
(1997) 07 PAT CK 0017
In the Patna High Court
Case No : C.W.J.C. No. 8909 of 1995

Ramsakha Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 15-07-1997

Acts Referred:

Civil Services (Classification, Control and Appeal) Rules — Rule 55, 828

Citation : (1997) 2 PLJR 402

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : S.N. Jha, Sunil Kumar Singh No. 1 and Indu Bhushan Singh, for the Appellant; Bijay Kumar Sinha, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—The Petitioner who was Sub-Inspector of Police under the Respondents-State has been reduced to the lower post of Assistant Sub-Inspector of Police for three years by way of punishment, vide impugned order dated 27th September, 1995, passed by Deputy Inspector General of Police, Darbhanga Range, Darbhanga in Departmental Proceeding No. 22/94. The said order of punishment is under challenge in this case.

2. It is not necessary to go into the detailed facts of the case, except the relevant one, as the writ petition is being disposed of on a short point.

3. Admittedly, the disciplinary authority of the rank of Sub-Inspector of Police, the post which the Petitioner was holding, is an officer of the rank of D.I.G. While the Petitioner was performing duty as Sub-Inspector of Police, some sort of complaint was made by one Reporter, Shri Radheyshyam Thakur relating to supply of illegal "KHAIR" by two trucks. On that basis, it was alleged that the Petitioner inspired of such intimation had not acted and in collusion with such persons, left the two trucks loaded with "KHAIR". On such allegation, a Departmental Proceeding No. 22/94 was initiated against the Petitioner by

District Order No. 376/94 dated 22nd March, 1994. Charge sheet was issued by the Superintendent of Police, Darbhanga. The said Superintendent of Police, Darbhanga conducted the case as an Enquiry Officer. The Petitioner filed show cause reply denying the charges. After enquiry, the Superintendent of Police, Darbhanga submitted his report and held that the charge stood proved against the Petitioner. The Petitioner was thereafter provided with second show cause notice and after going through the reply submitted by him, the Respondent D.I.G., Darbhanga Range, Darbhanga came out with the impugned order of punishment dated 27th September," 1995, by which the Petitioner has been reduced in rank for three years from the post of Sub-Inspector of Police to the lower post of Assistant Sub-Inspector of Police.

4. The Petitioner has taken different points to assail the impugned order. It has been pleaded that the enquiry was conducted without giving reasonable opportunity to the Petitioner and without allowing him to cross-examine the prosecution witnesses. It has further been alleged that the informer i.e. Reporter, Shri Radheyshyam Thakur Was not called for examination during the enquiry though the Petitioner requested for the same.

5. The counsel for the Petitioner further submitted that the informant Radheyshyam Thakur, the Reporter gave in writing that he never issued such letter of information, but still the same has not been taken into note during the enquiry by the Enquiry Officer.

6. The counsel for the Petitioner, apart from the aforesaid point, raised further two points, namely, (a) the Superintendent of Police, Darbhanga Range, Darbhanga who issued the charge sheet, had no jurisdiction to frame charge, he being an officer lower in rank than the appointing authority/disciplinary authority and (b) the Superintendent of Police, Darbhanga could not have been appointed himself as the Enquiry Officer. Such appointment could have been made by the disciplinary authority.

In absence of any appointment of Superintendent of Police, Darbhanga as Enquiry Officer by the disciplinary authority, his report cannot be treated to be an enquiry report submitted by Enquiry Officer, nor any punishment can be inflicted on such report.

7. A counter affidavit has been filed on behalf of the Respondents. In their counter affidavit, while it has been stated that the Superintendent of Police, Darbhanga had jurisdiction to frame the charges, it has not been denied that he was not pointed as Enquiry Officer by the appointing authority/disciplinary authority, who is an officer-higher in rank than the Superintendent of Police, Darbhanga.

8. The Petitioner being a member of the Police Force is guided by Bihar Police Manual. Rule 828 of the said Police Manual stipulates the manner in which major punishment is to be inflicted. The procedure is to be followed in terms with Rule 828 of the Bihar Police Manual and the same has been laid down under Appendix

49 of the said Manual at Volume III. The relevant provision relating to framing of charge and the manner in which the enquiry is to be conducted, is as follows:

In drawing up proceedings, the grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges, which shall be communicated to the person charged quickly together with a statement of the allegations on which each charge is based. Any other circumstances which is proposed to be taken into consideration in drawing up proceeding shall also be communicated. It should be ensured that several miscellaneous charges; should not be lumped into one proceeding and only connected or coherent charges should be included in it. The delinquent shall be required, within a reasonable time, not exceeding four weeks (unless extended for some definite reasons) to put in a written statement of his defence and to state whether he desired to be heard" in person. If he so desires, or if the authority concerned so directs, an oral enquiry shall be held. At that enquiry, evidence shall be heard as to such of the allegations as are not admitted, and the person charged shall be entitled to cross-examine the witnesses, to give evidence in person and to have such witnesses called as he may wish, provided that the officer conducting the enquiry may, for special and sufficient reasons to be recorded in writing, refuse to call a witness. Except in very special circumstances, no pleader or agent should be allowed to appear either on behalf of the Government or the accused either before that officer who conducts the enquiry or any officer to whom appeal may be made.

9. This provision is almost similar to Rule 55 of the Civil Services (Classification, Control and Appeal) Rules.

10. From the aforesaid provision, it is clear that it is only when the charged employee desires to contest the allegations in an oral enquiry or the "authority concerned" so directs an oral enquiry then only such enquiry can be conducted. The meaning of "authority concerned", according to this Court, in this context will be disciplinary authority/appointing authority or any authority delegated with such power or an authority who is higher in rank then such authority has got jurisdiction to direct oral enquiry and to take action to inflict major punishment like reduction in rank. (Emphasis given by me).

11. For the reasons stated above, I hold that the enquiry conducted by S.P., Darbhanga is itself ab initio void, he having no such jurisdiction to hold enquiry having not been authorised by the disciplinary authority to that effect. It is not in dispute that the S.P is an authority lower than the disciplinary authority of the Petitioner.

12. Accordingly, I set aside the enquiry report as well as the impugned order of punishment dated 27th September, 1995 and remit the matter to the disciplinary authority, who may proceed in the matter, in accordance with law.

13. In view of the fact that the impugned order has been set aside on one question of law, I am not giving any finding with respect to the rest of the

questions of law raised by the Petitioner, who may raise the same before the appropriate authority at appropriate stage, if so required.

14. The writ petition is allowed with the aforesaid observations and directions. No cost.

15. Let a copy each of the judgment may be handed over to the counsel for the parties.