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**(2002) 08 PAT CK 0090**  
**In the Patna High Court**  
**Case No : C.W.J.C. No. 8506 of 2001**

Satyadeo Choudhary

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision :** 20-08-2002

**Acts Referred:**

**Citation :** (2002) 08 PAT CK 0090

**Final Decision :** Dismissed

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## Judgement

Chandramauli Kr. Prasad, J.—In this writ application prayer of the Petitioner is to quash the order dated 24.3.2001 (Annexure-1) whereby the Petitioner has been awarded the punishment of stoppage of promotion for five years as well as for recovery of Rs. two lacs from his salary.

2. Shorn of unnecessary details, facts giving rise to the present application are that the Petitioner was working as Assistant Engineer during the relevant time. By order dated 2.4.1997 his promotion for five years was withheld and a direction was issued for recovery of a sum of Rs. two lacs from his salary. Aggrieved by the same he preferred C.W.J.C. No. 10264 of 1997 before this Court and by order dated 12.8.1999 said order was quashed and liberty was given to the Respondents to serve a copy of charge to the Petitioner and after consideration of the show cause to pass order in accordance with law. After the disposal of the aforesaid writ application by order dated 28.9.1999 (Annexure-13) memo of charges was served upon the Petitioner, and Petitioner was asked to file his show cause. According to the charge, while the Petitioner was posted as Assistant Engineer (Mechanical), Flood Control Division, Samastipur in the year 1991, on the basis of forged letters of the Executive Engineer dated 1.2.1990 and 3.2.1990 purportedly for supply of iron rods of 10 mm and 12 mm, he directed for supply of iron rods of 16 mm diameter and accordingly 80 metric tonnes of iron rods were delivered between 6.2 (SIC) to the proceeding of the (SIC) of (SIC) five Engineers and although the requisition was made for supply of 10 mm and 12 mm diameter, he made order for supply

of iron rods of 16 mm diameter but before that he did not seek the approval of the Superintending Engineer. According to the charge, Petitioner was the incharge of the stores and before disbursing the iron rods it was incumbent upon him to verify the requisition but without doing so, delivery of iron rods clearly shows misappropriation of 80 metric tonnes of iron rods under a planned conspiracy. It is relevant here to state that before framing of the charge an enquiry was held and a report was submitted.

3. Petitioner by his letter dated 29.10.1999 (Annexure-14) wrote to the Government that in the memo of charge the report given by the Flying Squad has been annexed but the same is not legible. He also informed to the Government that none of the Annexures mentioned in the enquiry report numbering 27 has been annexed and accordingly Petitioner is not in a position to submit his show cause. In the aforesaid premises, Petitioner prayed for supplying him the legible copies of the enquiry report as also the annexures. The request of the Petitioner was considered by the Government and by letter dated 12.1.1999 (Annexure-15) the legible copy of the report as also the Photostat copies of the annexures were made available and the Petitioner was requested to submit his show cause at the earliest. Thereafter the Petitioner by letter dated 22.12.1999 (Annexure-16) wrote to the State Government that Annexures 14, 18, 19 and 20 are not legible and he asked for legible copies of the same so that he can file his show cause. The request made by the Petitioner was considered by the State Government and by letter dated 22.1.2000 (Annexure-D) he was furnished with the Photostat copies of the annexures. Even after the receipt of the copies of the enquiry report and annexures Petitioner did not file his show cause and the State Government by its letter dated 28.3.2000 (Annexure-E) reminded him to submit the show cause immediately. Petitioner thereafter sent his reply dated 1.12.2000 (Annexure-18), inter alia, stating that during his entire service career he was never posted at Konar Canal Division and although the allegation against him is that he has not verified the authenticity of the letters of the Executive Engineer dated 1.2.1990 and 3.2.1990 but the copies of the aforesaid letters were not made available to him. In the aforesaid premises request was made to supply the documents, so that he can file his reply. It is relevant here to state that in his earlier letters Petitioner did not ask for these documents.

