

(2016) 09 PAT CK 0084

In the Patna High Court

Case No : Letters Patent Appeal No. 825 of 2015; (Arising out of Civil Writ Jurisdiction Case No. 16313 of 2007)

Shiv Prakash Singh

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 06-09-2016

Acts Referred:

Citation : (2017) 1 BBCJ 14 : (2016) 4 PLJR 813

Hon'ble Judges : Mr. Hemant Gupta and Mr. Ahsanuddin Amanullah, JJ.

Bench : Division Bench

Advocate : Mr. Piyush Lall, Advocate, for the Respondents; Mr. Sandip Kumar and Mr. Rana Vikram Singh, Advocates, for the Appellant

Final Decision : Allowed

Judgement

Mr. Hemant Gupta, J. - The challenge in the present Letters Patent Appeal is to an order passed by a learned Single Bench of this Court on 20th February, 2015 whereby, the writ application directed against an order of punishment dated 7th August, 2006 remained unsuccessful.

2. The appellant was charge-sheeted in respect of an allegation that he had kept 522 records in an Almirah and intentionally did not put up the records before the Presiding Officer of the Court for passing proper order, as a result of which in some cases cognizance of the offence became time barred. Such action was said to be that of a gross negligence and dereliction of duty and a grave misconduct.

3. To examine the allegations against the appellant, Sub-Judge-I, Sitamarhi was appointed as an enquiry officer who found the charges as proved and the act of the appellant were found to be of gross negligence and dereliction of duty but holding that the Presenting Officer has failed to prove any wrong intention or motive behind non-production of record before the Presiding Officer by the appellant. On the basis of such enquiry report, without supplying the same to the appellant, the learned District and Sessions Judge, Sitamarhi passed an order of

stoppage of three increments on permanent basis. It was also directed that the appellant shall not be given any posting as an Office Clerk or Bench Clerk of any Court.

4. The argument raised by learned counsel for the appellant is that the report of the enquiry officer was not supplied to the appellant; therefore, an order passed violates the principles of natural justice. Reliance is placed upon Constitutional Bench judgment Managing Director, ECIL, Hyderabad v. B. Karunakar, (1993) 4 SCC 727.

5. On the other hand, learned counsel for the respondents argued that the appellant has not suffered any prejudice on account of non-supply of the copy of the enquiry report, therefore, this Court should not intervene in the matter of punishment when serious allegations of not producing 522 records stand proved against the appellant.

6. We may point out that the appellant, after the order of punishment was passed by the disciplinary authority, obtained copy of the enquiry report and submitted an application for review of the order. Such review was dismissed by the learned District and Sessions Judge, Sitamarhi on 20th February, 2007.

7. We have heard learned counsel for the parties and find that non-supply of copy of the enquiry report before imposing order of punishment violates the principles of natural justice as laid down by the Hon''ble Supreme Court in B. Karunakar's case (supra). Once the adverse circumstance such as enquiry report was not supplied to the appellant, then such fact would warrant that the disciplinary authority should give an opportunity to the appellant to submit representation against the findings recorded by the enquiry officer and to consider and pass an appropriate order as it may think appropriate without being influenced by the earlier order of punishment passed by the District & Sessions Judge.

8. It may be noticed that an appeal was filed by the appellant against the order of punishment. Such appeal was dismissed for the reason that it was preferred beyond the period of limitation. We say that such fact shall not be taken into consideration by the learned District & Sessions Judge while examining the proceedings from the stage of consideration of reply to be submitted by the appellant.

9. With the said observation and direction, the appeal stands allowed. The matter is remitted back to the learned District & Sessions Judge to pass afresh order, after a reply if filed by the appellant within two weeks from today. Consequential order shall be passed by the learned District & Sessions Judge without considering himself bound by the earlier order of punishment passed. The learned District & Sessions Judge shall also pass an appropriate consequential order in accordance with law preferably within three months of the reply of the appellant in respect of the order of punishment to be imposed by the learned disciplinary authority.