
(2005) 09 PAT CK 0097
In the Patna High Court
Case No : C.W.J.C. No. 2945 of 2003

Ram Narayan Renu

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 29-09-2005

Acts Referred:

Citation : (2005) 09 PAT CK 0097

Final Decision : Dismissed

Judgement

S.K. Katriar, J.—This writ petitioner is directed against the order dated 26.2.2002 (Annexure-20), passed by the Government of Bihar in purported exercise of powers under Rule 43(b) of the Bihar Pension Rules, 1950, whereby the petitioner's pension to the extent of 25% per month has been reduced, the entire amount of gratuity has been forfeited, and a sum of Rs. 11,63,549.18 p. has been directed to be recovered from him for the losses caused to the State Government. It is further directed against the consequential order dated 22.3.2002 (Annexure-22) for recovery of the said amount of gratuity. The writ petition is also directed against the order dated 1.4.2004 (Annexure-23), which seeks to substitute the said orders dated 26.2.2002 (Annexure-20), and 22.3.2002 (Annexure-22), the cumulative effect of which is that apart from the said punishment of reduction of pension and forfeiture of the amount of gratuity, the amount of recovery for the losses caused to the Government has been substituted by Rs. 19,76,783 78 P.

2. According to the writ petition, the petitioner was posted at Begusarai as Assistant Commissioner of Commercial Taxes from November 1982 to 19.10.1987. during which period he had assessed one M/s Mukundi Lal Bansidhar to sales tax. The following chronology of events will delineate the situation lucidly :--

29.3.1984 (Annexure-1) The petitioner had assessed M/s Mukundi Lal Bansidhar on the basis of returns submitted by it to Rs. 23,53,879.77 P. by way of best judgment assessment.

28.6.1984 (Annexure-2) On the defects in the order pointed out by the assessee had thereafter filed a review petition u/s 47 of the Bihar Finance Act, 1981 (hereinafter referred to as "the Act") before the petitioner which was allowed by the order and the tax assessed was reduced to Rs. 11,93,695.99 P.

10.3.1987 (Annexure-4) The assessee preferred appeal against the said order dated 28.6.1984 (Annexure-2), which was allowed by the Joint Commissioner, Commercial Taxes (Appeals), Darbhanga Division, wherein the assessee got some relief on another point, and the tax liability was reduced to Rs. 1,69,742.23 P.

23.7.1990 Unmindful of the said appellate order dated 10.3.1987 (Annexure-4), the learned Commissioner of Commercial Taxes passed the order in purported exercise of powers u/s 46(4) of the Act, being suo motu revisional powers, set aside the said review order dated 28.6.1984 (Annexure-2), and remitted the matter back to the learned assessing authority for a fresh assessment.

16.11.1990(Annexure-5) Aggrieved by the said order dated 23.7.1990, the assessee preferred Revision Case No. DR-460/90, which was allowed by the Commercial Taxes Tribunal, and the order of the learned Commissioner of Commercial Taxes was set aside.

7.5.1991 The petitioner was placed under suspension.

10.7.1991(Annexure-7) Learned Commissioner of Commissioner Taxes once again set aside the said review order dated 28.6.1984 (Annexure-2), as well as the appellate order dated 10.3.1987 (Annexure-4).

19.9.1991 (Annexure-10) The petitioner preferred CWJC No. 4146 of 1991, which was disposed of by a Division Bench of the High Court, whereby the disciplinary authority was directed to serve charge-sheet on the petitioner if they want to hold a disciplinary enquiry, within a period of one month from that date, failing which the suspension order shall stand quashed.

15.10.1993 (Annexure-9) Aggrieved by the said order dated 10.7.1991 (Annexure-7), the assessee preferred Revision Case No. DR-346/91, which was allowed by the Tribunal and the same was set aside.

31.1.1999 The petitioner superannuated from the services of the Bihar Government.

28.4.2001 (Annexure-17) The Commissioner of Departmental Enquiry, being the Enquiry Officer, submitted his enquiry report adverse to the petitioner.

22.8.2001 The State Government converted the proceedings under Rule 43(b) of the Bihar Pension Rules and forwarded a copy of the enquiry report to the petitioner as to why the losses caused to the State revenue be not recovered from his pension and gratuity.

