

(2020) 05 JH CK 0097
In the Jharkhand High Court
Case No : Writ Petition(S) No. 3915 of 2019

Prem Ranjan

APPELLANT

Vs

State of Jharkhand And Ors

RESPONDENT

Date of Decision : 28-05-2020

Acts Referred:

Civil Service (Classification, Control and Appeal) Rules, 1930 — Rule 55
Constitution of India, 1950 — Article 226

Citation : (2020) 05 JH CK 0097

Hon'ble Judges : Dr S. N. Pathak, J

Bench : Single Bench

Advocate : K. M. Verma, Shadab Bin Haque, Arup Kumar Dey, Chandra G.A. Burdhan

Final Decision : Allowed

Judgement

1. Heard learned counsel for the parties.
2. Petitioner has approached this Court with a prayer for quashing the order of punishment of Censure issued vide Memo No. 287, dated 12.01.2016 (Annexure-7) as also the appellate order issued vide Memo No. 8017, dated 16.09.2016 (Annexure-8) and further to direct the respondents to pay admissible consequential benefits to the petitioner such as promotion etc.
3. The case of the petitioner is that when he was posted as District Transport Officer, West Singhbhum at Chaibasa for the periods from 07.01.2011 to 04.09.2013, upon a complaint lodged by a local resident namely Marsal Mundu, the Lokayukt sought report from the concerned Deputy Commissioner and thereafter from the Transport Department regarding the alleged loss of revenue to the State Government due to non-payment of Transport Tax by the officers of SAIL of Meghahatu Buru Iron Ore Mines, District - West Singhbhum. A letter was also sent to the Divisional Commissioner to enquire into the matter and submit the report. Upon submission of report by the Divisional Commissioner, show-cause was issued to the petitioner, who, in turn, filed reply which was found to be

satisfactory. However, a departmental enquiry was initiated under Rule 55 of CCA Rules and petitioner received Memo No. 6308, dated 15.07.2015 alongwith Prapatra-Ka and the same was forwarded by illegally appointed enquiry officer vide letter no. 158/2015, dated 21.07.2015. Petitioner submitted his reply before the enquiry officer on 30.07.2015 and the enquiry officer called for the report from the Deputy Commissioner. The matter was heard on 08.09.2015 and the enquiry report was submitted on 08.10.2015 along with letter no. 496, dated 07.09.2015 of the then District Transport Officer, West Singhbhum, Chaibasa. Thereafter, the order of punishment was issued vide Memo No. 287, dated 12.01.2016 (Annexure-7). Petitioner preferred appeal against the order of punishment of "Censure" which has been affirmed vide Memo No. 8017, dated 16.09.2016. During pendency of departmental proceeding, name of the petitioner was considered by the DPC but decision was kept in sealed cover. Petitioner moved from pillar to post for withdrawal of punishment of "Censure" which is not based upon cogent evidence but finally the respondent no. 2 refused to reconsider the matter and as such, he has been constraint to knock door of this Court.

4. Mr. K.M. Verma, learned counsel assisted by Mr. Shadab Bin Haque and Mr. Arup Kumar Dey, submits that this is a glaring example where petitioner has been made escape goat and is unnecessarily being harassed at the hands of the respondents. Even after the show-cause reply was found to be satisfactory, illegally a retired officer was appointed as an Enquiry Officer to enquire into the matter, which is contrary to the provisions of Departmental Enquiries Act, 1972. Learned counsel submits that no regular departmental enquiry was ever conducted except asking of show-cause. Even no witnesses were examined nor any of the documents were ever exhibited. Merely on assumption, the straight forward enquiry report was submitted. Learned counsel further submits that even the notings of the file brought on record and produced in paragraph-15 and 16 of the writ petition, which has been obtained under Right to Information Act, clearly shows malafide action on part of the respondents. Learned counsel submits that petitioner has worked as District Transport Officer for the periods 07.01.2011 to 04.09.2013 but he has been made escape goat and none of the officers have been prosecuted except him for not implementing the provisions of tax on the vehicle in question for the periods 28.09.2000 to 06.01.2011. It is a fact that none of the authorities ever took care in the matter right from the bifurcation of the State till the year 2010 and it is the petitioner who for the first time noticed the matter and issued letter dated 25.04.2011 to the Manager, SAIL, Kiriburu/ Meghahatuburu and in reply thereto, SAIL issued letter no. 2037, dated 24.05.2011 to the petitioner annexing list of vehicles being run in the mine. Learned counsel submits that SAIL is a Government of India Undertaking and it was never expected that such a concealment would be made by them regarding use of "Off Highway Vehicles and Equipments" required for registration under the Motor Vehicle Act. Learned counsel further submits that different guidelines for loading factor of "Off Highway Vehicle" was not available and as such petitioner

issued letter no. 669, dated 13.06.2011 to the Transport Commissioner and required to provide calculation chart. Learned counsel further submits that as a matter of fact, it is the petitioner who conducted enquiry along with SDO and BDO and even in absence of calculation chart by the department, roughly imposed penalty upon the SAIL to deposit lump-sum amount of Rs.80,00,000/- and petitioner realized the same from SAIL through Cheque No. 315391, dated 06.07.2012 and thereafter, a joint report was submitted on 06.07.2012. Petitioner has discharged his duties with utmost satisfaction and soon after his joining at the place, he started chasing the companies and collecting information about the plying of vehicles by all the companies but SAIL did not act fairly and concealed the information regarding plying of "Off Highway Vehicle". Petitioner took efforts to realize the huge amount of Rs.80,00,000/- for the first time in the State, which was however stayed by the Hon'ble Court. Pick and choose method has been adopted by the authorities and though petitioner has started to take efforts for generation of government revenue but he is being harassed whereas those who did nothing in the matter to collect revenue, have not been touched. In the facts and circumstances, the order of punishment as well as confirmation of the same in appeal, are liable to be quashed and petitioner is entitled for the consequential benefits.

