

(2016) 05 JH CK 0140

In the Jharkhand High Court

Case No : Writ Petition (S) No. 2249 of 2005.

Shree Bhagwan Choudhary - Petitioner @HASH State of Jharkhand and Others

Date of Decision : 19-05-2016

Acts Referred:

Uttar Pradesh Civil Services (Classification, Control and Appeal) Rules, 1930 — Rule 49(A)(1)(a)

Citation : (2017) 2 AIRJharR 378 : (2016) 4 JCR 198

Hon'ble Judges : Pramath Patnaik, J.

Bench : Single Bench

Advocate : Saurabh Shekhar, Advocate, for the Petitioner; Navin Kr. Singh, JC to GA, for the Respondents

Final Decision : Disposed Off

Judgement

Pramath Patnaik, J. - In tills accompanied writ application, the petitioner has approached this Court for quashing of the notification dated 12.2.2004 issued by the respondent No. 4 pertaining to imposition of following punishment:

- (i) Four annual increments have been withheld with cumulative effect.
- (ii) The petitioner is not entitled to get anything except his subsistence allowance during the suspension period.

2. The brief facts as delineated in the writ application is that while the petitioner was posted as Executive Engineer, Jamshedpur, he was assigned with completion of work i.e. for repairing of the M.G.M.M. College Hospital, Jamshedpur which was in pursuant to letter vide Annexure-I to the writ application. The said work was assigned to the petitioner because petitioner was holding the post of Executive Engineer, Building Construction Department, Jamshedpur. After completion of the said work, the petitioner was placed under suspension in exercise of powers under Rule 49(A)(1)(a) of the Civil Services (Classification Control and Appeal) Rules, 1930. The petitioner received letter dated 12.6.2003, wherein three charges were levelled against him. The petitioner submitted his

reply to the alleged charges denying the same. The petitioner submitted his reply dated 7.7.2003 reiterating the earlier facts. During course of departmental proceeding, the petitioner asked for certain documents, which were not supplied to him. In the departmental inquiry, the petitioner was asked to reply to the question of respondent No. 3. The matter was inquired into and the Inquiry Officer submitted his report without supplying the same to the petitioner in a hot haste and the respondents issued notification dated 12.2.2004 imposing punishment against the petitioner as mentioned vide Annexure-7 to the writ application.

3. Heard Mr. Saurabh Shekhar, learned counsel for the petitioner and Mr. Navin Kumar Singh (J.C. to G.A) appearing for the respondents.

4. Mr. Saurabh Shekhar, learned counsel appearing for the petitioner has strenuously urged that the impugned order of punishment has been passed, based upon vague and indefinite charges. Learned counsel for the petitioner further submits that the impugned order of punishment vide notification dated 12.2.2004 is liable to be set aside on the ground that the respondents have not served copy of the inquiry report causing gross prejudice. Moreover, the imposition of punishment has cast stigma on the career of the petitioner, thereby Jeopardizing his chance for promotion. Learned counsel for the petitioner further submits that before awarding punishment, no show-cause notice has been asked to the petitioner, thereby inquiry proceeding has been vitiated. Learned counsel for the petitioner further submits that so far as punishment Nos. 2 and 4 are concerned, the same are not envisaged under the Rules and, therefore, the impugned order of punishment Nos. 2 and 4 does not find place in accordance with Rule 49 of the Civil Services (Classification Control and Appeal) Rules, which is liable to, be set aside. Learned counsel for the petitioner further submits that the respondents have imposed one punishment by which the petitioner will not be entitled to get anything except the subsistence allowance for the period of suspension, which is against Rule 97 of the Bihar Service Code, in view of the fact that no order has been passed as to how the period from 20.5.2003 to 12.2.2004 shall be treated, because no opportunity to show-cause has been given prior to imposition of the said punishment. Learned counsel for the petitioner further submits that the notification imposing punishment is liable to be interfered with, on the ground that the preliminary inquiry conducted by the disciplinary authority has been used as an evidence to prove the charges against the petitioner, therefore, the conduct of the proceeding is fraught with infirmities which has vitiated the whole proceeding. Learned counsel for the petitioner further submits that the impugned order vide notification dated 12.2.2004 is a major punishment, in which, copy of the inquiry" report ought to have been supplied to the petitioner and the same having not been supplied to the petitioner prior to imposition of punishment, gross prejudice has been caused.

5. Learned counsel for the petitioner in order to buttress his argument has referred to the decision reported in 2007 (3) JCR 654 (Jhr), wherein this Court in

paragraph 10 has been pleased to hold that "in view of the decision of this Court in case of Anil Prasad and others v. State of Jharkhand and others (W.P. (S) No. 6903 of 2006) dated 4.1.2007, the issue is no more res integra as the provisions of Rule 49(A) of the Bihar Civil Services (Classification Control and Appeal) Rules clearly provides that the appointing/controlling authority has power to put the Government Servant under suspension."

