
(2005) 04 PAT CK 0090
In the Patna High Court
Case No : CWJC No. 3895 of 2000

Sri Jai Prakash Narayan

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 28-04-2005

Acts Referred:

Citation : (2005) 3 PLJR 142

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Navin Sinha, J.—Heard Learned counsel for the petitioner and the learned Counsel for the State. The petitioner seeks quashing of the order dated 15.2.99 at Annexure 5. The impugned order would record that in pursuance of a departmental proceeding against the petitioner and consideration of the enquiry report as also the reply to the second show cause notice submitted by. the petitioner the Government was satisfied of its being proved against the petitioner that the breach of the Baghmata Right Embankment on 1.7.95 at 5.30 AM initially for 25 feet which subsequently increased to 2500 feet on 4.7.95 affecting 40,000 people by the flood, was the result of absence of the petitioner from the site, which was an act of negligence and violation of government instructions by him. As a consequence three punishments, (a) censure for the years 1995 to 1998, (b) stoppage of three increments with cumulative effect and (c) payment of only subsistence allowance during the period of suspension while counting the period of suspension for the purpose of pension, were imposed upon the petitioner.

2. The petitioner at the relevant time was posted as an Executive Engineer at the Baghmata Pramandal, Sheohar, when the incident in question as aforesaid is alleged to have occurred in the night between 30.6.95 and 1.7.95. The petitioner was then placed under suspension by an order dated 18.7.95 and departmental proceedings were initiated against the petitioner based on the report of the District Magistrate, Sheohar which would be available at Annexure A to the

counter affidavit filed on behalf of the State. The memo of charges were then issued to the petitioner dated 19.7.95 at Annexure 1 to the present application which would allege that on the basis of report of the District Magistrate and the Superintending Engineer, for breach of embankment on 1.7.95 at 5.30 AM, the petitioner would appear prima facie guilty of gross negligence, callousness and violation of government instructions by having remained absent from the site. In pursuance of the departmental enquiry, the enquiry officer submitted his report on 4.11.95 returning the finding of guilt for reasons of the petitioner's absence from the site. The second show cause notice having been issued on 4.3.96 replied to by the petitioner on 16.4.96 the impugned order of punishment at Annexure 5 came to be passed.

3. Learned Counsel for the petitioner submitted that the only charge against the petitioner was his absence from the site at the time of breach of the embankment. The memo of charges would not allege that there was any allegation against the petitioner of negligence and violation of government instruction in construction, maintenance or upkeep of the embankment which resulted in the breach. On the contrary the reports of the Chief Engineer, Water Resources Department, Mazaffarpur, Special investigation headed by the retired Chief Engineer Sri Bideshi Mehta of the Flood Control Cell, Water Resources Department under the instructions of the Engineer-in-Chief, North, would be in favour of the petitioner. It was submitted that the fact that this was never the subject of deliberation during course of enquiry and consideration by the Enquiry Officer would be more than apparent from the enquiry report which quite simply arrived at a finding of negligence and callousness against the petitioner and violation of government instruction for reasons of his absence from the work site at the time of the breach. Without prejudice to the aforesaid learned Counsel for the petitioner submitted that in any event the reports as aforesaid in his favour were duly available with the Enquiry Officer but find no consideration or discussion by him. This would only support his assertion that the only subject matter of the charges was absence at the time of the breach as noticed both by the Enquiry Officer and the petitioner. Moreover the report of the District Magistrate in pursuance of which the charges came to be issued as contained in Annexure A to the counter affidavit would refer to the evidence by way of information gathered by the District Magistrate from the persons available at the site none of whom have been examined during enquiry and the opportunity to cross examination given to the petitioner. The report itself would record the posting of police force at the site in the background of the submission by the petitioner during the proceedings of disturbance caused due to law and order problem which is not of his defences for having remained absent from the site. On the aforesaid basis on vagueness in the charges with regard to the breach being consequence of the absence of the petitioner the Enquiry Officer arrived at a finding of negligence of the petitioner by reason of his absence only, simply on conjectures and surmises without any material or evidence in support of the same. Reliance was placed upon the recitals in the enquiry report to prima fades

demonstrate the limited nature of the charges, the subject of enquiry and the findings.

4. Likewise it is submitted that the second show cause notice dated 4.6.96 at Annexure 3 issued to the petitioner was far in excess of the memo of charges for the reason that for the first time the negligence of the petitioner as a consequence of which the breach was sought to be attributed directly to the petitioner resulting in loss to the government surfaced. Though the petitioner submitted his reply on 16.4.96 pointing out discrepancy in the enquiry specially procedural aspect as also the reports in his favour available with the Enquiry Officer that there had been no negligence or callousness on his part in maintenance of the embankment, the same never came in for consideration by the Enquiry Officer, the final order of punishment came to be passed without any consideration of the same resulting in imposition of punishment for reasons in excess of the memo of charges and subject matter of the enquiry.

