
(2011) 09 PAT CK 0044
In the Patna High Court
Case No : CWJC No. 4285 of 2007

Shri Bhagwan Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 29-09-2011

Acts Referred:

Citation : (2011) 09 PAT CK 0044

Final Decision : Dismissed

Judgement

V.N. Sinha, J.—Heard learned counsel for the petitioner and the State.

2. At the relevant time, petitioner served as Assistant in the office of the Commissioner, Darbhanga Division, Darbhanga. He has filed this writ petition assailing office order, bearing No. 465 dated 20.8.2005, Annexure-5 whereunder he has been punished after conclusion of the departmental proceeding by stopping his two annual increments with cumulative effect. He is also aggrieved by the appellate order dated 19.9.2006, Annexure-6 passed by the Member, Board of Revenue, Bihar, Patna in Service Appeal No. 5 of 2006 whereunder the appeal filed against the order dated 20.8.2005, Annexure-5 has been rejected. Earlier, petitioner was served with the charge-sheet under Memo No. 1181 dated 12.6.2003 alleging that he remained under unauthorized absence for the period between 22.12.2000-6.5.2003 disobeying the directions of the superior authorities as also of the High Court to join duties, which is demonstrative of his indiscipline and insubordination. He is also charged of stalling enquiry in connection with illegal appointment of ANM and Basic Health Worker. Further, he is charged of indulging in intoxication during duty hours and criminal activities violating Rule 4 of the Bihar Government Servant Conduct Rules. In response to the said charge-sheet, petitioner filed his written defence. Having considered the written defence, the Enquiry Officer submitted enquiry report, Annexure-3 holding the petitioner guilty of charge Nos. 1, 2, 3, 5, 6 and 8 placing reliance on documentary evidence including medical certificate in support of the finding that petitioner was consuming intoxicant everyday. Charge No. 4 was partially proved.

Charge Nos. 9, 10, 11 and 12 were not proved. In consideration of the findings recorded by the Enquiry Officer, the Disciplinary Authority passed the impugned punishment order dated 20.8.2005, Annexure-5 withholding two annual increments with cumulative effect. Against the impugned punishment order dated 20.8.2005, Annexure-5, petitioner preferred Service Appeal No. 5 of 2006, which has been dismissed under order dated 19.9.2006, Annexure-6 holding as follows:--

The enquiry report submitted by the Conducting Officer clearly brings out that the appellant remained on unauthorized leave for a long time. He did not attend office even though the leave was not sanctioned. He did not hand over the charge of the Department of Health to the person to whom it was allotted. The appellant deliberately absented himself from duty without justification. Whenever the leave application was submitted it was not accompanied by medical certificate or medical prescription. All these indicate that the appellant deliberately remained on leave without any valid reason. All the charges which have been levelled against the appellant, were examined by the conducting officer. He was given opportunity to place his case before the conducting officer. Based on the evidences and papers supplied by the appellant as well as by the officers the Conducting Officer came to the conclusion that charges related to 1, 2, 3, 5, 6 and 8 are completely proved. Charge No. 4 is proved partially and charges bearing Nos. 9, 10, 11 and 12 were not proved.

3. Learned counsel for the petitioner challenged the aforesaid punishment/appellate order on the ground that leave for the period, during which petitioner remained under unauthorized absence, having been sanctioned under Memo No. 320 dated 16.6.2003, Annexure-7, the Enquiry Officer ought not to have held the petitioner guilty of charge Nos. 1 and 2. Holding the petitioner guilty of charge Nos. 1 and 2 tantamounts to malice in law. In support of such submission, learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court rendered in the case of *The Regional Manager and Another Vs. Pawan Kumar Dubey*, paragraph 13, which is also quoted hereinbelow:--

We do not think that *State of U.P. and Others Vs. Sughar Singh*, in any way, conflicts with what has been laid down by this Court previously on Article 311(2) of the Constitution or Article 16 of the Constitution. We would, however, like to emphasize that, before Article 16 is held to have been violated by some action there must be a clear demonstration of discrimination between one Government servant and another, similarly placed, which cannot be reasonably explained except on an assumption or demonstration of "malice in law" or "malice in fact." As we have explained, acting on a legally extraneous or obviously misconceived ground of action would be a case of "malice in law." Orders of reversion passed as a result of administrative exigencies, without any suggestion of malice in law or in fact, are unaffected by *Sughar Singh's* case (*supra*). They are not vitiated merely because some other Government servants, juniors in the substantive rank, have not been reverted.

4. Perusal of the aforesaid judgment, the quoted paragraph would indicate that the same has been rendered in the context of Article 16 of the Constitution of India observing that when two similarly situate Government servants are differently dealt and discrimination is not reasonably explained except on assumption or demonstration of malice in law or fact. Acting on a legally extraneous or obviously misconceived ground of action would be a case of malice in law. In the instant case, petitioner remained under unauthorized absence for the period between 22.12.2000 to 6.5.2003 and submitted several leave applications for sanction of leave during the aforesaid period. None of the leave applications submitted by the petitioner during the said period was ever supported by medical certificate, appreciating such fact, the controlling officer of the petitioner, the Commissioner, Darbhanga Division, Darbhanga during the period between 22.12.2000-6.5.2003 never sanctioned leave to the petitioner. The order sanctioning leave has been issued by the succeeding controlling officer of the petitioner after petitioner joined his duties on 7.5.2003. It is evident from perusal of the order dated 16.6.2003, Annexure-7 that the leave of the petitioner for the aforesaid period has been sanctioned after giving him warning. As such, it is quite evident that at the relevant time when petitioner was under unauthorized absence, the controlling officer was not satisfied with his plea that he was suffering from illness. Finding regarding intoxication during duty hour is made with reference to the medical certificate.

5. In view of the findings of the Enquiry Officer as also of the Appellate Authority, I am not inclined to interfere with the impugned punishment/appellate orders dated 20.8.2005 and 19.9.2006, Annexures-5 and 6. The writ petition is, accordingly, dismissed.