26.2.2002 (Annexure-20) The State Government passed the impugned order

whereby the petitioner's pension has been reduced to the extent of 25% each month, his entire amount of gratuity has been forfeited, and a sum of Rs. 11,63,549.18 P. directed to be recovered from his pension for having caused loss to the State revenue.

22.3.2002 (Annexure-22) The impugned order, being consequential in nature, for recovery of the said amount.

1.4.2004 (Annexure-23) The impugned order of the State Government, whereby the said orders dated 26.2.2002 (Annexure-20) and 22.3.2002 (Annexure-22), have been substituted, the punishment with respect to the pension and gratuity has remained intact but the amount of loss sought to be recovered has been raised to Rs. 19,76,783.78 P.

3, While assailing the validity of the impugned order, learned Counsel for the petitioner submits that the petitioner's appeal against the order on the review petition was allowed and he was granted further relief reducing his tax liability. Therefore, the very *raison d'être* for the disciplinary proceeding is gone. In other words, there is no basis to initiate departmental proceedings for having caused loss on account of the order on the review petition. He relies on the following judgments :

(I) AIR 1963 SC 1125 (Collector of Customs v. East India Commercial Co.).

(II) Commissioner of Commercial Taxes Vs. Rohtas Industries Ltd.,

(III) Kunhayammed and Others Vs. State of Kerala and Another,

(IV) Amba Bai and Others Vs. Gopal and Others,

(3.1) He next submits that the enquiry report states that the loss to the State treasury can not be quantified, whereas the impugned order dated 26.2.2002 (Annexure-20) quantifies the loss at Rs. 11,63,549.18 P. without any basis, which has been raised by the impugned order dated 1.4.2004 (Annexure-23) to Rs. 19,76,783.78 P. This is also in violation of the provisions of Rule 43(b) of the Bihar Pension Rules, which lays down to the effect that the loss to the State Government must have been quantified in an appropriate proceeding. He next submits that the impugned order dated 1.4.2004 (Annexure-23) does not assign reasons and suffers from non-application of the mind. He relies upon the following reported judgments :--

(i) AIR 1976 SC 1786 (The Siemens Engineering and Manufacturing Co. of India Ltd, v. The Union of India and Anr.),

Nand Kishore Prasad Vs. State of Bihar and Others,

The Manager, Government Branch Press and Another Vs. D.B. Belliappa,

(3.2) He next submits that the enquiry proceedings had concluded with the impugned orders dated 26.2.2002 (Annexure-20), and 22.3.2002 (Annexure-22), and the impugned order dated 1.4.2004 (Annexure-23), raising

the amount of loss to be recovered, has been passed during the pendency of the present proceedings which amounts to re-opening the proceedings. In his submission, therefore, the finding and the punishment are beyond the charge.

(3.3) It is next submitted that in view of the position that the disciplinary authority has disagreed from the finding of the Enquiry Officer, the petitioner ought to have been served with a show-cause notice.

(3.4) The departmental proceeding is-hit by delay. The review order was passed on 26.8.1984 (Annexure-2), whereas the charge- sheet was served on 4.7.1992 (Annexure-11).

(3.5) He lastly submits that on the facts of this case, the petitioner could not have been subjected to the departmental proceeding, namely, for the reason of exercise of review jurisdiction which was passed in bona fide exercise of powers conferred by the Act.

4. The respondents have placed on record their counter affidavit and have opposed the writ petition. Learned Standing Counsel No. 4 submits that the orders passed by the learned Commissioner of Commercial Taxes in exercise of his powers u/s 46(4) of the Act were set aside by the Tribunal, not on the merits of the matter, but on technical ground of limitation etc. He next submits that the appellate order granting relief to the dealer, or the Tribunal setting aside the two orders of the Commissioner of suo motu revision, do not come in the way of the disciplinary proceeding for diverse reasons.

(4.1) He next submits that law is well settled that an authority exercising judicial and quasi-judicial powers can be subjected to disciplinary proceedings for the misconduct shown by him in the discharge of duties. He relies on the following reported judgments.

