the books of accounts including the trial balance and this aspect deserves consideration at the level of the disciplinary authority. Even this observation was not at all noticed by the disciplinary authority and disciplinary authority without assigning any reason or even without discussing what were the charges against the petitioner has simply awarded punishment of dismissal, whereas, disciplinary authority was required to assign succinctly reason for imposing such a harsh punishment of dismissal. Learned counsel for the petitioner has rightly referred to paragraph No. 20 and 21 of Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others, which has been quoted in preceding paragraph of this judgment. Similarly, the order of appellate authority contained in Annexure-10 to the writ petition suffers with the same defect. The appellate authority has also not discussed or assigned an iota of reason for rejecting the appeal, whereas, in memo of appeal which was a statutory appeal the petitioner had specifically raised several grounds including the ground that on the stale charge departmental proceeding against his Branch Manager namely, Chandra Shekhar Prasad was set aside by this court. In the present case even during departmental enquiry the Corporation had not brought on record any cogent evidence to establish the case, but in a perfunctory manner the enquiry was conducted and in the same manner the disciplinary authority has accepted the enquiry report and passed the order of dismissal of petitioner from service. In the case of the Branch Manager Chandra Shekhar Prasad, against whom departmental proceeding was also initiated almost for similar charge that was pertaining to the year 1981 this court vide Annexure-7 had set aside the initiation of departmental proceeding on the ground that charges were stale. Subsequently, on behalf of respondent/Corporation a review petition was filed with an attempt to clarify that date of knowledge of the said incident was in the year 1996 and as such, the charges may not be treated as stale charge. However, the said review petition i.e. Civil Review No. 72 of 1997 was dismissed

on 29.4.1997 vide Annexure-8 to the writ petition. The petitioner has further brought on record an order passed by Division Bench of this court whereby this court had rejected the appeal i.e. L.P.A. No. 1345 of 1997, which was preferred by the respondents against the order of single bench. The said order i.e. order dated 8.1.2004 has been brought on record as Annexure-14 to the 2nd supplementary affidavit filed on behalf of the petitioner. It would be appropriate to quote last paragraph of order dated 8.1.2004 passed in L.P.A. No. 1345 of 1997, which is as follows:--

The incident is of 1981. The charge was made in 1995, 14 years ago. At this time, the management should accept the decision in which there is laches and the entire inquiry is likely to be vitiated, if this charge is dragged having been framed after 14 years". In view of observation of the Division Bench of this court in case of Branch Manager, the court is left with no option but to allow the writ petition by setting aside Annexure-1, Annexure-6 and Annexure-10 to the writ petition. Accordingly, the writ petition stands allowed with all consequential benefits.