
(2015) 06 PAT CK 0024

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 3303 of 2000

Shashi Nath Jha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 25-06-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 06 PAT CK 0024

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : Rekha Mukund and Anil Kumar Mukund, for the Appellant; Sudhir Kumar, AC to AAG, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Chakradhari Sharan Singh, J.

1. The petitioner, in the present writ application has sought for quashing of an order dated 03.12.1997 passed by the District Collector, Supaul as contained in Memo No. 560-2/Supaul, whereby, the petitioner has been dismissed from service. The order dated 14.3.2000, whereby, the Divisional Commissioner, Koshi Division, Saharsa rejected his Service Appeal No. 4 of 1999-2000, is also under challenge in the present writ application.

2. From the pleadings on record, it appears that the petitioner was working as Nazir in Kishanpur Anchal Office under Supaul District. A departmental proceeding was initiated with the service of charge-sheet upon the petitioner vide memo No. 1624-2.Est.Saharsa dated 13.10.1987, containing altogether 12 charges, including the charge of embezzlement of a sum of Rs. 88,535.87/-. A criminal case was also instituted with respect to embezzlement of money, vide Kishanpur P.S. Case No. 52 of 1985. This is not in dispute that the petitioner was subsequently, acquitted by the Court in the criminal case. After conclusion of the criminal trial, the departmental proceeding initiated against the petitioner

continued, though the petitioner wanted the said disciplinary proceeding to be dropped, in view of the judgment of criminal Court, acquitting the petitioner of criminal charge.

3. The Inquiry Officer submitted his report, holding that charges against the petitioner stood proved. The disciplinary authority, accepting the report of the Inquiry Officer, passed an order, dated 11.8.1994, dismissing the petitioner from service.

4. The petitioner approached this Court by filing CWJC No. 8424 of 1994 against the order dated 10.8.1994, whereby, he was dismissed from service. This Court by an order dated 04.05.1995, though rejected the petitioner's plea that the departmental proceeding should not have been allowed to continue after his acquittal in the criminal case, allowed the writ application on the ground that the petitioner ought to have been given opportunity to file his show cause. The Court also took into account the fact that in the enquiry report, the Inquiry Officer had mentioned that no evidence had been produced on behalf of the State and, therefore, this Court allowed the writ application i.e. CWJC No. 8424 of 1994 by the said order dated 04.05.1995 and set aside the order of petitioner's dismissal from service.

5. This Court by the said order dated 04.05.1995 directed the petitioner to file his show cause before the District Magistrate, Supaul on or before 4.7.1995 and the District Magistrate, in turn, was directed to intimate the petitioner as to who would be the Conducting Officer before whom the petitioner would be required to appear. The Court observed that it would be open to the District Magistrate to get the enquiry held either by the same very Inquiry Officer or nominate another person for holding enquiry. The Court also directed that if the petitioner filed his show cause, the Conducting Officer shall submit report after giving opportunity of adducing evidence to both the parties and thereafter, the disciplinary authority would pass an appropriate order upon the enquiry report, after serving a copy of the said enquiry report upon the petitioner and giving him an opportunity of hearing. It was further observed that if the petitioner failed to appear and filed his show cause within the aforesaid time, the District Magistrate would direct the Conducting Officer to proceed with the enquiry, ex parte and take a decision in accordance with law upon the enquiry conducted by him.

6. It has been stated in the writ application that the Deputy Collector, Land Reforms, Supaul again conducted his enquiry and submitted his report to the Collector to the effect that the charges framed against him stood proved. I must take note of the fact at this stage itself that there is no statement in the writ application that in compliance of the order of this Court dated 04.05.1995, the petitioner appeared before the District Magistrate along with his show cause on or before 04.07.1995. It has been only stated that after submission of the enquiry report, the disciplinary authority issued a second show cause notice, asking the petitioner to submit his show cause reply. It has been stated that the petitioner received the second show cause notice through the Block Development