6. Learned counsel for the petitioner further submits that since the parent department is the Road Construction Department, the Building Construction Department have no authority to place the petitioner under suspension, therefore, the impugned order of suspension vide Annexure-1/1 of the writ application being without jurisdiction is non est in the eye of law.

7. Mr. Navin Kumar Singh, learned J.C. to G.A., appearing for the respondents has reiterated the submissions made in the counter-affidavit. Learned counsel for the respondents referring to counter-affidavit dated 18.9.2005 submits that soon after issuance of charges, the petitioner was requested vide letter dated 14.6.2003 (Annexure-A to the counter-affidavit) to submit his reply in defence and if at all he needs any Government's documents/papers to be produced to him. Learned counsel further submits that after a full-fledged in the departmental proceeding, in which the petitioner has participated without any demur punishment has been inflicted upon him by the Road Construction Department.

8. Learned counsel for the respondent-State by referring to the supplementary counter-affidavit dated 13.7.2011 filed on behalf of respondent Nos. 2 and 5 has referred to the letter dated 20.6.2003, whereby standing order has been circulated amongst all departments of Jharkhand State regarding disciplinary actions against the engineers of the Road Construction Department that if it is necessary, the relevant department shall suspend the delinquent engineer according to the rule/provisions for the same, but the headquarter of the such delinquent engineer shall be fixed in the Road Construction Department during his suspension. In view of the aforesaid letter, the Building Construction Department had sent the file of the petitioner along with its recommendation for issuing the order of the penalty against the petitioner to the Road Construction Department. After getting approval from competent authority, an order of punishment had been issued vide notification dated 12.2.2004 at the level of the Road Construction Department.

9. After hearing learned counsels for the respective parties at length and having bestowed my anxious consideration to the rivalized submissions and on perusal of the records. I am of the considered view that the impugned order of punishment passed vide notification dated 12.2.2004 is fraught with infirmities due to the reasons stated here in below:

(I) That the impugned order vide Annexure-7 dated 12.2.2004 contains major punishment, a full dressed departmental inquiry ought to be followed. In the

Instant case, before infliction of punishment, copy of the inquiry report basing on which the order has been passed, has not been supplied to the petitioner causing serious prejudice, thereby preventing the petitioner to put forth his defence. Therefore, non-supply of the inquiry report causing prejudice to the petitioner has resulted in vitiating the proceeding. So far as impugned order of punishment is concerned, the second and fourth punishment are not envisaged under Civil Services (Classification Control and Appeal) Rules, hence the said punishments having not mentioned under Rule 49(A) of the Bihar Civil Services (Classification Control and Appeal) Rules, cannot be sustained in the eye of law. So far as payment of only subsistence allowance during suspension period, is against Rule 97 of Jharkhand Service Code, which inter alia envisages :

"97. (1) When a Government servant who has been dismissed, removed, or suspended, reinstated, the authority competent to order the reinstatement shall consider and make specific order,-

(a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty, and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Where the authority mentioned in sub-rule (1), is of opinion that the Government servant has been fully exonerated, or in the case of suspension, that it was wholly unjustified, the Government servant shall be given full pay and allowances to which he, would have been entitled has he not been dismissed, removed or suspended, as the case may be.

(3) In other cases, the Government servant shall be given such promotion of such pay and allowances as such competent authority may prescribe :

Provided that the payment of allowances under Clause (2) or Clause (3) shall be subject to all other conditions under which such allowance are admissible.

(4) In a case falling under Clause (2) the period of absence from duty shall be treated as a period spent on day for all purposes.

(5) In a case falling under clause the period of absence from duty shall not be treated as a period spent on duty, unless such competent authority specifically directs that it shall be so treated for any specified purpose :

Provided that if the Government servant so desires such authority may direct that the period of absence from duty shall be converted into leave of any kind due and admissible to the Government servant."

Therefore, the authority ought to have passed order as to how to treat the period from 20.5.2003 to 12.2.2004, and the same having not been done, the punishment order No. 2 is not legally sustainable.

10. In view of the aforesaid discussions and legal provisions, I hold that the notification dated 12.2.2004 vide Annexure-7 being not legally sustainable, is

quashed and set aside and the matter is remitted to the disciplinary authority to start de novo proceeding after supplying inquiry report and conclude the proceeding as expeditiously as possible, preferably within a period of 16 weeks from the date of receipt/communication of the order and pass order/orders as deemed fit and proper in the interest of justice.

11. With the aforesaid observations and directions, this writ petition stands disposed of.