

(2013) 05 JH CK 0033
In the Jharkhand High Court
Case No : Writ Petition (S) No. 6612 of 2003

Raj Kishore Prasad Singh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 15-05-2013

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2013) 4 AJR 40 : (2013) 3 JLJR 72

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Binod Kumar, for the Appellant;

Final Decision : Allowed

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties. By the original order dated 03.05.1997, Annexure-16, the petitioner has been imposed punishment of recovery of Rs. 1,03,159.50/- from his gratuity pursuant to the departmental proceeding initiated, vide order No. 2863 dated 05.08.1995, in respect of certain charges.

2. The appeal preferred against the said order has also been rejected by the Appellate Authority i.e. the Commissioner-cum-Secretary, Forest and Environment Ministry, Government of Jharkhand, Ranchi vide order dated 19.09.2003. The petitioner has challenged both these orders in the present writ petition. He has also assailed the impugned order by which the salary for the period from January, 1994 to January, 1995 has been withheld and the period in question held to-be unauthorized leave. According to the petitioner, the petitioner consequently has prayed for the payment of entire remaining post retirement, dues and the salary for the said period.

3. According to the petitioner, he retired with effect from 31.01.1995 from the post of Range Officer, Forest Range, Ranchi. However, vide order dated 05.08.1995, a departmental proceeding was initiated against him for the alleged

charges that he has not obeyed the order of the higher authorities and he has not deposited of Rs. 31,400/- after certain period and further he has caused loss of amount of Rs. 1.62 lakhs and odd in respect of fertilizer kept in Godown under his charge. It is submitted that after the enquiry proceeded, the enquiry officer vide Annexure-18 dated 10.10.1996 exonerated him from all the charges after thorough discussion of the materials produced during the enquiry also taking into account the petitioner's show cause as also the statements of the presenting officer. It is however submitted that without any second show cause notice issued by the Disciplinary Authority showing reason for differing with the enquiry report, the impugned order of punishment dated 03.05.1997 has been passed imposing the aforesaid punishment. It is submitted that the petitioner had in the meantime earlier approached Patna High Court in CWJC No. 1117 of 1998(R) against the original order of punishment. However, the same was permitted to be withdrawn with liberty to the petitioner to prefer an appeal before the Appellate Authority.

4. Learned counsel for the petitioner submits that the Appellate Authority has failed to consider his ground for defence in the appellate order dated 19.09.2003, Annexure-20 and confirmed the aforesaid punishment. Learned counsel for the petitioner submits that though the Appellate Authority has taken note of the fact that, the enquiry officer had exonerated him from all the charges, but has proceeded to hold against him by making him responsible for such financial loss to the department with respect to the loss of fertilizer as he was In-charge of the godown at the relevant point of time. The Appellate Authority has felt that the petitioner has failed to give satisfactory reply to the charges relating to the stock of fertilizer lying in the godown and as such, the amount, which has been found to be lost from the State exchequer against the said stock of the fertilizer, be recovered from his gratuity. In these circumstances, learned counsel for the petitioner has assailed the impugned order stating that they are vitiated in law as well as on facts.

5. Learned counsel for the respondents, on the other hand, has contended that the proceedings have been conducted after giving opportunity to the petitioner and even the Appellate Authority allowed him personal hearing, but the petitioner could not show satisfactory reasons for loss of the amount against the fertilizers, which were kept in the godown under the charge of the petitioner. As such the said amount had been ordered to be recovered from his gratuity. Since the petitioner has remained absent unauthorizedly from duty from January, 1994 to January, 1995, the said period has been held to be on unauthorized absence from duty and the petitioner would not be entitled to salary for the said period. So far as the claim of the petitioner for seeking salary for the period from July, 1991 to May, 1992, it has been stated on their part that the amount relating to increase in Dearness Allowance have been paid to the petitioner. The amount on leave salary for 240 days have also been withdrawn and deposited in the Ranchi Treasury. The order has been passed as per the Rules and they are not arbitrary in nature and, therefore, no interference is required in the instant writ petitioner.

The Departmental proceedings can also be proceeded against retired personal under the Provisions of Bihar Pension Rules (Now adopted by Jharkhand). The Appellate Authority had also considered the submissions of the petitioner, but found his explanation unsatisfactory and therefore, the Original Order has been confirmed.

6. I have heard learned counsel for the parties at some length and have gone through the relevant materials on record. The petitioner admittedly has been proceeded against after his retirement on the basis of the office order dated 05.08.1995 for the charges of having disobeyed the orders of the superiors and of remaining absent for certain periods from duty, "for having deposited an amount of Rs. 31,400/- after certain time" and also for failure to account for fertilizer to the tune of Rs. 1,03,159.50. However, it is also not in dispute that the Enquiry Officer of the rank of Conservator of Forest, Works, Employment & Research Circle, Ranchi in his enquiry report, Annexure-18 to the writ petition, exonerated the petitioner from all the charges. The impugned order has been passed thereafter as contained in Annexure-16 dated 03.05.1997 wherein the aforesaid punishments have been imposed. It is, however, not in dispute that the Disciplinary Authority never issued a second show cause giving reasons for differing with the report of the enquiry officer and proposed punishments against the petitioner in order to enable him to defend himself. The requirement of second show cause notice in the Departmental Proceeding is mandatory and in case where Disciplinary Authority differs from the enquiry officer report exonerating delinquent employee, reasons for differing with the enquiry officer are required to be indicated so that the delinquent employee can town occasion to defend himself against the proposed punishments and the reasons for such differences. It also enables the delinquent to know the mind of the Disciplinary Authority. In the instant case, it does not appear that the aforesaid requirements of law contemplated under the Departmental Rules as also read under the provisions of under Article 311 of the Constitution of India and interpreted by the judgment of Hon"ble Supreme Court have been followed before imposing the punishment. The Appellate Authority also did not take into account the aforesaid lacuna in conducting the Departmental Proceeding and has confirmed the order of punishment.

7. In such circumstances, the impugned order dated 03.05.1997, Annexure-16, imposing punishment of recovery of Rs. 1,03,159.50/- from the gratuity of the petitioner cannot be sustained in law and it is, accordingly, set aside. However, since the petitioner remained absent from duty from January, 1994 to January, 1995. no fault can be found with the stand of the respondents in treating the aforesaid period as unauthorized absence from duty. No separate punishment has been given on that account. In such circumstances, the writ petitioner is allowed to the extent indicated hereinabove.

8. The petitioner admittedly has retired in the year 1995, therefore, it will be a futile exercise at this stage after 18 years of his retirement to remand the matter

once again to the respondents to proceed against the petitioner for the same charges after such a length of time. In these circumstances, the petitioner would be entitled to refund of the amount of Rs. 1,03,159.50/- within a period of eight weeks from the date of receipt of a copy of this order. This writ petition is, accordingly, allowed in the aforesaid manner.