5. Per contra counter affidavit has been filed by the respondents.

6. Mr. Chandra G.A. Burdhan, learned SC-II vehemently opposes contention of learned counsel for the petitioner and submits that memo no. 368, dated 26.03.2015 (Annexure-A to the counter affidavit), clearly mentions about the charges of dereliction of duties committed by the petitioner causing revenue loss to the Government due to non-registration of "Off Highway Vehicles" of mines operators during his posting as a District Transport Officer, East Singhbhum, Chaibasa. The Disciplinary Authority has also found prima-facie case against the petitioner and as such, in terms of Rule 55 of the Civil Service (Classification, Control and Appeal) Rules, 1930, a decision was taken vide memo no. 6308, dated 15.07.2015, to initiate a regular departmental proceeding against the petitioner. Petitioner duly participated in the enquiry and had never objected appointment of the retired officer to be the enquiry officer and when the charges have been found to be proved, he has started raising objections regarding appointment of enquiry officer. After the charges levelled against the petitioner was found proved, the punishment of 'Censure' has been imposed, which is very minor in nature. The appeal against the punishment order has also been rejected. Due opportunity was given to the petitioner to defend his case and as such there is no violation of principles of natural justice. Since punishment of 'Censure' has been awarded in the departmental proceeding, the sealed cover process is adopted and the same could not to be opened in view of para 2(vii) of departmental resolution no. 6227, dated 20.11.2008.

7. Be that as it may, having gone through rival submission of the parties and on perusal of entire records, this Court is unable to appreciate the arguments

advanced by learned counsel for the State. Though it has been argued that charges have been proved against the delinquent/ petitioner, but the punishment of censure has been imposed, which is very minor in nature. Mr. K.M. Verma, learned counsel appearing for the petitioner is able to satisfy and convince this Court that the entire proceeding is full of procedural latches which itself is a cogent ground for quashing the entire departmental proceeding. The department failed to consider report of the Divisional Commissioner dated 18.12.2012 which clearly absolved petitioner of the charges and found his show-cause satisfactory and the same was recommended to the Transport Department and subsequently it was also forwarded to the Personnel Department. The State has failed to produce any document or any subsequent development which led to framing of the charges after two years. The State failed to satisfy as to why and how without leading any evidence, oral or documentary, the charges were partially proved. It also appears from the record that there was no material evidence brought on record in support of the charges framed against the petitioner.

8. The Hon'ble Apex Court in the case of M.V. Bijlani Vs. Union of India reported in (2006) 5 SCC 88, at paragraph-25 has held as under:-

25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."

9. From perusal of the entire records, it appears that the report of the enquiry officer suffers from the aforesaid vices. It is also well settled that on the outcome of a departmental enquiry, depends the livelihood of the employee. Before holding the charges be proved, scrupulous care should be taken to see that innocent men is not punished. Even the disciplinary authority has not discussed the specific defence of the delinquent officer, neither any finding has been recorded whether the defence of the officer has been accepted or not. The agreement or disagreement with the enquiry report has also not been indicated in the final order. The disciplinary authority has passed the order mechanically, without applying his mind and has simply affirmed the order of the Secretary and as such the impugned order is fit to be quashed and set aside, being mechanical, cryptic, capricious and violative of the principles of natural justice.

10. From the record, it appears that though a regular proceeding was initiated

for a major punishment, a summary procedure was adopted by the enquiry officer. It clearly manifests from the record that the petitioner has been penalized for non-registration of the "off highway vehicles" for sale by the predecessor from the year 2000 to 2010. For ten long years none bothered to execute the Rules but petitioner was penalized though he made every efforts for implementation of the Rules and for collecting taxes against the off-highway vehicles, which were plying in SAIL.

11. The entire enquiry is full of procedural latches which is reflected from the records where enquiry officer was appointed dehors the Rules as only for a major punishment, the retired employees are appointed as an enquiry officer otherwise the working departmental authorities can only hold such enquiries leading to minor punishment which is also proved from Annexure-D, Page-50 of the counter affidavit.

12. It is also surprising that vide his order dated 07.12.2015, the Joint Secretary has clearly held that the charges are not proved against the delinquent and as such he be exonerated from the charges and decision be taken to that effect and the same authority has passed the punishment of censure vide order dated 12.01.2016 which is contrary to the settled proposition of law, which is sufficient ground for setting aside the order of punishment. This Court, sitting under Article 226 of the Constitution of India, cannot act as an appellate authority re-appreciating the evidences, but when there is glaring procedural latches and violation of cardinal principles of natural justice, the Court cannot shut its eyes and has every power to interfere with the order.

13. From the aforesaid discussions and from perusal of documents and by carefully examining the rival submission of the parties and from perusal of entire records, I hold that the enquiry conducted against the petitioner was improper and in violation of the principles of natural justice. Since petitioner has already been considered for promotion but a sealed cover procedure has been adopted, I, hereby direct the respondents to open the seal cover and consider case of the petitioner for promotion, if he is otherwise found eligible and there be no other legal impediment, within a period of eight weeks from the date of receipt/production of a copy of this order.

14. As a sequel of the aforesaid rules, guidelines, legal proposition and judicial pronouncements, I hereby quash and set aside the impugned order of punishment of Censure issued vide Memo No. 287, dated 12.01.2016 (Annexure-7) as also the appellate order issued vide Memo No. 8017, dated 16.09.2016 (Annexure-8) and further direct the respondents to pay admissible consequential benefits to the petitioner on being found eligible etc., in accordance with law.

15. This writ petition is accordingly allowed with aforesaid order and direction.