
(2013) 09 JH CK 0089
In the Jharkhand High Court
Case No : Writ Petition (S) No. 280 of 2013

Sudarshan Choubey

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 25-09-2013

Acts Referred:

Citation : (2014) 1 AJR 616 : (2013) 4 JLJR 484

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Rajiv Ranjan, for the Appellant; A. Shankar, J.C. to G.A., for the Respondent

Final Decision : Allowed

Judgement

S. Chandrashekhar, J.—The petitioner has approached this Court seeking quashing of notification dated 10.09.2010 and the appellate order dated 19.10.2012. The brief facts of the case are that, the petitioner was posted as an Executive Engineer, Building Division, Chaibasa between the period July, 2005 to June, 2006. A notice inviting tender was published in the newspaper on 5.2.2006. A Charge Memo dated 7.2.2007 was served upon the petitioner on the allegations, of committing irregularities and taking commission in issuing tender, having failed to supervise and in not taking interest in the supervision of the work at Seraikella, not providing the physical verification record and remaining absent, misleading the Government with respect to construction of "C" type houses at Seraikella, shown disinterest in coordinating with the senior departmental officers and District headquarters and not showing interest in the work as a result of which an amount of about Rs. Two crores was not utilized and was to be surrendered. An enquiry was instituted and enquiry report was submitted on 12.12.2008 in which Charge Nos. 2, 3, 4, 5 & 6 were found not proved and Charge No. 1 was found partly proved. The Disciplinary Authority passed the order of Censure to be recorded in the Service Book of the petitioner and the appeal preferred by the petitioner has been dismissed by order dated

19.10.2012.

2. A counter-affidavit has been filed by the respondents stating as under:

8. That it is stated and submitted that during the tenure of the petitioner as Executive Engineer, Building Division, Building Construction Department, Chaibasa some irregularities were found against the petitioner. In this context Building Construction Department, Jharkhand Ranchi had recommended to initiate departmental proceeding against the petitioner. On this basis a departmental proceeding was initiated vide departmental resolution No. 533 dated 07.02.2007 against the petitioner.

9. That is stated and submitted that the enquiry report submitted by the conducting officer was thoroughly examined and it was found that the petitioner was guilty with respect to irregularities in notice inviting tender and it was decided at the level of competent authority to impose him "Censure" as a measure of minor penalty. Thus notification No. 5183 read with memo No. 5184 dated 10.09.2010. The petitioner has preferred an appeal before the Appellate authority: the appeal preferred by the petitioner has already been rejected vide Departmental notification No. 7530 read with memo No. 7531 dated 19.10.2012.

10. That it is stated and submitted that with regard to the statement made at paragraph No. 1 of the writ application is concerned it is submitted that the same is prayer before the Hon"ble court hence requires no comment.

11. That it is stated and submitted that with regard to the statement made at paragraph No. 2 of the writ application is concerned it is submitted that the contention of the petitioner is denied. The punishment of "Censure" is specified as a measure of minor penalty. It is not necessary to provide an opportunity of second show cause before imposing minor penalty.

12. That it is stated and submitted that with regard to the statement made at paragraph No. 3 is concerned it is hereby submitted that the same requires no comment.

13. That it is stated and submitted that with regard to the statement made at paragraph No. 4 to 7 are concerned it is hereby submitted that the same is matter of record hence requires no comment.

14. That it is stated and submitted that with regard to the statement made at paragraph No. 8 of the writ application is concerned it is submitted that the contention of petitioner is denied. It is a fact that the petitioner has been found guilty with respect to notice inviting tender during the course of enquiry. As per NIT the tender was to be received upto 3 PM of 18.02.2006 and the bill of quantity for the purpose had to be sold from the officer of the Executive Engineer, Building Division, Chaibasa and concerned sub-divisional office. As per clause "K" (8) of part II of Circular No. 462 dated 30.03.82 of the Chief Secretary, the sanctioned bill of quantity should have reached the officer of the Executive Engineer and the concerned sub-divisional office latest by 11.02.2006

in order to ensure proper communication to the tenderers for the purpose of proper competition among the tenderers but the petitioner in the instant case filed to ensure the said provision.

3. Heard learned counsel for the parties and perused the documents on record.

4. Mr. Rajiv Ranjan, the learned counsel appearing for the petitioner has submitted that even the enquiry officer has observed that the foundational facts in support of the Charge No. 1 has not been mentioned in the Charge-Memo and the allegation of taking commission has not been found proved still, the punishment of censure to be recorded in the Service Book of the petitioner has been passed. This would amount to inflicting major punishment upon the petitioner as this would come in the way of promotion of the petitioner to a higher post. He further submits that the appellate order is cryptic order which reflects non-application of mind on the part of the Appellate Authority and the defence taken by the petitioner has not been considered by the Appellate Authority and therefore, also the penalty order as affirmed by the appellate order, is liable to be quashed.