(i) Union of India and others Vs. A.N. Saxena,

(ii) Union of India and Others Vs. K.K. Dhawan,

(iii) Government of Tamil Nadu Vs. K.N. Ramamurthy,

In view of the facts found by the enquiry officer, the petitioner is clearly covered by the various clauses enumerated by the Supreme Court in the Union of India v. K.K. Dhawan (supra).

(4.2) He next submits that this Court in exercise of its writ jurisdiction does not act like an appellate authority. He relies on the following reported judgments :

(i) State of West Bengal Vs. Atul Krishna Shaw and Another,

(ii) State of U.P. and others Vs. Nand Kishore Shukla and another,

(4.3) He also submits that in view of the provisions of Section 47 of the Act, laying down a very narrow scope for interference in review jurisdiction, the petitioner purposely expanded the same to the unlimited jurisdiction of an appeal

and granted massive relief to the petitioner as if he was sitting in appeal over the order of assessment passed by him. He relies on the following reported judgment:

(i) Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi 45 STC 212 PAT

(ii) Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury,

(4.4) Learned Standing Counsel next submits that out of the nine charges, four have been fully proved, the other four have been partially proved, and one could not be proved. He therefore, submits that the four fully proved charges, and the four partially proved charges, are adequate to justify the quantum of punishment. He relies on the following reported judgment:--

(i) State of U.P. and others Vs. Nand Kishore Shukla and another,

(4.5) He next submits that if the order of the disciplinary authority agrees with the findings of the Enquiry Officer, then he is not required to assign reasons in support of the order of punishment. He relies on the following reported judgments of the Supreme Court:--

(i) paragraph 7 and 8 Ram Kumar Vs. State of Haryana,

(ii) National Fertilizers Ltd. and Anr. v. P.K. Khanna AIR 2005 SCW 4333

Enhancement of the loss caused to the revenue as per Annexure -23 does not amount to disagreement with the findings of the Enquiry Officer. It was a matter of calculation which was corrected by the impugned order marked Annexure-23.

5. I have perused the materials on record and considered the submissions of learned Counsel for the parties. In exercise of the writ jurisdiction, the scope of interference with a disciplinary proceeding is very limited, namely, the employee was afforded reasonable opportunity of presenting his own case to rebut the charges, the principles of Natural Justice were observed, and the prescribed procedure was followed. The Supreme Court has observed in *State of West Bengal v. Atul Krishna Shaw* (supra), that in a quasi-judicial proceeding where the authority has appreciated the evidence on record and recorded the findings of fact, the same are binding on the High Court. By process of judicial review, the Court cannot appreciate the evidence and record its own findings of facts subject to the well-known exceptions of perversity of findings etc. Giving of reasons is an essential element of administration of justice. The judgment of the Supreme Court in *State of U.P. v. Nand Kishore Shukla* (supra) is to the same effect. It is manifest from a perusal of the enquiry report that the enquiry officer has gone into the depth of the matter, examined the evidence of both sides and has recorded the findings of facts. The disciplinary authority has agreed with the findings of facts. Therefore, there was no need for him to record separate reasons nor was the need to issue any show-cause notice to the petitioner. In that view of the matter, the judgments cited on behalf of the petitioner in the *Siemens Engineering and Manufacturing Co. of India Ltd. v. Nand Kishore Prasad*,

The Manager, Government Branch Press, and Rajendra Singh, case are wholly inapplicable to the facts and circumstances of the present case. These judgments lay down to the effect that all authorities exercising quasi-judicial powers must record reasons in support of their conclusions which has been adequately observed in the present case.