Officer, but there was no enquiry report annexed to that, though there was an endorsement in the second show cause notice to this effect. It has been stated that the petitioner demanded copy of the enquiry report from Block Development Officer, which was not annexed with the second show cause notice. It has accordingly, been stated that because of non- supply of the enquiry report, petitioner failed to submit his show cause reply to the second show cause notice. It has been stated that a reminder was sent to the petitioner through letter dated 16.6.1997 asking him to file his reply to the second show cause notice but that was also without the enquiry report. I must take note of this fact here that though copy of the reminder dated 16.6.1997 has been brought on record by way of Annexure-2, the petitioner has not annexed copy of the second show cause notice which was admittedly, served upon him, along with which, according to him, enquiry report was not attached. However, it has been specifically mentioned in the impugned order passed by the Collector, Saharsa that a second show cause notice was issued to the petitioner vide letter dated 31.1.1996 (which has wrongly been typed as 31.1.1995 at page 30 of the writ application), enclosing therewith a copy of the report of the enquiry Officer, wherein, he had held that the petitioner had embezzled a sum of Rs. 88,535.87/- stood proved. It has further been mentioned in the said order that the petitioner had received the said letter dated 31.1.1996 on 8.3.1996. The petitioner has not stated anywhere in the writ application, as regards receipt of the said letter on 8.3.1996 nor he has denied this fact by stating that he did not receive any such letter on 8.3.1996, which was the second show cause notice issued on 31.1.1996. There is vague statement in paragraph 11 that he demanded enquiry report from the Block Development Officer, but the manner and mode of such demand has not been mentioned anywhere in the writ application. It has been stated that since the report of the enquiry officer was not served upon the petitioner, he could not file any show cause in response to the second show cause notice and according to him, the ex parte dismissal order came to be passed by order dated 3.12.1997 by the Collector, Saharsa which is under challenge in the present writ application.

7. The petitioner thereafter, again moved this Court by filing CWJC No. 540 of 1998 which was dismissed by this Court by an order dated 25.8.1999 on the ground that the petitioner ought to have availed the alternative statutory remedy of appeal. The petitioner thereafter, preferred appeal before the Divisional Commissioner, Koshi Division, Saharsa against the order of the disciplinary authority i.e. the Collector, Supaul giving rise to Service Appeal No. 4 of 1999-2000. The Divisional Commissioner, Koshi Division, Saharsa (the appellate authority), rejected the petitioner's appeal by an order dated 14.3.2000.

8. In the background of the facts as noted above, the present writ application has been filed, seeking quashing of the order dated 03.12.1997 passed by the Disciplinary Authority and the order dated 14.03.2000 passed by the Appellate Authority.

9. A counter affidavit has been filed on behalf of the respondent State of Bihar,

wherein the statement made in paragraph 11 of the writ application that copy of the enquiry report was not served upon the petitioner has been denied. It has been stated in the counter affidavit that vide Memo No. 75-2.Est. dated 31.1.1996, the Collector, Supaul asked the petitioner to file his second show cause within 15 days, which letter was received on 8.3.1996 by the petitioner, but he did not file his response to the second show cause notice. He was again reminded by a letter dated 16.6.1997 to file his response to the second show cause notice, by way of indulgence. The petitioner, however, did not submit his response and accordingly, agreeing with the report of the Inquiry Officer, the Collector, by his order dated 03.12. 1997 dismissed the petitioner from service.

10. Mr. Anil Kumar Mukund, learned counsel appearing on behalf of the petitioner has raised following three points to challenge the impugned orders, passed by the disciplinary authority and the appellate authority:--

"(a) The enquiry report was not supplied to the petitioner along with the second show cause notice and, therefore, the petitioner did not have the opportunity to deal with the findings recorded by the Inquiry Officer. Non-supply of enquiry report amounts to violation of principles of natural justice and on that ground alone the order of the disciplinary authority as well as the appellate authority vitiate.

(b) There has been non-application of mind by the disciplinary authority inasmuch as, he passed the order after seeking opinion from the Government Pleader as mentioned in the impugned order dated 03.12.1997 itself. According to him, the disciplinary authority was required to apply his own mind and ought not to have sought and got influenced by any opinion from the Government Pleader in this regard.

(c) No fresh evidence was adduced in the subsequent departmental enquiry held pursuant to the order of this Court dated 04.05.1995 passed in CWJC No. 8424 of 1994."

11. Learned counsel appearing on behalf of the respondent State of Bihar while, opposing the writ application has contended that the petitioner was given due opportunity of hearing in course of departmental enquiry and despite the fact that he did not file any written statement of defence/show cause despite order of this Court dated 4.5.1995 passed in CWJC No. 8424 of 1994, the Inquiry Officer treated his statement made before the Inquiry Officer in course of proceeding to be his show cause and after giving him sufficient opportunity to put forth his defence, he continued with the departmental enquiry. He has submitted that petitioner was given ample opportunity for the purpose of his defence in the disciplinary proceeding and on the basis of material available in the departmental enquiry, the Inquiry Officer rightly came to the finding that the charge of embezzlement levelled against the petitioner stood proved. He has reiterated the stand of the respondents in their counter affidavit that the enquiry report was in fact served upon the petitioner and he was given an opportunity to reply to the

second show cause notice, in view of findings in the enquiry report, but he deliberately did not avail the opportunity in order unnecessarily delay the departmental proceeding. He has submitted that there is neither any procedural lapse in the departmental enquiry nor the findings of the Inquiry Officer can be said to be perverse. He would further submit that punishment of dismissal from service imposed upon the petitioner is befitting the gravity of charge of misconduct levelled against him.