5. As against above, Mr. A. Shankar, learned counsel appearing for the respondents has submitted that an enquiry was instituted and the Enquiry Officer has found the charge of irregularities in issuing tender notice dated 5.2.2006, proved and therefore, in exercise of power under Article 226 of the Constitution of India, this is not a matter which would invite interference by this Court, as such an exercise would amount to re-appreciating the evidence on record. The learned counsel for the respondents relied on a judgment reported in *Rae Bareilly Kshetriya Gramin Bank Vs. Bhola Nath Singh and other*, He has further submitted that sufficient evidence was brought on record by the Department in support of the Charge No. 1 which relates to committing irregularities in inviting tender notice dated 5.2.2006 and therefore, this writ petition is liable to be dismissed.

6. Having heard the learned counsel for the parties, I find that in support of the Charge No. 1, the newspaper reports and complaint made by the politicians have been relied upon by the Department. No other independent evidence has been brought on record in support of the Charge No. 1 which relates to committing irregularities in inviting tender dated 5.2.2006. Further reliance has been placed on the guidelines issued in letter dated 16.11.2006 which admittedly was issued after the tender notice was issued on 5.2.2006 and therefore, reliance placed by the Department during the course of enquiry on the guidelines dated 16.11.2006, is not tenable. I further find that the charge as levelled against the petitioner under charge No. 1 is completely vague as no foundational facts in support of the said charge have been disclosed in the Charge-Memo. A delinquent employee is entitled to know what is the charge framed against him. If a charge is not specifically framed, it would amount to denying him the opportunity to defend himself. The Enquiry Officer has also recorded in the enquiry report that in the Charge Memo the specific dates and other foundational facts have not been mentioned while framing Charge No. 1. It is also a matter of

record that the charge of taking commission while issuing the tender has not been found proved against the petitioner.

7. In *Sawai Singh Vs. State of Rajasthan*, the Hon"ble Supreme Court has found as under:

14. Quite apart from that fact, it appears to us that the charges were vague and it was difficult to meet the charges fairly by any accused. Evidence adduced was perfunctory and did not at all bring home the guilt of the accused.

15. Shri B.D. Sharma, learned advocate for the respondent, contended that no allegations had been made before the enquiry officer or before the High Court, that the charges were vague. In fact the appellant had participated in the enquiry. That does not by itself exonerate the department to bring home the charges.

8. In *Union of India (UOI) and Others Vs. Gyan Chand Chattar*, the Hon"ble Supreme Court while holding that every act or omission on the part of an employee would not constitute misconduct, has observed as under:

35. In view of the above, law can be summarised that an enquiry is to be conducted against any person giving strict adherence to the statutory provisions and principles of natural justice. The charges should be specific, definite and giving details of the incident which formed the basis of charges. No enquiry can be sustained on vague charges. Enquiry has to be conducted fairly, objectively and not subjectively. Finding should not be perverse or unreasonable, nor the same should be based on conjectures and surmises. There is a distinction in proof and suspicion. Every act or omission on the part of the delinquent cannot be a misconduct. The authority must record reasons for arriving at the finding of fact in the context of the statute defining the misconduct.

9. In view of the aforesaid, I am of the opinion that the procedure which was adopted by the enquiry officer and accepted by the disciplinary authority for recording a finding that the Charge No. 1 is partly proved, is erroneous. No reasonable person would reach such a conclusion on the basis of the materials which have been brought on record during the departmental enquiry in support of Charge No. 1.

10. In *Narinder Mohan Arya Vs. United India Insurance Co. Ltd. and Others*, , the Hon"ble Supreme Court has held that the evidence adduced on behalf of the management must have nexus with the charges. The enquiry officer cannot base his findings on mere hypothesis. Mere ipse dixit on his part cannot be a substitute of evidence.

11. I further find that the specific defence taken by the petitioner has not been considered by the Appellate Authority and the appeal of the petitioner has been rejected summarily. The appellate order dated 19.10.2012 suffers from non-application of mind and therefore, it is liable to be quashed. In "*Narinder Mohan Arya Vs. United India Insurance Co. Ltd. & Ors.*" (Supra), the Hon"ble Supreme

Court has held as under:

33. An appellate order if it is in agreement with that of the disciplinary authority may not be a speaking order but the authority passing the same must show that there had been proper application of mind on his part as regards the compliance with the requirements of law while exercising his jurisdiction under Rule 37 of the Rules.

In view of the aforesaid, the writ petition is allowed. The petitioner would be entitled for other consequential benefits.