4. The State Government on consideration of the allegation made against the Petitioner found that he had issued 80 metric tonnes of iron rods on the basis of the forged requisition of the Executive Engineer and the same was done without verifying its authenticity. It further observed that although the requisition was for iron rods of 10/12 mm diameter but the Petitioner had made delivery of iron rods of 16 mm diameter. Petitioner was accordingly found guilty for causing pecuniary loss to the Government and by the impugned order the punishment for withholding of promotion for five years and recovery of a sum of Rs. two lacs from his salary was passed.

5. Mr. Ambar Nath Banerjee appearing on behalf of the Petitioner submits that

the impugned order is vitiated on account of the fact that the Petitioner was not given reasonable opportunity to defend his case. In this connection, learned Counsel for the Petitioner referred to letter dated 22.12.1999 (Annexure-16) in which the Petitioner had asked for supply of legible annexures. It is the assertion of the Petitioner that those documents were not supplied. In support of his submission learned Counsel has placed reliance on a Division Bench judgment of this Court in the case of Dr. Rabindra Nath Singh Vs. The State of Bihar and Others, and my attention has been drawn to paragraph 12 of the judgment, which reads as follows:

Before I part with the judgment, I want to make it clear that fair play is the soul of natural justice. If any prejudicial material is used by the Disciplinary authority against the delinquent employee the latter must have knowledge of the said material in order to file an effective representation for the consideration of disciplinary authority. The charge must not lack in particulars and must furnish sufficient details to enable the delinquent employee to prepare his defence. It should also not be lost sight of that the delinquent employee is called to answer charges in the year 1977 with respect to matters, said to have occurred between the years 1959 and 1963.

6. The assertion of the Petitioner that the copies of the annexures were not made available to him, has been denied by the Respondents in paragraph 26 of the counter affidavit and in that it has been stated that the request made by the Petitioner for supply of the documents was acceded and the enquiry report and all the annexures were made available to the Petitioner. In fact, in support of its assertion that in response to the demand of the Petitioner copies of Annexures, 14, 18, 19 and 20 were made available to him, letter dated 22.1.2000 (Annexure-D) showing supply of those documents has been placed on record. In the rejoinder to the counter affidavit filed by the Petitioner said assertion has not been denied. In that view of the matter, the very assertion of the Petitioner that documents asked for were not supplied to him is untenable in fact and as such the authority relied on by Sri. Banerjee is of no assistance to him.

7. It is relevant here to state that while imposing the penalty, regular departmental enquiry has not been held and the impugned order has been passed only after giving an opportunity to the Petitioner to file his show cause. Mr. Banerjee contends that withholding of promotion for five years and recovery of an amount of Rs. two lacs from the salary of the Petitioner cannot be imposed without holding a regular departmental enquiry in which the employer is under an obligation to appoint an enquiry officer, give opportunity to the Petitioner to adduce evidence in rebuttal before submission of the enquiry report. Mr. Sinha, G.P. IX appearing on behalf of the Respondents submits that for imposition of the penalty of withholding of promotion for five years and recovery of a sum of Rs. two lacs from his salary no detailed enquiry is called for and the impugned order having been passed after giving opportunity to the Petitioner, no fault can be found out in the same.

8. Having appreciated the rival submissions, I do not find any substance in the submission of Sri. Banerjee. It is common ground that the case of the Petitioner is governed by the Civil Services (Classification, Control and Appeal) Rules (hereinafter referred to as the Rules). Rule 49, inter alia, provides for punishment which can be imposed upon member of the services. Same reads as follows:

49. The following penalties may, for good and sufficient reason and as hereinafter provided, be imposed upon members of the services comprised in any of the classes (1) to (5) specified in Rule 14, namely:

(i) Censure.

(ii) Withholding of increments or promotion including stoppage at an efficiency bar.

(iii) Reduction to a lower post or time scale, or to a lower stage in a time scale.

(iv) Recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders.

(iv-a) Compulsory retirement.

(v) Suspension.

(vi) Removal from the civil service of the Crown which does not disqualify from future employment.

(vii) Dismissal from the civil service of the Crown, which ordinarily disqualifies from future employment;

Explanation 1 -The discharge

(a) of a person appointed on probation, during or at the end of the period of probation, on grounds arising out of the specific conditions laid down by the appointing authority, e.g., want of a vacancy, failure to acquire prescribed special qualifications or to pass prescribed test,

(b) of a person appointed otherwise than under contract to hold a temporary appointment, on the expiration of the period of the appointment,

c) of a person engaged under contract, in accordance with the terms of his contract, does not amount to removal or dismissal within the meaning of this rule.

