
(2015) 12 JH CK 0018
In the Jharkhand High Court
Case No : WP(S) No. 4636 of 2011

Philbiyus Barla

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 04-12-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 1 AJR 613 : (2016) 1 JLJR 547

Hon'ble Judges : Aparesh Kumar Singh, J.

Bench : Single Bench

Advocate : V.P. Singh, Sr. Advocate, for the Appellant; Abhay Kumar Mishra, SC III and B.N. Ojha, JC to SC III, for the Respondent

Final Decision : Dismissed

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties.

2. Petitioner, a Member of the Jharkhand Administrative Service, has been proceeded against in a departmental proceeding vide Resolution No. 3166 dated 13.06.2011 for certain charges in relation to his posting as Land Revenue Deputy Collector, Sadar, Chaibasa, Annexure 2 to the amended writ petition impugned herein. Chargesheet is enclosed to the counter affidavit of the respondents dated 6.1.2012. Allegation relates to misconduct of the petitioner in the matters of grant of sanction and approval on certain deputation of Revenue Karmchari and Amin in the execution of work relating to renewal of Khas Mahal without obtaining permission of the Deputy Commissioner and giving misleading reply on being asked.

3. The second charge relates to improper behaviour of the petitioner with the superior authority in relation to application for allotment of certain quarters i.e. the Deputy Commissioner, Chaibasa. The third charge alleges disobedience of direction on deputation for law and order duty issued by the Sub Divisional Officer, Sadar, Chaibasa by the petitioner indulging in unwarranted

correspondences amounting to indiscipline on the part of the petitioner. The next charge also alleges violation of Rules in the matter of renewal of Khas Mahal lease in the matter of sending recommendation by passing the Sub Divisional Officer, Sadar, Chaibasa directly to the Deputy Commissioner. Other three charges allege act of unauthorized occupation of quarters allotted to the observer in Local Urban Bodies Election; Procurement of advance as salary in his capacity as a Special Officer, Chaibasa from the Municipality and unparliamentary language used in the reply submitted to the Deputy Commissioner. Petitioner has also assailed a letter No. 156 dated 26th April, 2012 and letter No. 185 dated 14th May, 2012 issued by the Inquiry Officer whereunder he was asked to appear and submit his defence. Challenge to the initiation of the departmental proceeding is essentially on the ground that the respondent-Department have already taken a decision to impose a punishment of withholding of one increment with cumulative effect as proposed by the Secretary, Department of Personnel, Administrative Reforms and Rajbhasa, but thereafter impugned proceeding for imposing a major penalty has been initiated, which is without jurisdiction and unsustainable in law. A decision was already taken to punish the petitioner by a minor punishment by the competent authority and they are debarred from reviewing their own decision thereafter which has led to initiation of the impugned proceeding.

4. Learned senior counsel for the petitioner submits that the notings on the file enclosed show that on a wholly misconceived assumption the punishment of withholding of one increment with cumulative effect is treated as a major punishment and the department has proceeded to initiate regular departmental proceeding for imposing major punishment upon the petitioner. Withholding of one increment with cumulative effect, is in the nature of minor punishment and the respondents authorities seem to have arrived at such finding on due deliberation on the charges levelled against the petitioner by the Deputy Commissioner, Chaibasa. Thereafter initiation of the impugned proceeding would lead to victimization of the petitioner in an arbitrary exercise of power.

5. Learned senior counsel informs that on account of interim protection granted by this Court though the proceedings have continued but final decision has not been taken. Learned counsel for the petitioner also submits that the respondents authorities are likely to proceed in a biased manner against the petitioner. In the aforesaid facts and circumstances, the impugned proceeding is liable to be interfered.

6. Learned counsel for the State has relied upon the notings which form the very basis of the submission of learned counsel for the petitioner, to dispute that a decision to impose minor punishment has already been taken by the competent authority. Reference has been made to the notings dated 28th January, 2011 of the Departmental Secretary to the Chief Secretary and thereafter deliberations undertaken with the Chief Secretary of the State. He has also referred to the notings at page 39 of the Supplementary Counter Affidavit filed on their behalf

on 27th November, 2015, of the Departmental Secretary i.e. dated 24th February, 2011 and decision taken by the competent authority through the hierarchy of the Chief Secretary of the State on 1.3.2011. It is submitted that the notings on the file would not amount to a decision as alleged by the petitioner and it is only upon final decision taken by the competent authority i.e., the Hon"ble Chief Minister of the State, in cases of officers belonging to the Jharkhand Administrative service like the petitioner, the formal resolution of initiation of proceeding has been issued in exercise of the powers under the Civil Services (Classification, Control & Appeal) Rules, specifically Rule 5. It is submitted that the impugned proceedings do not suffer from any jurisdictional error and the allegations contained in the chargesheet are warranted to be inquired into in a regular departmental proceeding whereafter a proper decision would be taken by the competent authority in accordance with law, principles of natural justice and the procedure required for conduct of such proceedings. Therefore, no interference is warranted. Learned counsel for the State has relied upon a judgment in the case of Sethi Auto Service Station and Another Vs. Delhi Development Authority and Others, , paragraph 12 to submit that a noting of an officer is only an expression of his view point on the subject. It is submitted that notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision making process, gets his approval and the final order is communicated to the person concerned.

7. I have considered the submissions of the parties in the factual matrix of the case pleaded. Upon consideration and perusal of the relevant material facts and the notings relied upon by the parties, it cannot be said that a noting of the Departmental Secretary dated 28th January, 2011 would amount to a final decision on the question of imposition of penalty of withholding of one increment on the part of the petitioner as alleged. Deliberations on the file show that the decision to initiate departmental proceeding has been taken by the competent authority on the charges alleged which formed part of the records on which the hierarchy of officials have given their opinion by way of notings in the journey of the file. In such circumstances, the contention of the petitioner that the decision to initiate the departmental proceeding amounts to a review of the decision already taken, is not justified. It is only the decision of the competent authority finally taken after the deliberations and application of mind on the subject, which has led to the initiation of the impugned resolution. In such circumstances, grounds to challenge the impugned proceedings are wholly without substance requiring any interference in exercise of the power of this Court under Article 226 of the Constitution of India.

8. As it appears that though the proceeding were allowed to continue but by virtue of the interim order dated 18.2.2013, the respondents were restrained from passing any final order against the petitioner. The respondents would now conclude the departmental proceeding in accordance with law after compliance of principles of natural justice and the procedure laid down within a reasonable time, preferably within a period of 16 weeks from the date of receipt of a copy of

this order.

9. Petitioner shall co-operate in the proceeding and if he fails to do so, it will be open to the respondents authorities to conclude the same in accordance with law in an ex parte manner also. However, it is made clear that discussions and observations made hereinabove would not prejudice the case of the parties in any manner.

10. This writ petition is, however, dismissed.