
(2000) 07 PAT CK 0044
In the Patna High Court
Case No : C.W.J.C. No. 1169 of 1998

Rabindra Nath Pandey

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 25-07-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 4 PLJR 299

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Shailendra Kumar Singh No. 1, for the Appellant; G.P. Rai and Prabhat Kumar Singh, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—The petitioner who was posted as Subdivisional Officer (S.D.O.) at Araria, certain works were done under his guidance and order. In respect of such work, a departmental proceeding was initiated on the ground of certain omission and commission, where in after he having found guilty was dismissed from service vide order dated 9th March, 1993. Against the said order, the petitioner preferred appeal before the Governor of Bihar but no decision having taken and matter having referred by Governor to the State for their comment, vide letter dated 6th November, 1995, both the order of dismissal dated 9th March, 1993 and the Governor's reference made, vide letter dated 6th November, 1995, are under challenge in the present writ petition. The brief fact of the case shows that while petitioner was functioning as S.D.O., Araria, under his guidance and order, a number of civil works were taken up. Altogether, 13 such works were taken up. For some of the works, the petitioner also made advances to the Agents/Contractors.

2. While petitioner, on transfer, was functioning at other place, was suspended on 28th March, 1990 and a departmental proceeding was initiated, vide Annexure-4. In respect of 13 such works, one charge was framed and allegation of

irregularities in the matter of advance payment; dereliction of duty; misconduct; and indiscipline was made with specific allegation that the petitioner intentionally violated the Government guidelines with a view to misuse the Govt. fund, which shows doubtful integrity of the petitioner.

It was mainly alleged that the works were allotted to the Agents/Contractors and, in some cases, advances were also made without any prior technical sanction or administrative approval of the higher authority in terms with guidelines issued by the State. Funds were also alleged to have been diverted in making payments. In some cases, though no specific allotment was made for one or other scheme, without any approval of the District Planning Committee, without any technical and administrative approval, not only the works were allotted, but advances were also made. Further allegation was made that the Agents/Contractors were engaged without following the procedure like calling tenders and works were allotted illegally, which action shows doubtful integrity of the petitioner, amounting to misconduct.

3. Before the Commissioner for enquiry, the petitioner was given opportunity; evidences were laid and witnesses were examined. The Enquiry Officer, on appraisal of evidences and hearing the petitioner and the prosecution, held the charges "proved" against the petitioner vide its report, as contained and annexed with letter dated 1st February, 1992 (Annexure-6).

4. Admittedly, the petitioner was thereafter given opportunity of 2nd show cause with a copy of the enquiry report, vide letter dated 19th February, 1992 and he was asked as to why he not punished.

5. It appears that on receipt of reply, the authorities accepted the enquiry report and inflicted punishment of dismissal, vide order dated 9th March, 1993.

In the meantime, the petitioner filed one or other writ petitions against the order of suspension/departmental enquiry, but no substantive relief was granted, though he was allowed to be given full opportunity in the departmental enquiry. It is not necessary to discuss the details of those writ petitions.

6. The petitioner thereafter moved in appeal before the Governor of Bihar, but it was not decided. The O.S.D.2, on behalf of the Governor of Bihar vide letter dated 6th November, 1995 forwarded the matter to the State for its comment.

7. In the aforesaid background, the present writ petition was preferred wherein the petitioner also raised the jurisdiction of the Governor to remit the matter before the State for its comment, though the order of dismissal was passed by the State of Bihar.

8. Earlier when the case was taken up, a controversy was raised regarding the correct person to hear the appeal as per Civil Services (Classification, Control & Appeal) Rules, 1930. While petitioner relied on one of the decisions to show that the Governor of Bihar himself was to decide the appeal, reliance was placed by State on decisions of this Court and the Supreme Court in *Samsher Singh Vs.*

State of Punjab and Another, to show that the Governor does not have independent discretion, but is bound to act on the advise of the Government.

9. In view of aforesaid controversy, this Court vide order dated 5th July, 2000, when observed that the Civil Services (Classification, Control & Appeal) Rules, 1930 and Bihar & Orissa Subordinate Services (Discipline and Appeal) Rules, 1935 have become obsolete, in the present context, took into consideration on the fact that nomenclatures of one or other posts have been changed, including the designation of officers, which may give rise to confusion. It was in the aforesaid background, while this Court allowed time to the State and directed them to frame new Discipline and Appeal Rules for its Class-I to IV employees, as their think fit and proper, also desired to hear this case on merit for final disposal without remitting the matter to the appellate authority.

10. The fact that the enquiry was; conducted, in accordance with law after adequate opportunity to petitioner, is not under dispute. The counsel for the petitioner solely raised two questions namely (a) the allegation as levelled does not constitute misconduct and as such as punishment can be inflicted much less dismissal from service and (b) the quantum of punishment is disproportionate is the gravity of charges.

