
(2002) 11 PAT CK 0017
In the Patna High Court
Case No : C.W.J.C. No. 8017 of 2001

Ram Sagar Singh

APPELLANT

Vs

The Bihar State Agriculture Marketing Board and Others

RESPONDENT

Date of Decision : 21-11-2002

Acts Referred:

Citation : (2002) 11 PAT CK 0017

Final Decision : Allowed

Judgement

Narayan Roy, J.—Heard learned Counsel appearing on behalf of the Petitioner and learned Counsel appearing on behalf of Respondent Nos. 1 to 4.

2. Pure question of law has been raised by learned Counsel appearing on behalf of the Petitioner that the order impugned, as contained in annexure 6, has been passed after differing with the inquiry report, as contained in annexure 5, without giving an opportunity to the Petitioner to represent his case.

3. It appears that a departmental proceeding was initiated against the Petitioner for committing certain omissions and commissions on his part and the matter was enquired into after considering the explanation of the Petitioner to the charges levelled against him, and the inquiry officer vide inquiry report, as contained in annexure 5, submitted his report recommending for no action against the Petitioner.

4. The disciplinary authority, however, differing with the inquiry report passed the impugned order, as contained in annexure 6, imposing a penalty of withholding of two increments with cumulative effect.

5. Learned Counsel appearing on behalf of the Petitioner submits that the disciplinary authority having differed with the inquiry report was required to give an opportunity to the Petitioner to represent his case and since the same has not been given to him, the order impugned vitiates.

6. In paragraph 11 of the writ application, it has been stated that no opportunity

was given to the Petitioner before passing of the order, as contained in annexure 6.

7. A counter affidavit has been filed on behalf of the Respondents, but these facts have not been stated as to whether an opportunity was given to the Petitioner prior to passing of the order impugned. The fact, thus, remains that the order impugned was passed without giving an opportunity to the Petitioner to represent his case.

8. It is settled that for difference of opinion, the disciplinary authority is required to give a notice to the delinquent. In the case of Punjab National Bank and Ors. v. Kunj Behari Mishra (1998) 7 SC 84, the Apex Court has held that for difference with the inquiry report a notice is required to be given to the delinquent to represent his case. In subsequent cases, these views have been endorsed by the Apex Court in the case of S.B.I. and Others Vs. Arvind K. Shukla,

9. Since the requirement of law, as referred to above, has not been met by the authority before passing of the order impugned the same is not sustainable in law, as it is wholly without jurisdiction.

10. In the result, this application is allowed and the order impugned, as contained in annexure 6, is set aside and the matter is remitted back to the disciplinary authority Respondent No. 2, to proceed with the matter afresh in accordance with law, as indicated above.

11. No order as to costs.