
(2011) 04 PAT CK 0031
In the Patna High Court
Case No : CWJC No. 9603 of 2010

Shailesh Kumar Ojha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 21-04-2011

Acts Referred:

Citation : (2011) 4 PLJR 106

Hon'ble Judges : J.N. Singh, J

Bench : Single Bench

Judgement

J.N. Singh, J.—In this writ application petitioner has challenged the order of his dismissal, as contained in Annexure-11, passed by the Principal Secretary of the Revenue and Land Reforms Department as well as the order of rejection of his review application, as contained in Annexure-13.

2. Learned Senior Counsel for the petitioner has placed before this Court the charges framed against the petitioner, as contained in Annexure-5. The charges were found proved by the Inquiry Officer. Hence, a second show cause notice was issued alongwith a copy of the enquiry report and petitioner was given an opportunity to file representation against the same. Accordingly, petitioner filed his representation, copy whereof is annexed as Annexure-10. This representation runs into 11 pages. Learned Senior Counsel for the petitioner has placed the representation in detail before this Court from which it appears that the petitioner has given the facts and circumstances of the case in detail which ultimately led to passing of the order, by the Collector, Kishanganj settling the lands in favour of the allottees for tea plantation under the Industrial Policy of 1995. He has taken a categorical stand in his representation that he had only submitted the report in respect of physical feature of the land on the orders of the higher authorities. Thereafter the file was processed at different levels and ultimately reached the Collector who passed final orders. In his reply, petitioner has also dealt with each of the three charges separately and has tried to meet the findings of the Inquiry Officer. Learned Senior Counsel for the petitioner

submits that, in spite of the same, the representation of the petitioner was not considered by the Disciplinary Authority and only with a vague observation, that after consideration of representation of the petitioner the same was not found satisfactory, the order terminating the services of the petitioner was passed. He also submitted that, in the facts and circumstances of the case, the punishment is disproportionate to the gravity of the charge as the role of the petitioner in the entire process was only confined to submission of a report as directed by the higher authorities.

3. After going through the representation of the petitioner in detail and the impugned order of the Disciplinary Authority, this Court finds the submission of learned Senior Counsel for the petitioner as correct. The impugned order of the Disciplinary Authority in no manner discloses that the facts and circumstances disclosed by the petitioner in his representation and his defence to the findings of the Inquiry Officer in respect of the charges were considered by him before he came to the conclusion that the same were not satisfactory.

4. It need not be emphasized that the issue of second show cause notice with liberty to the delinquent to submit his reply/representation is not an empty formality. Since the Conducting Officer is a delegatee of the Disciplinary Authority only for the purposes of conducting the inquiry and submitting a report, the Disciplinary Authority is required under law to apply his own independent mind to the matter and then pass orders of punishment or otherwise. For that purpose the settled law is that he shall supply a copy of the inquiry report with another notice to the delinquent, popularly known as "second show cause notice" to enable the delinquent to file a representation/explanation in respect of the evidences collected and relied upon in the inquiry and findings of the Inquiry Officer against him for his independent consideration and decision, either way. In case the Disciplinary Authority does not intend to agree with the findings of the Inquiry Officer, he is required to disclose his reasons for such disagreement in the notice for the delinquent to reply to the same also. Therefore, any mechanical application of mind by a Disciplinary Authority to the matter by rejecting the representation of a delinquent with vague observations has to be held as vitiated in law on account of non-application of independent mind by the Disciplinary Authority.

5. This has happened in this case also. The order of the Disciplinary Authority does not show that in any manner he had applied his independent mind to the representation filed by the petitioner in reply to the second show cause notice in respect of the findings of the Inquiry Officer. This Court finds the order rejecting the review application of the petitioner also suffers from the same defect.

6. In the circumstances, this Court finds that the orders of the Disciplinary Authority as well as the Appellate Authority are unsustainable in law. The same are, therefore, quashed. Liberty is granted to the Disciplinary Authority to apply his independent mind afresh in the matter in specific reference to the reply filed by the petitioner to the second show cause notice and take a fresh final decision

in accordance with law by a speaking order.

7. As a consequence of cancellation of the impugned orders petitioner shall stand restored to his status as on prior to passing of the order of his dismissal. The fresh final orders in the matter shall be passed by the Disciplinary Authority positively within a period of three months from the date of receipt/production of a copy of this order.