11. The counsel for the petitioner submitted that the charges relate to the regularities, which does not amount (sic) dereliction of duty, nor amount to misconduct. There are guidelines where power vested to obtain post facto approval, or completion of works. In all these cases/works, for which allegation was made, the petitioner merely allotted the work or, in some cases, made advance Immediately, thereafter, about within week, the petitioner was transferred Subsequently, the work having completed; approval having granted by the competent authority and there being no loss of State exchequer, the allegation cannot construed to be a misconduct on the part the petitioner. It was suggested that their was no allegation relating to taking of legal gratification by the petitioner in allotment of work or in making advances favour of one or other Agents/Contractors

12. The counsel further submitted that there being no allegation of substance hard work, there being no allegation relating to loss of State exchequer, even a certain irregularities made in the matter of allotment of work and in making advances, a major punishment like dismissal from service is uncalled for being disproportionate to the gravity of charges.

13. In the case of Union of India (UOI) and Others Vs. J. Ahmed, , while the Supreme Court held that disciplinary proceeding can be held against a member of the service for any act or omission, which render him liable to a penalty, but such penalty can be imposed for good and sufficient reason. The inhibitions in the Conduct Rules clearly provide that an act or omission contrary thereto, so as to run counter to the expected Code of Conduct, constitute misconduct.

14. It is true that in a particular case, there may be negligence in performance of

duty or lapse in performance of duty or error of judgment in evaluating the developing situation; the same may not constitute misconduct unless the consequences directly attributable to negligence would be such as irreparable or the resultant damage would be so heavy that the degree of palpability will be very high. But in cases where an act or omission is found to have been made number of times contrary to the Code as stipulated, the same can be construed to be a misconduct and integrity of one can be doubted.

15. It is not in dispute, as accepted by the petitioner in his show cause reply, that he was not competent to allot the work, without sanction by the Technical Committee or approval of work by the competent authority. Tenders were to be called for, before allotment of work. The guidelines also prohibits payment and advances, before the starting of the work. The case of the petitioner is that he allotted all the works and was transferred immediately within six days.

16. From the charge, it will be evident that such allotment of work was large in number, totaling 13 (thirteen). Either it was in respect of construction of Nalas or in respect of construction of boundary wall or building or shops or other, in all the 13 cases, neither presanction was obtained from technical persons, though the work was civil in nature, and petitioner was not technical personnel. Nor in any of such 13 works, prior approval was obtained from the competent authority. In spite of guidelines issued by the State, the tenders were not called for before allotment of 13 such works and all of them were done simultaneously within a short span, just before the transfer.

All these facts have been taken into consideration by the Enquiry Officer and have been proved by the leading evidences. In such a case, there being a number of such action taken (13 in number), within such a short span, including grant of advances to a number of Agents/Contractors, without any tender. The same cannot be held to be a mere irregularity, but one may doubt the integrity and the totality can be termed to be a misconduct. Such act and omission on the part of the petitioner, having found proved, has been rightly termed as dereliction of duty and deliberate violation of the Government guidelines.

17. In the aforesaid circumstances, the plea taken by the counsel for the petitioner that the allegation made against the petitioner does not constitute misconduct, cannot be accepted, nor the order can be interfered on such ground.

18. So far as quantum of punishment is concerned, it is not open for this Court to decide the same under Article 226 of the Constitution of India. It was well within the competence of the disciplinary authority or the appellate authority to decide the proportionality of punishment on the basis of gravity of charge. Thereby, no specific direction can be given by this Court relating to proportionality of punishment on the basis of gravity of charges.

19. It is stated that in normal course, the petitioner would have retired from service in 1998. Suggestion was made by the counsel for the petitioner that if the order of punishment is converted as penal order of compulsory retirement,

the petitioner may be entitled for retiral benefits at least from the date of the impugned order (9th March, 1993).

20. in this respect, I give liberty to the petitioner to move before the State (Secretary of the Department) to ventilate his grievance relating to quantum of punishment.

21. If any representation is filed by the petitioner to convert the punishment of dismissal as a compulsory retirement by way of punishment with effect from 9th March, 1993, the said authority is expected to decide the same, taking a lenient view, in view of the fact that no loss of State exchequer shown in the charge sheet.

22. If any such representation is filed, the State through the Secretary of the Department will decide the same within three months from the date of receipt of representation and, if so required, may review the punishment order dated 9th March, 1993 and modify the same. In such case of representation, the decision so taken be also communicated within the aforesaid period of three months. The writ petition is dismissed, but with aforesaid observations.