Explanation II.-The discharge of a probationer, whether during or at the end of the period of probation for some specific fault or on account of his suitability for the services, amounts to removal or dismissal within the meaning of this rule.

Explanation III.-Compulsory retirement of a Government Servant in accordance with the provisions relating to his superannuation or retirement does not amount to penalty within the meaning of this rule.

9. From a plain reading of Rule 55A of the Rules, it is evident that before imposing punishment specified in classes (ii) and (iv) of Rule 49 of the Rules, the employee is to be given an adequate opportunity of making representation and the employer is obliged to consider such representation before an order is passed. As observed earlier, the punishment imposed on the Petitioner is provided under Rule 49(ii) and (iv) of the Rules and in that view of the matter the procedure prescribed under Rule 55A of the Rules is required to be followed. Same only contemplates of giving an opportunity of representation and casts obligation on the employer to consider that. In the present case the Petitioner was given opportunity to make representation and as such the first requirement of Rule 55A has been fulfilled.

10. Mr. Banerjee then contends that even if it is held that the case of the Petitioner is governed by Rule 55A of the Rules, still on account of the nature of controversy, before imposing punishment Respondents were under an obligation to hold regular enquiry. In support of his submission learned Counsel has placed reliance on a judgment of the Supreme Court in the case of O.K. Bhardwaj v. Union of India and Ors. : (2001) 9 S.C.C. 180. My attention has been drawn to paragraph 3 of the judgment, which reads as follows:

While we agree with the first proposition of the High Court having regard to the rule position which expressly says that "withholding increments of pay with or without cumulative effect" is a minor penalty, we find it not possible to agree with the second proposition. Even in the case of minor penalty an opportunity has to be given to the delinquent employee to have his say to file his explanation with respect to the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for. This is the minimum requirement of the principle of natural justice and the said requirement cannot be dispensed with.

11. To put the record straightway, Mr. Banerjee all the time emphasized that withholding of promotion for five years is a major penalty and as such procedure as provided under Rule 55 of the Rules is required to be followed. It is worth mentioning that the Rule by which the Petitioner is governed does not catalogue minor or major penalty unlike many of the service rules. In the Rule under consideration, penalty has been provided under Rule 49 of the Rules and Rules 55 and 55A had provided for procedure which is required to be followed in a case attracting the penalties enumerated therein. Rule 55 provides for procedure for imposing the punishment of dismissal, removal, compulsory retirement or reduction in rank whereas Rule 55A provides for procedure for imposition of penalty of censure, withholding of increment or promotion including stoppage of efficiency bar and recovery from the pay of the whole or part of any pecuniary loss caused to the Government by negligence or breach of orders. Rule 55 contemplates of regular departmental enquiry whereas Rule 55A does not provide for the same. Here in the present case, the procedure as required under Rule 55A has been followed. In the case of O.K. Bhardwaj (supra) on which Mr.

Banerjee has placed strong reliance does not lay down as a principle of law that in cases of imposition of minor penalty a regular enquiry is to be held. The contemplation of an enquiry in case of charges being denied in the judgment relied on by the learned Counsel means that the plea taken by the employee has to be examined. The aforesaid passage cannot be construed to mean that in case of penalty covered under Rule 55A of the Rules a regular enquiry is called for. Any contrary view would make Rule 55A of the Rules nugatory. Hence the submission made by the learned Counsel for the Petitioner has no substance and the authority relied on in no way advances the case of the Petitioner.

12. Mr. Banerjee lastly submits that the order impugned has been passed without considering the plea of the Petitioner and this itself vitiates the impugned order. He emphasizes that the order impugned is vitiated on account of the fact that the impugned order is nothing but reproduction of the charge leveled against the Petitioner. In support of his submission he has placed reliance on a Division Bench judgment of this Court in the case of *Dr. Rabindra Nath Singh v. The State of Bihar and Ors.* 1983 R.L.J.R. 92 (supra) and my attention has been drawn to paragraph 7 of the judgment which reads as follows:

Learned Counsel for the Petitioner has also cited authorities in support of his contention that there has been no "consideration" of the show cause reply. According to him the word "consideration" in Rule 55A entitles him to an active application of the mind by the Disciplinary Authority after considering the entire circumstances of the case in order to decide the nature and extent of penalty to be imposed. I find there is much substance in this contention as well.

