

(2008) 10 JH CK 0017
In the Jharkhand High Court

Sugan Prasad Mehta

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 17-10-2008

Acts Referred:

Citation : (2009) 120 FLR 527 : (2008) 4 JCR 588

Hon'ble Judges : Ajit Kumar Sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajit Kumar Sinha, J.—The present writ petition has been preferred for issuance of an appropriate writ, order or direction in the nature of certiorari to quash the office order issued under Memo No. 773 dated 10.7.2001 whereby and whereunder two punishments were awarded against the petitioner, namely, stoppage of two increments with non-cumulative effect and relieved from establishment work in future and also for quashing the order dated 13.8.2002 passed by respondent No. 2 in Service Appeal No. 108/2001 affirming the said office order dated 10.7.2001.

2. The case of the petitioner, in brief, is that he was posted as Assistant in Barkattha Anchal within Hazaribagh District and was overloaded with work and due to excess work allotted to him, he could not attend the assigned duties regularly and could not comply with the directions issued by the Deputy Commissioner and, accordingly, he was issued a charge memo for negligence of duty.

3. It appears that a complaint was made by one Mr. Surendra Prasad, Halka Karmchari, about demand of illegal gratification of Rs. 10,000/- by the petitioner to release payment of certain dues. Accordingly, the following three charges were framed against the petitioner.

(i) Delaying the re-fixation of pay;

(ii) Non-payment of bonus for the year, 1998-90; and

(iii) Disobeying the order of Circle Officer, Barkattha, dated 23.2.2001.

4. The petitioner filed his show cause and, accordingly, an enquiry was conducted by the Circle Officer, who vide his enquiry report dated 16.5.2001 while holding him guilty for negligence and delay, recommended for warnings.

5. However, the disciplinary authority vide the impugned order dated 10.7.2001 awarded minor punishment to the petitioner by directing stoppage of two increments with non-cumulative effect and further relieved him from establishment work in future. The petitioner, thereafter, preferred an appeal before respondent No. 2 vide Service Appeal No. 108 of 2001 and the appellate authority vide its impugned order dated 13.8.2002 affirmed the said office order dated 10.7.2001, which is sought to be challenged in the present writ petition.

6. The main contention raised herein by the petitioner is that he was not served with the enquiry report nor a second show cause notice was issued to him and, thus, the proceeding was not in compliance with the well settled cardinal principles of natural justice.

7. Learned Counsel for the petitioner has referred to and relied upon a decision of the Hon'ble Supreme Court, rendered in the case of *Lav Nigam v. Chairman & MD, ITI Ltd.*, as reported in (2006) 9 SCC440 wherein it was held that show cause notice has to be issued and the same cannot be confined to a show cause only against the proposed punishment and accordingly the Hon'ble Supreme Court while setting aside the order of the High Court directed that the proceedings may be commenced from the stage of issue of a fresh show cause notice by the disciplinary authority to the appellant communicating him the shown disagreement with the findings of the enquiring officer.

8. In the aforesaid judgment, the Hon'ble Supreme Court has referred to and relied upon a decision, rendered in the case of *Punjab National Bank and Others Vs. Sh. Kunj Behari Misra*, and has quoted with approval as under:

11. In *Punjab National Bank v. Kunj Behari Misra* a Bench of this Court considered Regulation 7(2) of the Punjab National Bank Officers' Employees' (Discipline and Appeal) Regulations, 1977. The Regulation itself did not provide for the giving of any notice before the disciplinary authority differed with the view of the enquiry officer. This Court held: (SCC p.97, para 19)

The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the

favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.

9. Again in the case of Yoginath D. Bagde Vs. State of Maharashtra and Another, , the Hon''ble Supreme Court at paragraph 29 held as under:

...But the requirement of "hearing" in consonance with the principles of natural justice even at that stage has to be read into Rule 9(2) and it has to be held that before the disciplinary authority finally disagrees with the findings of the enquiring authority, it would give an opportunity of hearing to the delinquent officer so that he may have the opportunity to indicate that the findings recorded by the enquiring authority do not suffer from any error and that there was no occasion to take a different view. The disciplinary authority, at the same time, has to communicate to the delinquent officer the "TENTATIVE" reasons for disagreeing with the findings of the enquiring authority so that the delinquent officer may further indicate that the reasons on the basis of which the disciplinary authority proposes to disagree with the findings recorded by the enquiring authority are not germane and the finding of "not guilty" already recorded by the enquiring authority was not liable to be interfered with.

10. I have considered the rival contention and the judgments referred to hereinabove and relied upon. The aforesaid judgments referred to and relied upon is dependent upon an important factor which is as to whether the disciplinary authority disagreed with the enquiry officer on any article of charge or any findings then an opportunity has to be given to the delinquent officer to explain and assign reasons as to why he is not guilty.

11. The fact remains that in the instant case the petitioner has admitted about his guilt and has tried to explain the reason for not following the direction. Secondly this is not a case where there was any difference or disagreement with regard to the findings and article of charge between the enquiry officer and the disciplinary authority and thus the ratio of the aforesaid case will not apply to the facts of the present case. It is relevant to point out that in the instant case the petitioner has neither before the disciplinary authority nor before the appellate authority nor in the present writ petition raised the plea that he was not supplied with the enquiry report. It is also relevant to point out that no prejudice has been caused to the petitioner since the findings of the enquiry officer as well as the disciplinary authority and also the appellate authority were identical holding the petitioner guilty of negligence. Even otherwise there are concurrent findings of fact.

12. In the aforesaid facts and circumstances, this writ petition, being devoid of any merits, is hereby dismissed but without any order as to costs.