

(2004) 09 PAT CK 0123
In the Patna High Court
Case No : CWJC No. 10132 of 2003

Rajib Lochan Jha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 03-09-2004

Acts Referred:

Citation : (2004) 09 PAT CK 0123

Final Decision : Allowed

Judgement

Navin Sinha, J.—The prayer in the present writ application is to quash the memo of charges issued against the petitioner dated 21.6.1982 at Annexure 3. The petitioner also seeks quashing of the enquiry report dated 15.3.1983 at Annexure 12 in pursuance thereto as also to quash the consequent order dated 8.6.1985 at Annexure 15 by which the petitioner has been dismissed from service. Having preferred a re presentation/review against the order of dismissal and the same having been rejected, the prayer also is to quash the order dated 22.8.2003 at Annexure 21.

2. The petitioner at the relevant time was posted as Assistant (Incharge Nazir) in Triveniganj block. An allegation was made against the petitioner of defalcation of a sum of Rs. 50,000/- combined with the charge of having violated government procedures for withdrawal and transportation of such a large amount of cash leading to loss of the same. The petitioner was taken into custody on 10.8.1981 in Supaul PS Case No. 123 of 1984 registered u/s 409 of the Penal Code on 28.8.1981, the petitioner was placed under suspension. A copy of the First Information Report is on record as Annexure 2.

3. On 21.6.1982 departmental proceedings were initiated against the petitioner by serving on him the memo of charges which is at Annexure 3. It would be necessary at this stage to observe that the charges in the departmental proceedings at Annexure 3 are the same as the allegations against the petitioner in the First Information Report at Annexure 1. This fact has also been reiterated by the petitioner in para 10 of the present application.

4. The learned Counsel for the petitioner submitted that in the departmental proceedings neither any list of witnesses nor any list of documents were supplied to the petitioner with the memo of charges, thus causing him serious prejudice. The petitioner appeared before the Enquiry Officer and requested for supply of documents. However no document or list of witnesses were provided to the petitioner who then proceeded to submit his reply to the same within his limitations denying the allegations. The petitioner's request for summoning the witnesses named in the FIR was not acceded to by the Enquiry Officer, thus causing serious prejudice to him. Quite apart from the aspect of violation of principles of natural justice. The Enquiry Officer despite the request of the petitioner did not call for the relevant original documents from the concerned office. The ultimate allegation by the petitioner against the departmental proceedings was that there was no Presenting Officer appointed on behalf of the Department and therefore the Enquiry Officer acted as both the Judge and the Executioner, Based on such conduct of a departmental proceeding contrary to all canons of law and procedure, the Enquiry Officer of his own on the basis of the departmental documents available with him and the show cause submitted by the petitioner proceeded to hold the petitioner guilty by his report dated 15.3.1983 at Annexure 12.

5. This led to the issuance of the second show cause notice to the petitioner by the respondent No. 2 and finally culminated in the order of dismissal dated 8.6.1985 at Annexure 15.

6. It is the contention of the petitioner that both during the pendency of the departmental proceedings as also at the stage of submission of reply to the second show cause, the petitioner had requested that further action in the departmental proceedings be restrained till decision in the aforesaid Supaul PS Case No. 123/81 registered against him. The allegations and charges in both being the same. Notwithstanding the same the authorities in haste proceeded with the departmental proceedings and passed final orders of punishment. It is relevant to point out here that the pleadings of the petitioner both with regard to non-compliance of procedures of a departmental enquiry as recorded hereinabove, and to the prejudice of the petitioner, as also the pleadings with regard to the request for stay of further proceedings in the disciplinary enquiry are clear and specific in paragraphs 11, 27, 30 & 33 of the writ application.

7. The criminal prosecution ultimately came to be decided adverse to the petitioner by judgment dated 19.2.1994 holding him guilty of the charges. Aggrieved thereby the petitioner preferred Cr. Appeal No. 6 of 1994 wherein he was acquitted by judgment dated 18.9.2002 pronounced by the Additional Sessions Judge, Supaul, on grounds of complete lack of evidence. A copy of the same is on record at Annexure 17.

8. In the aforesaid changed circumstances the petitioner then requested the authorities by a representation dated 29.1.2003 to review the order of dismissal which was rejected by order dated 22.8.2003 at Annexure 21. The petitioner in

his representation also requested for the release of his full salary and other allowances from the date of his suspension.

9. This was followed by repeat representations when respondent No. 4 finally by order dated 22.8.2003 rejected the same.

10. A counter affidavit has also been filed on behalf of the State. The counter affidavit is vague in its pleadings and assertions. The allegation of the petitioner with regard to complete non-compliance with law and procedure in the conduct of the departmental proceeding is not denied. A reference may be made to paragraph 5 of the counter affidavit on behalf of respondent No. 2 which simply states "the departmental proceeding was conducted and concluded properly". The counter affidavit in paragraph 13 simply reiterates that all legal process were followed before passing final orders of dismissal. The counter affidavit has however sought to make a half hearted distinction between the criminal liability of the petitioner of which he was absolved in the prosecution, from the departmental liability for non-compliance with government procedures for withdrawal of large sums of money.