5. Learned Counsel for the State with reference to para 6 of the counter affidavit as also the report of the District Magistrate at Annexure A sought to submit that on the basis of the report of the District Magistrate it would appear that the breach was due to the negligent action of the petitioner. The fact that the District Magistrate had submitted a report followed by a departmental proceeding would itself be sufficient to uphold the order of punishment. The report would indicate the attitude and conduct of the petitioner not only considering the present occurrence as also in the past and considering the nature of the damage caused by the negligence and collousness of the petitioner this Court may not interfere with the impugned order and the writ application be dismissed. It was lastly emphasized from the report of the District Magistrate that the fact of absence of the petitioner from the site even on the next date is per se evidence of his lack of bonafide as a government servant and therefore this Court would be loath to interfere with the impugned order.

6. Having considered the facts and circumstances of the case, the materials on record and the submissions made on behalf of the parties, this Court is satisfied that the subject of memo of charges issued to the petitioner was his negligence and callousness and violation of government instructions by reason of absence from the site at the time of breach of embankment. It would not be necessary for this Court at this stage to consider the submissions of the petitioner with regard to the vagueness of the charges. The fact that the enquiry report also does not go into the aspect of construction, maintenance and upkeep of the embankment by the petitioner, with a consequential result of breach thereby, this Court was also under no misconception with regard to the nature of the charges against the petitioner and the scope of enquiry to be held in the departmental proceeding. Moreover even the report of the District Magistrate on the basis of which the Enquiry Officer arrives at a finding of negligence by reason of his absence itself refers to various evidence. It would not appear from the enquiry report that any evidence was led before the Enquiry Officer in support of the allegation and

assertion against the petitioner in the report of the District Magistrate. The Enquiry Officer appears to have acted ipso facto on the basis of allegations against the petitioner as made in the letter of the District Magistrate. This, in view of this Court is not permissible. The case against the delinquent was required to be proved giving him adequate opportunity to meet the same. The assertion of the petitioner that there were reports in his favour stands admitted by the respondents in para 9 of their counter affidavit to quote which would read; "Chief Engineer, Muzaffarpur has also reported in his inspection report that the petitioner's action at the site was not irresponsible. If the scope of the charges of the enquiry be limited there would be no occasion for the respondents to issue second show cause notice in excess of the memo of charges. In that view of the matter, this Court would have no hesitation in arriving at the conclusion that both the second show cause notice and the imposition of punishment thereupon are far in excess of what was subject matter of memo of charges and the enquiry. The recital in the impugned order with regard to the finding against the petitioner with regard to the acts for breach of embankment leads this Court satisfied that the impugned order cannot be sustained.

7. The aforesaid reasoning of this Court with regard to the enquiry report would find support from the judgment of the Supreme Court reported in *Anil Kumar Vs. Presiding Officer and Others*, Dealing with the order of punishment for reasons of non-application of mind in the enquiry report their Lordships were pleased to hold in para 5 of the judgment that a disciplinary enquiry is a quasi judicial enquiry to be held in consonance with the principles of natural justice. The Enquiry Officer has to apply his mind to the evidence, discuss the evidence and not record his ipse dixit that the charges are proved. The enquiry report must permit a peep into the mind of the Enquiry Officer and that he considered the pros and cons of the matter before arriving at a conclusion. The report has to be an speaking order in the sense that the conclusion must be supported by reasons. This would be the view reiterated in *Sher Bahadur Vs. Union of India (UOI) and Others*, . The mere recital of the rhetoric words that he had considered the oral, documentary and circumstantial evidence as adduced in the enquiry would not suffice to uphold the same.

8. Reliance can conveniently be also placed on another judgment of the Supreme Court reported in *Sawai Singh Vs. State of Rajasthan*, with regard to the conclusion arrived at by this Court that the petitioner had been prejudiced by the variance between the subject of the charge and the enquiry as distinct from the grounds stated in the order of punishment. The Supreme Court in para 16 of the aforesaid judgment would hold that the charges involving consequence of service must be specific. There must be fair play in action in respect of an order involving adverse or penal consequence against the employee. There must be investigation of the charges consistent with the requirement of the situation in accordance with law principles of natural justice in so far as these be applicable in a given situation. The requirement of natural justice would depend on the facts of each case which would include the nature of the charges, the subject of the

enquiry and the punishment thereon causing prejudice to the delinquent.

9. In the result Annexure 5 is accordingly quashed. The petitioner would be entitled to all arrears of salary for the period of suspension and salary for the period of suspension less what has been paid to him during period of suspension as subsistence allowance be paid within a period of six weeks from the date of receipt or production of a copy of this order. The writ application stands allowed. No order as to costs.