(2000) 11 PAT CK 0012

In the Patna High Court

Case No : C.W.J.C. No. 11501 of 2000

Shambhu Nath Jha — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 27-11-2000

Acts Referred:

Citation : (2001) 1 PLJR 632

Hon'ble Judges : S.K. Chattopadhyaya, J

Bench : Single Bench

Advocate : Mahendra Pathak, for the Appellant; Arun Kumar, for State, for the Respondent

Final Decision : Allowed

Judgement

S.K. Chattopadhyaya, J.—Heard learned Counsel for the parties.

2. A very short question is involved in this case and, as such, with the consent of the parties this application is being disposed of at the admission stage itself.

3. Admittedly in a departmental proceeding the Inquiry Officer exonerated the Petitioner by its recommendation dated 18.4.1992. The disciplinary authority, differing with the recommendation of the Inquiry Officer, though revoked the suspension order but awarded punishment. Being aggrieved the Petitioner filed an appeal before the Additional Commissioner, Water Resources Department, Government of Bihar and the appellate authority while modifying the order of punishment to some extent dismissed the appeal. The appeal was filed on 13.7.1996 which was disposed of on 2.9.1998.

4. Learned Counsel for the Petitioner urged that when the disciplinary authority differed with the report of the Inquiry Officer it was incumbent upon the authority to assign its reasons. In support of his decision he has relied on the decision reported in the case of Punjab National Bank and Ors. v. Kunj Behari Misra AIR 1998 SC 273. On the other hand, learned Counsel for the State with reference to the case of The High Court of Judicature at Bombay, Through Its

Registrar Vs. Shashikant S.Patil and Another, , submits that the latest view of the Supreme Court is that it is not imperative for the disciplinary authority to discuss the materials in detail and contest the conclusions of the Inquiry Officer while differing with the enquiry report.

5. The enquiry report in the instant case is annexure-3 dated 18.4.1992 which shows that after considering the relevant records and examining the witnesses the Inquiry Officer has come to the conclusion that the allegations made against the Petitioner could not be proved. As such, he recommended for exonerating the Petitioner. The order of the disciplinary authority dated 24.5.1993 is annexure-4. This order reveals that on perusal of the enquiry report punishment was inflicted on the Petitioner and the suspension order was revoked. The order, however, does not show as to why the disciplinary authority took a contrary view expressed by the Inquiry Officer. The appellate authority without considering this aspect of the matter while affirming the order of the disciplinary authority modified the order of punishment to some extent. The appellate order is dated 2.9.1998 at contained in annexure-6. The appellate order also does not reveal that the appellate authority took into consideration the grounds taken by the Petitioner before him. In the case of Punjab National Bank and Ors. (supra) their Lordships inter alia have held that whenever the disciplinary authority disagrees with the inquiry authority on any article of charge than, before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the Inquiry Officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the Inquiry Officer. Their Lordships were of the view that the principles of natural justice require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file representation before the disciplinary authority records its findings on the charges framed against the officer. Similar view was expressed in the case of State of Rajasthan Vs. M.C. Saxena, and in the case of Vijay Kumar Vs. State of Bihar and Others, .

6. The decision in the case of High port of Judicature at Bombay (supra) relied heavily by the learned Counsel for the State, in my view, is quite distinguishable. The Division Bench of the High Court quashed the order of imposition of compulsory retirement of the delinquent officer mainly on the premise that the Disciplinary Committee had not put forward adequate reasons for differing from the findings of the Inquiry Officer. The Court held that the Disciplinary Committee did not discuss how the Inquiry Officer went wrong and how his findings were not acceptable to the Committee. The High Court held that "it is an established principle in disciplinary jurisprudence that when the disciplinary authority differs from the findings of the Inquiry Officer, it has to discuss the entire case threadbare and establish that each finding of the Inquiry Officer was totally improbable that in the light of the materials the only conclusion that can be

arrived at by an ordinary prudent man, is the conclusion arrived at by the Disciplinary Authority". This finding of the High Court was reversed by the Supreme Court holding that the Disciplinary Committee was neither an appellate nor a revisional body over the Inquiry Officer''s report. The findings of the Inquiry Officer are only his opinion on the materials, but such findings are not binding on the disciplinary authority as the decision making authority is the punishing authority and, therefore, that authority can come to its own conclusion, of course bearing in mind the views expressed by the Inquiry Officer. But it is not necessary that the disciplinary authority should "discuss materials in detail and contest the conclusions of the Inquiry Officer". Otherwise the position of the disciplinary authority would get relegated to a subordinate level. The Supreme Court noticed the facts of the said case and found that the Disciplinary Committee enumerated reasons in its proceedings for dissenting from the Inquiry Officer''s conclusion. All such reasons were set out in the notice issued by the Disciplinary Committee to the delinquent officer requiring him to show cause why the conclusions of the Inquiry Officer be dissenting from.

7. Thus it is clear that when the disciplinary authority differs from the conclusion of the Inquiry Officer, he is not required to discuss the evidence in detail for differing with the findings but as held in the case of Punjab National Bank and Ors. (supra) the disciplinary authority, before disagreeing with the Inquiry Officer on any articles of charge, must record tentative reasons for such disagreement. Moreover, a notice to the delinquent officer must be given to represent before disciplinary authority records its findings. In the instant case this very basic principle has been violated and in such circumstance the impugned orders dated 24.5.1993 and 2.9.1998 as contained in annexures 4 and 6 respectively cannot be sustained.

8. In the result, this application is allowed. The orders dated 24.5.1993 (annexure-4) 2.9.1998 (annexure-6) are quashed and the case is remitted to the disciplinary authority for starting another innings from the stage of submission of enquiry report. The disciplinary authority, if so desires may proceed with the departmental enquiry after giving its tentative findings for differing with the report of the Inquiry Officer and after giving notice to the Petitioner.

9. This application is allowed with the aforesaid observation and direction.