
(2008) 04 PAT CK 0001
In the Patna High Court
Case No : CWJC No. 7727 of 2000

Pawan Kumar Tibrewal

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 24-04-2008

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : (2008) 3 PLJR 97

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Advocate : Siya Ram Shahi, for the Appellant; Ranjan Kumar, for the Respondent

Final Decision : Allowed

Judgement

Navin Sinha, J.—Heard learned counsel for the petitioner and the State. The petitioner in this writ application questions the order of punishment in a departmental proceeding as upheld by the appellate authority. He has been visited with the punishment of censure to be recorded in his character roll for the year 1989-90, stoppage of five increments with non-cumulative effect, relegated to the minimum of the pay scale of the post of Assistant Engineer and that nothing but subsistence allowance was payable for the period of suspension.

2. The petitioner being an Assistant Engineer was sent on deputation to the Koshi Area Development Agency in Saharsa Division. He was served with a memo of charges dated 1.2.1993. The allegation was that as an Assistant Engineer he approved payment of bills for the works done without verification. That the bills were for drains constructed for a length of 315 ft. as recorded in the measurement book when in fact only 300 ft. of the drain has been constructed. The second charge was that the quality of drain at specified points was found to be substandard. The plaster work was not done by proper mix, leading to breakage of the plaster at several places. The petitioner filed his reply. After conclusion enquiry report came to be submitted on 12.11.1993 at Annexure-2.

3. Learned counsel for the petitioner submitted from the conclusion of the enquiry report that the Officer arrived at the conclusion that there was no material to hold short construction of the drain by 15 feet or sub-standard quality of construction. The enquiry report was, therefore, inconclusive and did not return a finding of guilt but only concluded that the charges do not appear to be serious, the petitioner at best was negligent in procedures and the department may take an appropriate decision on the report. Learned counsel next submits from the enquiry report itself that the Inquiry Officer became a witness himself in the enquiry. He refers to the recitals in the enquiry report that the Inquiry Officer went to the site, collected evidence of the villagers and recorded his opinion based on his discussions with the villagers. He submits that once the Inquiry Officer becomes a witness himself in the proceeding, the entire proceeding is vitiated.

4. Based on the enquiry report, the petitioner was issued a second show cause notice to which he replied when the order of punishment came to be passed holding lack of diligence on duty. On appeal, the appellate authority dismissed the appeal by a non-speaking order.

5. Learned counsel for the State sought to support the punishment with reference to the enquiry report by urging that when the Inquiry Officer has arrived at a finding that the petitioner was negligent in discharge of his duty, the order of punishment, therefore, requires no interference. Learned counsel, however, found it difficult to deal with the submission of the petitioner with regard to the Inquiry Officer having become a witness himself in the matter, thus vitiating the entire enquiry.

6. Learned counsel for the petitioner has rightly relied upon a judgment of the Supreme Court reported in *Arjun Chaubey Vs. Union of India (UOI) and Others*, in support of his submission that the enquiry report itself was vitiated for reason of the Inquiry Officer becoming a witness himself. In the case of *Arjun Chaubey (supra)*, the appellant therein was alleged to have misbehaved with the Senior Commercial Officer. After he gave his explanation in writing, the Deputy Chief Commercial Superintendent replied that his explanation was not satisfactory and he was given another opportunity to reply. He submitted his explanation when the order of dismissal came to be passed by the Senior Commercial Officer under Rule 14(H) of the Railway Servants (Discipline and Appeal) Rules, 1968 read with proviso (b) to Article 311(2) of the Constitution of India. The Senior Commercial Officer himself recorded his reasoning in writing for coming to the conclusion that it was not reasonably practicable to hold an inquiry into the conduct of the appellant when he proceeded to pass the order of dismissal without enquiry. The Apex Court held that evidently the Senior Commercial Officer assessed the weight of his own accusations against the appellant. He, therefore, violated a fundamental principle of natural justice. The Court held placing reliance on AIR 1958 SC 86 (*State of Uttar Pradesh vs. Mohammad Nooh*) that the roles of a judge and a witness cannot be played by one and the same person and that it is

futile to expect, when those roles are combined, that the judge can hold the scales of justice even. Such an illegality touching the proceedings leaves an indelible stamp of infirmity.

7. This Court, therefore, holds that the enquiry itself was vitiated for the aforesaid reason. If the enquiry is bad, the order of punishment based thereupon is naturally bad so as the appellate order. The writ application is allowed. The enquiry report, the order of punishment and the order of the appellate authority rejecting the appeal is, accordingly, set aside. The petitioner shall be entitled to his entire salary for the period of suspension. He was also liable to be paid the arrears of his salary in consequence of the order of punishment for reduction in the pay scale. Let the same be done within a maximum period of four months from the date of receipt and/or production of a copy of this order.