
(2015) 04 JH CK 0122
In the Jharkhand High Court
Case No : WP(S) No. 1521 of 2015

Rajendra Prasad

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 29-04-2015

Acts Referred:

Citation : (2015) 2 JLJR 533

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Anil Kr. Sinha and Saurav Arun, for the Appellant; Sumir Prasad, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Aparesh Kumar Singh, J—Heard learned counsel for the parties. Petitioner has approached this Court against the second show cause notice dated 28.7.2014 (Annexure-7) alleging that they are in teeth of the ratio laid down by the Hon"ble Supreme Court in the judgment rendered in the case of Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, (1998) 6 AD 220 : AIR 1998 SC 2713 : (1998) 2 CTC 742 : (1998) 5 JT 548 : (1998) LabIC 3012 : (1998) 2 LLJ 809 : (1998) 4 SCALE 608 : (1998) 7 SCC 84 : (1998) SCC(L&S) 1783 : (1998) 1 SCR 22 Supp : (1999) 1 SLJ 271 : (1998) AIRSCW 2762 : (1998) 6 Supreme 486 and also the judgment rendered by the learned Single Judge in his own case in W.P.S. No. 1221 of 2013. He has therefore prayed that the impugned show cause notice be not given effect to.

2. The brief facts of the instant case are that earlier petitioner approached this Court in relation to the same departmental inquiry when after submission of the inquiry report by the Inquiry Officer dated 29.6.2012, finding the charges not proved against him, a fresh inquiry was ordered on 6.10.2012 appointing a new Inquiry Officer. The challenge to the initiation of fresh inquiry in W.P.S. No. 1221 of 2013 was allowed by the learned Single Bench of this Court and the order directing fresh inquiry dated 6.10.2012 was quashed vide judgment dated

17.1.2014 (Annexure-6). However, it was left open to the respondents to pass a fresh order in the matter in accordance with law. Thereafter, the respondents have issued notice in the nature of second show cause, which is being challenged by the petitioner on the ground that it in fact contained the findings against the petitioner on the aforesaid charges without actually giving opportunity to the petitioner to represent on the grounds of difference by the Disciplinary Authority on the inquiry report. It is submitted by learned Senior Counsel appearing on behalf of the petitioner that in fact this is no opportunity to the petitioner to represent against the reasons for differing from the opinion of the Inquiry Officer as the Disciplinary Authority has asked him to show cause as to why major punishment be not imposed against him. The impugned show cause notice also does not give him an opportunity of hearing as contemplated in the judgment rendered in the case of Punjab National Bank and Others v. Kunj Behari Misra (supra). The Disciplinary Authority in fact has not differed with the findings of the Inquiry Officer rather reiterated the charges itself. Therefore, the impugned notice does not fulfill the requirement of second show cause and it should be quashed.

3. The respondent-State has filed their-counter affidavit and taken a stand that after recommendation was made by the C.B.I., the department chose to initiate a disciplinary proceeding against the petitioner after reviewing of the C.B.I.'s report. However, the Inquiry Officer exonerated the petitioner of the charges and thereafter the Disciplinary Authority being not satisfied with the Inquiry Officer's report intended to take further action. According to the respondents, initiation of a fresh inquiry having been quashed by this Court, the impugned show cause has been issued on 28.7.2014 in accordance with the provisions of the conduct of departmental proceeding, wherein the reasons for disagreement has been clearly mentioned. Petitioner was also reminded through notice on 23.2.2015 to respond.

4. At this stage learned Senior Counsel for the petitioner points out by referring to the averments made at para 20 of the writ petition that the impugned show cause notice dated 28.7.2014 was never communicated to the petitioner earlier and the same has been communicated for the first time through letter dated 23.2.2015. This statement does not stand specifically refuted by the respondents in their reply in para 25 of their counter affidavit.

5. I have heard counsel for the parties and gone through the relevant materials on record including the judgment relied by the petitioner. At the outset it is to be noted that the challenge to the impugned show cause is not on the ground of lack of jurisdiction or mala fide. It is well settled that at the stage of second show cause, interference of the Court in judicial review is wholly uncalled for unless the same are vitiated as being without jurisdiction or being mala fide in nature. The petitioner has tried to make out a case that the second show cause notice does not fulfill the requirement of a notice and the reasons indicated therein are not in the nature of difference of opinion of the Disciplinary Authority from the Inquiry Officer report rather they are part of the charges itself and are in the

nature of findings by the Disciplinary Authority. Moreover, the petitioner has not been given any opportunity of hearing" as required under the Principles of Natural Justice and in view of the judgment rendered by the Hon"ble Supreme Court referred to herein supra.

6. On perusal of the impugned notice, it appears that while narrating four grounds by the Disciplinary Authority as being not satisfied with the report of Inquiry Officer, it has been indicated thereafter that the Disciplinary Authority differs from the opinion of the Inquiry Officer on the charges alleged against the petitioner. The impugned notice thereafter has asked the petitioner to reply as to why proposed punishment be not imposed against him, at the same time asked him to submit his written reply to the aforesaid grounds of difference of opinion indicated in the said show cause notice.

7. At this stage, this Court does not seem it necessary to examine the grounds of difference shown by the Disciplinary Authority with the Inquiry Officer's report on merit as the petitioner has adequate opportunity to respond to the same before the Disciplinary Authority. This Court is not required to prejudge the issue which is yet to attain finality and it may be quite possible that upon submission of the reply by the petitioner, the Disciplinary Authority may take an informed decision in favour of the petitioner also. In such circumstance, this Court does not find any reason to interfere with the impugned show cause notice. However, it is, to be observed that the show cause does not seem to grant an opportunity of hearing to the petitioner as is contemplated in such cases where the Disciplinary Authority differs with the findings of the Inquiry Officer which has exonerated the delinquent employee in view of the ratio laid down by the Hon"ble Supreme Court in the case of Punjab National Bank and Others v. Kunj Behari Misra (supra). Therefore, while refusing to interfere with the impugned second show cause notice, it is however observed that the Disciplinary Authority would grant an opportunity of hearing to the petitioner on his reply to the second show cause notice before arriving at a decision on the instant departmental inquiry against him. The writ petition is disposed of with the aforesaid observations.