6. Learned counsel for the petitioner has submitted that the amount of losses caused to the State revenue initially quantified at Rs. 11,63,549.18 P. and indicated in the earlier order dated 26.2.2002 (Annexure-20), was substituted by order dated 1.4.2004 (Annexure-23), and raised to Rs. 19,76,783.78 P. is wholly illegal for diverse reasons. The contention on the face of it appears to be attractive but a deeper investigation shows that it is without substance. The enquiry officer has clearly found that the petitioner had caused heavy losses to the State Revenue by allowing the review petition. He had purposely and with ulterior motives expanded the review jurisdiction, making it co-extensive with the appellate powers and granted huge relief to the assessee. The petitioner purposely exercised his review jurisdiction to confer further benefits illegally to the petitioner in exercise of review jurisdiction, because the matter had otherwise gone out of his hand after he had passed the assessment order. The narrow scope of interference in review jurisdiction is clearly spelt out in Section 47 of the Act and is well known. The assessment order had assessed taxes to the tune of Rs.23,53,879.77 P., and the petitioner reduced the same to Rs. 11,93,695.99 P. by his review order. The records of the proceedings clearly disclose that there was on his part the desire to oblige himself and unduly favour the party before himself. The losses have been indicated in the order dated 23.7.1990, passed by the Commissioner of Commercial Taxes, in exercise of his suo motu revisional powers. It is true that the order was set aside on the technical ground of limitation, but the factual position indicated therein has all through remained unchallenged. The inter departmental communicated dated 10.1.2004 (Annexure-D) also formed the basis for quantifying the amount of loss. All these documents cumulatively provided a sound basis for calculating the amount of loss caused to the State Revenue. Charge No. 3 relates to this aspect of the matter and the learned enquiry officer has clearly found that the petitioner by his review order caused losses to the State Revenue. Calculation of the exact amount of losses is a matter of detailed calculation to be done departmentally and the aforesaid documents formed the clear basis to quantify the amount. The contention is rejected.

7. I also do not find it possible to agree with the contention on behalf of the petitioner that the order raising the amount of loss was in disagreement with the findings of the enquiry officer and needed a show-cause notice. The correct position is that the learned enquiry officer found charge Nos. 3, 4 and 8 to have been proved, namely, the petitioner had caused losses on several counts by his review order. The disciplinary authority agreed with this finding and proceeded to determine the exact amount of loss on the basis of the materials on record. The contention is, therefore, rejected.

8. Learned Standing Counsel is, therefore, right in his submission that if the disciplinary authority agrees with the finding of the enquiry officer, then reasons need not be assigned. He has rightly relied on the judgment reported in Ram Kumar Vs. State of Haryana, and AIR 2005 SCW 4333 (National Fertilizer Ltd. and Anr. v. P.K. Khanna). In view of the discussions hereinabove, it is manifest that the order dated 1.4.2004 (Annexure-23) does not amount to re-opening the matter. It is only correcting the error in calculation of the amount of loss. As stated hereinabove, the position may have been different if the enquiry officer had found that the petitioner had not caused loss to the State Revenue and disagreeing with the same, the disciplinary authority would have taken the view that he did cause losses in which case show-cause notice conveying reasons for disagreement to the petitioner was essential. In that view of the matter, the contention advanced on behalf of the petitioner that the impugned orders are in violation of the provisions of Rule 43(b) of the Bihar Pension Rules is also without substance. It has been determined in a duly constituted enquiry that the petitioner had caused losses to the State Government.

9. Learned Standing Counsel is right in his submission that law is well-settled that an authority exercising judicial or quasi-judicial functions can be subjected to disciplinary proceeding if there was desire to oblige himself or unduly favour a party. He has rightly relied on the judgment of the Supreme Court in Government of Tamil Nadu Vs. K.N. Ramamurthy, is of great relevance in the present context, paragraphs 7 to 9 of which are set out hereinbelow for facility of quick reference :

7. In the case on hand, the finding accepted by the disciplinary authority was to the effect that by the act of negligence in making the assessment, the delinquent caused, loss to the Government exchequer to the extent of Rs. 44,850/-. This finding of the disciplinary authority is not open to challenge on the facts of the case. This Court in Upendra Singh's case AIR 1994 SCW 2777 (supra) has ruled that the Tribunal has no jurisdiction to go into the correctness or truth of the charges and the Tribunal cannot take over the functions of the disciplinary authority. This Court in the said case further observed that the function of the Court /Tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court. This Court further held that in case of charges framed in a disciplinary enquiry, the Tribunal or the Court can interfere only if on the charges (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law.