11. Learned Senior Counsel, Dr. Sadanand Jha, appearing on behalf of the petitioner made a two pronged submission. The first submission was that the departmental enquiry being contrary to law, the report of the Enquiry Officer and the consequent order of dismissal become per se bad. The second submission was that in view of the fact that the charges in the departmental proceeding and in the criminal prosecution were the same, consequent to acquittal in the criminal prosecution the order in the departmental proceeding was automatically rendered bad. In support of his submissions learned Sr. Counsel placed reliance upon a judgment of this Court reported in 2000 (3) PLJR 10 and submitted that in absence of the presenting Officer, the sine qua non for a valid departmental proceeding, the entire proceeding was vitiated. The argument was that in absence of exhibition of any document, examination of witnesses the entire proceeding was rendered bad. As noticed earlier, the counter affidavit does not dispute these assertions on procedure. This aspect of the matter where likewise no presenting officer was appointed, no documents were exhibited, no evidence was led by witnesses and the Enquiry Officer on basis of the official documents and show cause filed by the delinquent proceeded to pass final orders in the departmental enquiry came to be considered in a judgment of this Court relied upon by the learned Senior Counsel Shri Jha reported in 2000 (3) PLJR 10. The conclusion therein was that the order of dismissal was bad and was accordingly set aside with direction for reinstatement. The submission therefore was that the order of dismissal is bad, vitiated in law, and fit to be set aside. The submission of the learned Counsel would also find support from the judgment of the Supreme Court in the case of D.K. Yadav Vs. J.M.A. Industries Ltd., . It would be relevant to quote para 14 of the said judgment for purposes of better appreciation.

"The order of termination of the service of an employee/workman visits him with

civil consequences of jeopardising not only his/her livelihood but also career and livelihood of dependents, Therefore, before taking any action putting an end of the tenure of an employee/workman fair play requires that a reasonable opportunity to put forth his case is given and domestic enquiry conducted complying with the principles of natural justice."

12. In the aforesaid facts and circumstances this Court has no hesitation in coming to the conclusion that the departmental proceedings were conducted contrary to law. The order of the Enquiry Officer dated 15.3.1983 at Annexure 12 as also the order of dismissal dated 8.6.1985 at Annexure 12 as also the order of dismissal dated 8.6.1985 at Annexure 15 therefore are automatically rendered bad in law.

13. There would however be another aspect of the case i.e. the judgment in the criminal prosecution by which the petitioner has been acquitted for complete lack of evidence, keeping in mind that the charges in both were the same. Learned Counsel for the petitioner for this proposition sought to rely upon a judgment of this Court reported in 2000(3) PLJR 709 and 2003(3) PLJR 347. This Court finds that similar was the view taken by the Supreme Court in the Case of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, . Learned counsel for the petitioner lastly submitted placing reliance upon the Bihar Boards Miscellaneous Rules, 1957, and that the petitioner would be governed by the same and that vide government instruction dated 23.8.1963 contained in Memo No. 111/RI-102/63A-10158 at Appendix j. Clause 7, that in view of the acquittal in the criminal case the authorities were bound to review the case and come to a fresh conclusion with regard to the departmental misdemeanor. He submitted that in the present case the departmental proceeding being bad in law, even if the authorities sought to make a distinction between the judgment in the criminal case with regard to the allegation of defalcation from the charge of departmental misdemeanor the same would be of no help to the respondents in view of assertion that the departmental proceedings were entirely contrary to law.

14. Learned Counsel appearing for the State placing reliance upon the judgment reported in 2000(4) PLJR 345 submitted that even if the criminal prosecution resulted in acquittal it would not automatically provide relief to the petitioner in the departmental proceeding. This Court does not dispute the contention. This aspect of the matter has already been considered by this Court in the reasoning as contained hereinabove. The question would be whether there was a proceeding in accordance with law for departmental misdemeanor. The next judgment relied upon by the State was 2000 (2) PLJR 305. This Court is afraid that the same has no relevance to the question in issue here.

15. In view of the aforesaid discussions this Court has no hesitation in coming to the conclusion that (a) the departmental proceedings were conducted contrary to all cannons of law and procedures. The report of the Enquiry Officer dated 15.3.1993 at Annexure 12 is therefore vitiated in law. For the same reason the consequential order of dismissal at Annexure 5 dated 8.6.1985 is also therefore

rendered invalid in law. Both the orders are accordingly set aside.

16. The petitioner both during the pendency of the proceedings having requested for stay of the criminal prosecution reiterated the same at the stage of the second show cause notice and submitted his representation for review in accordance with law. This Court has no hesitation in holding that the impugned order dated 22.8.2003 at Annexure 21 declining to review the same is also bad in law. The order is cryptic, non speaking and completely ignores the government instructions under the Boards Miscellaneous Rules in this regard. Accordingly the order dated 22.8.2003 is also set aside.

17. The next question which arises is what is the relief to be granted in the peculiar facts of the case. The petitioner is said to have superannuated on 31.12.94. An order of remand would bring little succour to the petitioner in the evening of his life. The petitioner was subjected to proceedings and prosecution since 1981. He was sent to jail, he was suspended, charges of defalcation failed in the criminal prosecution and an order of dismissal came to be passed for departmental misdemeanor in a departmental proceeding conducted contrary to law. This Court therefore does not consider the present to be a fit case at this stage of time to be remanded to the authorities either to initiate fresh proceedings with regard to the departmental misdemeanor or for review based upon acquittal in the criminal prosecution. In the facts and circumstances, peculiar to the case, this Court considers it proper to direct that the petitioner shall be treated as to have remained in continuous service from the date of suspension till his superannuation on 31.12.1994. The petitioner shall be entitled to all consequential benefits of salary, allowances etc. in accordance therewith. The respondents shall be obliged to comply the order within a period of four months from the date of receipt or production of a copy of this order.

18. The writ application stands allowed. There shall be no order, as to costs.