

(2009) 11 PAT CK 0005
In the Patna High Court

Sandhya Kumari		APPELLANT
	Vs	
The State of Bihar and Others		RESPONDENT

Date of Decision : 12-11-2009

Acts Referred:

Citation : (2009) 11 PAT CK 0005

Final Decision : Dismissed

Judgement

Navin Sinha, J.—Heard learned Counsel for the petitioner and the State.

2. In CWJC No. 14407 of 2009, it is the original charge memo which has been challenged. The supplementary charges in the pending departmental proceedings are the subject matter of challenge in CWJC No. 14323 of 2009.

3. It is submitted that the petitioner has been suspended on 13.1.2009. Her headquarters have been kept at Patna but the departmental proceeding is being conducted at Gaya. She has not been paid her subsistence allowance and is, therefore, unable to effectively participate in the departmental proceeding.

4. Learned Counsel for the State submits that unless the petitioner reports at the headquarters and signs attendance, she cannot claim subsistence allowance.

5. The issue of reporting at the headquarters and signing attendance as a prerequisite for payment of subsistence allowance, in the mind of this Court cannot be equated. If a delinquent does not report at the headquarters during the period of suspension, it may lead to its own consequences of administrative indiscipline, if it be so, but the issue of subsistence allowance has to be kept separate. The latter is a statutory right to be paid by the employer without further more on fulfilment of the condition of suspension.

6. In Anwarun Nisha Khatoon Vs. State of Bihar and Others, the Supreme Court with reference to Rule 96 of the Bihar Service Code repelling a similar argument held that there is no requirement for a suspended employee to mark attendance before his subsistence allowance could be paid. A suspended employee is entitled

to be paid his subsistence allowance as the master servant relationship subsists.

7. This Court, therefore, directs that any arrears of subsistence allowance of the petitioner should be paid to her within a maximum period of four weeks from the date of receipt and/or production of a copy of this order with interest @ 5% along with current subsistence allowance. The amount of interest shall be paid from the Government coffers immediately but the Respondents are directed to hold enquiry, fix administrative responsibility for non-fulfilment of statutory obligations and recover the amount of interest from the person concerned including issue of initiation of departmental proceedings against him.

8. If the petitioner has made a request for shifting of her headquarters or the venue of the departmental proceedings for reason of her inconvenience because of the two being situated at different places combined with non-payment of subsistence allowance, the authorities will be well advised to reconsider the issue to facilitate proper participation by the petitioner keeping in mind that she is lady.

9. Learned Counsel for the petitioner next submits that the memo of charge has not been accompanied by documents. She has by Annexure-8 series to CWJC No. 14407 of 2009 requested for specified documents which have been supplied to her counsel but not to her. Once the documents have been supplied to her counsel, the issue loses its relevance.

10. It is next urged that all documents have not been supplied. If the petitioner has asked for certain documents, the Respondents are not ipso facto obliged to supply all documents that she may have asked for. Nonetheless, if the Respondents are of the opinion that all the documents need not be supplied, they are required to pass a reasoned and speaking order on the request for the documents.

11. In State of Tamil Nadu Vs. Thiru K.V. Perumal and others, the Supreme Court has held that the delinquent is not bound to be supplied every document that he may ask for. The duty is only to supply relevant documents. The authority may ask the delinquent to specify the relevance of the documents asked for by him and which has to be answered to decide their relevancy. It was the duty of the delinquent to point out how every document asked for was relevant and non-supply would prejudice his case.

12. Learned Counsel next submits that the proceedings have been initiated mala fide for which he invites the attention of the Court to certain file noting dated 15.1.2009 annexed to the supplementary affidavit filed on behalf of the petitioner in CWJC No. 14323 of 2009.

13. This Court on perusal of the same finds that certain directions have only been given for appointment of Inquiry Officer. It is not in controversy that the petitioner is amenable to disciplinary proceedings. If the petitioner is aggrieved by the appointment of a particular Inquiry Officer, she has a remedy in accordance with law. Per se, the appointment of an Inquiry Officer, competent to

hold the enquiry, cannot lead this Court to hold that such appointment is vitiated on the apprehension of the petitioner. In any event of the matter, file noting create no legal right so as to demand mandamus upon the same.

14. In *Sethi Auto Service Station and Another Vs. Delhi Development Authority and Others*, it has been held at paragraph 14 that noting in a departmental file do not have sanction of law to be an effective order. It is but only expression of a view point, an opinion for internal use and consideration for a final decision, which culminate in an executable order when approval is given and communicated to the person concerned.

15. If the petitioner has submitted any request for a change in the Inquiry Officer for the reason that the Inquiry Officer is the same person, who had earlier conducted the administrative enquiry into the matter and had submitted some report which the petitioner considers prejudicial and apprehends official bias on the part of the Inquiry Officer that is an aspect to be appropriately kept in mind by the disciplinary authority as there is a reasonable apprehension of bias and not only bias, though the latter may surface subsequently. If an Officer, who has already conducted an enquiry into the matter and has submitted his report, fairness and transparency in action suggests that such a person should be kept, away from the enquiry.

16. The last submission on behalf of the petitioner is that the subject matter of charges has been inquired by the Special Officer and a report dated 22.7.2008 has been submitted. It was next urged that the charges do not create an offence, were vague and not fit to go to a departmental proceeding. Learned Counsel attempted to invite the Court to reappraise the charges.

17. If there is a report, and the petitioner is of the opinion that the allegations do not constitute sufficient material to go to trial in a departmental proceedings, those are matters of his defence to be more appropriately examined in the departmental proceeding itself. Some of the charges may be good; some of the charges may be bad. That will not necessarily vitiate the entire proceedings. If the charges are severable, the unsustainable part can be set aside without doing violence to the sustainable part unless the two are integrally connected impinging upon each other.

18. The charges relate to appointments made on the post of Anganbari Sevika contrary to rules and procedures leading to cancellation of the appointments. The itemized charges set out the violations in context of Government circulars mentioned therein. The supplementary charges are based on question of facts along with the evidence submitted by the Vigilance Department of the Police. Whether or not the procedure for appointment was violated, what was the role of the petitioner etc. are matters to be examined as the defence of the petitioner appropriately in the departmental proceedings itself.

19. In *District Forest Officer Vs. R. Rajamanickam and Another*, the Supreme Court setting aside the decision of the Tribunal interfering at the stage of framing

of charge relying upon an earlier decision reported in Union of India (UOI) and Others Vs. Upendra Singh, has held as follows:

In Union of India v. Upendra Singh it was held thus: (SCC p. 362, para 6)

6. In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (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. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be.

In view of the aforesaid decision we find that the Tribunal was not justified under law to interfere with the correctness of the charges leveled against the delinquent officer.

20. The law stands well settled that if there is any lacuna in the memo of charge or if certain charges have been omitted, supplementary charge can be framed.

21. In the entirety of the matter, this Court finds no merit in the writ application. It is accordingly-dismissed, but with observations.