13. Another decision on which Sri. Banerjee has placed reliance in support of his submission is the judgment of this Court in the case of *Ugra Nath Jha v. The Administrator, Biscornaun and Anr.* 1998(1) P.L.J.R. 29. He has reared to paragraph 5 of the said judgment, which reads as follows:

I have considered the submissions of the counsel for the parties. I have also perused the enquiry report, copy whereof has been marked annexure-6 to the writ petition. From the report it appears that the enquiry officer noticed the aforesaid three inspection reports and thereafter directed the Petitioner to appear. He thereafter called certain clarifications from the Range Officer and Sr. Range Officer. On the basis of the explanation given by the Petitioner and the so called clarification given by the officer, behind back of the Petitioner, he recorded his findings on 10.3.89 and forwarded the same to the Administrator. Copies of the communications received from Range/Senior Range Officer were not furnished to the Petitioner and he was not allowed any opportunity to explain the same. Since the order is based on materials not known to the Petitioner I find substance in the contention of the Petitioner that there has been violation of natural justice. Further, in my opinion, if the Respondents wanted to impose major punishment they should have held a regular enquiry and given liberty to the Petitioner to adduce his evidence. If they wanted to rely on any report or material which was obtained after the submission of the show cause and

explanation orally furnished by the Petitioner, in all fairness, copies should have been given to him so that he could explain them. In the above premises, the impugned order cannot be sustained.

14. Yet another decision on which Sri. Banerjee has placed reliance is the judgment of the Supreme Court in the case of Kuldeep Singh Vs. The Commissioner of Police and Others, He draws my attention to paragraph 42 of the judgment which reads as follows:

The enquiry officer did not sit with an open mind to hold an impartial domestic enquiry which is an essential component of the principles of natural justice as also that of "reasonable opportunity", contemplated by Article 311(2) of the Constitution. The "bias" in favour of the Department had so badly affected the enquiry officer's whole faculty of reasoning that even non-production of the complainants was ascribed to the Appellant which squarely was the fault of the Department. Once the department knew that the laborers were employed somewhere in Delvi Khanpur, their presence could have been procured and they could have been produced before the enquiry officer to prove the charge framed against the Appellant. He has acted so arbitrarily in the matter and has found the Appellant guilty in such a coarse manner that it becomes apparent that he was merely carrying out the command from some superior officer who perhaps directed "fix him up."

15. Mr. V.N. Sinha, Government Pleader No. IX, however, submits that in the present case Petitioner has been visited with the penalty, for which procedure under Rule 55A of the Rules is required to be followed and Rule 55A provides for giving opportunity to the delinquent employee to file representation and the employer an obligation to consider the same, the authorities relied on by the Petitioner governing the case of removal from service are of no assistance. He also points out that in the present case Petitioner has not filed his show cause and thus the State Government had no material than the report of the Flying Squad and the allegation made in the memo of charges. Hence, in his submission the impugned order cannot be said to be the reproduction of the charge and is not vitiated on that count.

16. Having appreciated the rival contention, I do not find any substance in the submission of Sri. Banerjee. After the memo of charges was served on the Petitioner, he did not file the show cause and asked for supply of various documents. After those documents were supplied to him, he again filed application on 1.12.2000 (Annexure-18) seeking for further documents. He never approached the authority for supply of those documents referred to in his letter dated 1.12.2000 earlier and after the documents sought for by him were made available, instead of filing the show cause, he again asked for further documents. It seems that the Petitioner was bent upon to delay the decision. In a situation like this, the employer had no option than to consider the memo of charges, the report of the Flying Squad and come to its conclusion. The Respondents, while passing the impugned order, have precisely done so. Hence, the submission of

Sri. Banerjee is without any substance and the authorities relied on by him, in no way, support the case of the Petitioner.

17. In the result, I do not find any merit in the application and it is dismissed accordingly. No cost.