8. In K.K. Dhawan's case AIR 1993 SCW 1361 this Court held as follows (at p. 1370 of AIR SCW) :--

28. Certainly, therefore, the officer who exercises judicial or quasi-judicial powers acts negligently or recklessly or in order to confer undue favour on a person is not acting as a Judge. Accordingly, the contention of the respondent has to be rejected. It is important to bear in mind that in the present case, we are not

concerned with the correctness or legality of the decision of the respondent but the conduct of the respondent in discharge of his duties as an officer. The legality of the orders with reference to the nine assessments may be questioned in appeal or revision under the Act. But we have no doubt in our mind that the Government is not precluded from taking the disciplinary action for violation of the Conduct Rules. Thus, we conclude that the disciplinary action can be taken in the following cases :

- (i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;
- (ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty;
- (iii) if he has acted in a manner which is unbecoming of a Government servant;
- (iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;
- (v) if he had acted in order to unduly favour a party;
- (vii) if he had been actuated by corrupt motive, however small the bribe may be because Lord Coke said long ago though the bribe may be small, yet the fault is great.

29. The instances above catalogued are not exhaustive. However, we may add that for a mere technical violation or merely because the order is wrong and the action not falling under the above enumerated instances, disciplinary action is not warranted. Here, we may utter a word of caution. Each case will depend upon the facts and no absolute rule can be postulated.

9. In the premises and in the light of the finding of the disciplinary authority, the view taken by the Tribunal to set aside the punishment cannot be sustained. Accordingly, the order of the Tribunal is set aside and that of the disciplinary authority is restored. However, there will be no order as to costs.

10. It is manifest in the present case that in order to oblige himself as well as to favour the assessee, the petitioner had most illegally entertained the review petition filed by the assessee, making it co-extensive with the appellate powers and granted massive relief to the assessee. He acted as if he was sitting in appeal over his own order of assessment. The review order outrageously exceeded the narrow scope of interference permissible u/s 47 of the Act. The narrow scope of review jurisdiction u/s 47 of the Act is manifest from a plain reading of the same which is confined to correction of errors apparent from the record. Reference may be made to the judgment reported in *Northern India Caterers (India) Ltd. Vs. Lt. Governor of Delhi*. It is further relevant to state in the present context that the forum of appeal u/s 45 of the Act is available only to the assessee. The suo motu posers u/s 46(4) of the Act provides the remedy to the State Government in case it has a grievance against the order of assessment.

11. Learned counsel for the petitioner has also submitted that the petitioner had been granted further relief by the appellate order. The contention once again on first flush appears to be attractive but without substance. The petitioner must remind himself that the appellate forum in the scheme of the Act is available to the assessee only and the corresponding forum is available to the Revenue u/s 46(4) of the Act. Therefore, the revenue could not have filed an appeal against the review order as it did avail the remedy u/s 46(4) of the Act. The assessee has got further relief by the appellate authority on a single issue only. Whereas the review order had granted relief to the assessee on several counts, the appellate order had granted reliefs only with respect to the rates of sale price.

12. Learned Standing Counsel is right in his submission that it is true to state that the suo motu powers of revision in terms of Section 46(4) of the Act were exercised by the learned Commissioner twice and were set aside by the tribunal on technical ground of delay etc., which only mean that the Revenue was not able to get a reversal of the review order judicially. This would by no means preclude the State Government from initiating a departmental proceeding against the petitioner for having caused losses to the State Government by illegally and most authorisedly exercising quasi-judicial powers under review jurisdiction with ulterior motives. The judgments of the Supreme Court in *Union of India v. A.N. Saxena* (supra), and *Government of India v. K.K. Dhawan*, and *Government of Tamil Nadu v. K.N. Ramamurthy* (supra) lay down to that effect. This is clearly permissible in terms of Rule 43(b) of the Bihar Pension Rules.

13. Learned counsel for the petitioner has also contended that unexplained delay has taken place. Whereas the review order is dated 28.6.1984, the charge-sheet is dated 4.7.1992. The contention is stated only to be rejected. It is manifest from the chronology of events that no unexplained delay has taken place in the case, nor any laches or negligence is attributable to the State Government. This aspect of the matter in one sense closed by order dated 19.9.1991 (Annexure-10), passed in the petitioner's previous writ petition, whereby the disciplinary authority was directed to serve charge-sheet on the petitioner, if they want to hold a disciplinary enquiry, within a period of one month from the date of the order failing which the suspension order was to stand quashed. The order became final and, therefore, it is no longer open to the petitioner to raise the question of delay. 14. There is no merit in this writ petition. It is accordingly dismissed.