12. As has been noticed above, this Court vide order dated 04.05.1995 passed in CWJC No. 8424 of 1994, had directed the petitioner that he must file his show cause before the Collector-cum-District Magistrate, Supaul within a period of two months from the date of the said order dated 04.05.1995. The petitioner was specifically directed to appear before the District Magistrate along with his show cause on 04.07.1995. There is absolutely no averment in the writ application that in compliance of the said order of this Court, the petitioner went to the Collector-cum-District Magistrate, Supaul, along with his show cause. On the contrary, from the impugned order dated 03.12.1997, it appears that the petitioner did not submit his show cause/written statement of defence at all. I am of the view that the petitioner, as a matter of fact, acted in breach of the specific order of this Court dated 04.05.1995, passed in CWJC No. 8424 of 1994.

13. The petitioner has taken a plea that report of the Inquiry Officer was not supplied to him and, therefore, he did not submit his response to the second show cause notice. This assertion has been denied in the counter affidavit. It has been specifically mentioned in the order of the disciplinary authority that copy of the second show cause notice along with the enquiry report was served upon the petitioner on 08.03.1996 through letter dated 31.01.1995. The petitioner has said nothing about it in the writ application nor he has brought on record the said letter dated 31.1.1995. In my opinion, the petitioner has attempted to conceal the material fact in order to make out a case that the copy of the enquiry report was not supplied to him.

14. The petitioner's case that though it was mentioned in the second show cause notice that a copy of the enquiry report was being annexed thereto, the said enquiry report was not in fact annexed, cannot be accepted. Had this been so, the petitioner could have immediately complained to the disciplinary authority as regards non-supply of the enquiry report which he did not do. As per his own statement, a reminder was sent to him for submitting his response to second show cause notice through letter dated 16.6.1997. Had non-supply of the enquiry report been the reason for not responding to the second show cause notice, the petitioner could have, after receiving the letter dated 16.6.1997, intimated the disciplinary authority that the copy of the enquiry report in fact was not served upon him. As a matter of fact, there is absolutely no material/evidence brought on record on the basis of which, it can be accepted that the petitioner raised any grievance as regards non-supply of the enquiry report.

15. From the facts pleaded in the writ application and in the counter affidavit as

well as the impugned order of the disciplinary authority, I am of the view that the petitioner has made a false statement that copy of the enquiry report was not supplied to him because of which he could not file reply to the second show cause notice. The submission made on behalf of the petitioner by Mr. Mukund in this regard is not tenable and is accordingly, rejected.

16. The second point taken by the learned counsel for the petitioner that there has been non-application of mind by the disciplinary authority, while passing the impugned order dated 3.13.1997, as he sought opinion from the Government Pleader in this regard, is also not acceptable. From the impugned order dated 03.12.1997, it appears that the disciplinary authority i.e. District Collector, Supaul applied his mind to all the facts and circumstances of the case, taking into account the facts relating to the charges levelled against the petitioner, decided to impose punishment of dismissal from service upon the petitioner. It is true, as would appear from the disciplinary authority, that he consulted the Government Advocate while taking final decision for imposition of punishment on the petitioner, but at the same time, it is clear that it is not based solely on consultation between him and the learned Government Pleader and it is based on the analysis of the material on record by the Disciplinary Authority. Learned counsel for the petitioner has submitted that the decision of the disciplinary authority is based on no evidence. This submission is not acceptable. From the order of the disciplinary authority, it appears that evidences were adduced in course of departmental enquiry and the petitioner was given sufficient opportunity to participate in the departmental enquiry at every stage.

17. Learned counsel for the petitioner has failed to make out any case that there has been any procedural lapse in holding the departmental enquiry.

18. I do not find any substance in submission made on behalf of the petitioner for challenging the impugned orders in the present application. The writ application is accordingly, dismissed.

19. Before I part with, I must deprecate the conduct of the petitioner, who admittedly, disobeyed this Court's order dated 04.05.1995 passed in CWJC No. 8424 of 1994, whereby, he was directed to appear before the Collector-cum-District Magistrate((disciplinary authority), Supaul on or before 04.07.1995, along with his show cause. There is no averment anywhere in the writ application that he ever filed his show cause/written statement of defence in the departmental enquiry. Having acted in breach of the specific order of this Court, the petitioner cannot be granted any relief by this Court in the present writ proceeding under Article 226 of the Constitution of India. I am also of the view that one who refuses to avail the opportunity of filing show cause in a disciplinary proceeding despite clear direction of the Court, he cannot allege violation of principles of natural justice, in the present facts and circumstances of the case. The conduct of the petitioner is highly reprehensible.

20. This writ application is accordingly, dismissed with a cost of Rs. 5,000/- (five

thousand) to be deposited by the petitioner in the account of Bihar State Legal Services Authority, Patna within a period of two months from today.