
(2010) 03 PAT CK 0032

In the Patna High Court

Sunil Kumar Sinha

APPELLANT

Vs

The State of Bihar, The District Magistrate and The Divisional
Commissioner, Tirhut Division

RESPONDENT

Date of Decision : 31-03-2010

Acts Referred:

Citation : (2010) 03 PAT CK 0032

Judgement

Navin Sinha, J.—Heard learned Counsel for the petitioner and learned Counsel for the State.

2. The original records of the departmental proceedings have been produced as directed by this Court. The petition was placed under suspension on 21.2.2003.

3. A memo, of charge dated 25.6.2005 was served on the petitioner on six counts. It did not narrate, much less contain as enclosures any list of documents and witnesses in support of the charges. The petitioner submitted his reply to the charges on 2.9.2005 when he specifically asked for six documents as detailed therein to enable him to defend himself appropriately and to file a proper reply, though he filed a preliminary reply.

4. It is the case of the petitioner that these documents were never supplied to him and enquiry report came to be submitted on 21.8.2006 of punishment dated 6.8.2009 then came to be passed.

5. Counter affidavit has been filed on behalf of the respondents. Paragraph-11 of the counter affidavit prima facie satisfies this Court that there have been serious procedural infirmities in the departmental proceeding. In view of the serious nature of the punishment of withholding 50% pension, this Court opines that there shall have to be strict adherence to procedures before a major punishment of the kind imposed could have been passed.

6. The order of punishment dated 26.8.2009 is accordingly set aside.

7. The matter is remanded to the enquiry officer to proceed afresh from the

stage that the charges have been framed and reply submitted by the petitioner. Needless to state that all documents on which the prosecution proposes to rely have to be furnished to the petitioner. If there are any voluminous records, inspection has to be provided to the delinquent, If the delinquent makes a request for any additional documents and satisfies the enquiry officer of the relevance of those documents, the enquiry officer is required to order thereupon in accordance with law when otherwise he has to record evidence, oral or documentary, led in support of the presentation. The enquiry report at page-3 states that the enquiry officer has considered the cause shown, the comments of the presenting officer and examined the records. What emerges of the manner in which proceedings were conducted is that the documents asked for have not been supplied to the petitioner. The presenting officer has not appeared and led his evidence, oral or documentary, to prove the charges, but has submitted his comments. The enquiry officer assumes to himself the role of the presenting officer to examine his comments, and prove the same, In this manner, based on unproved charges in accordance with law, without supply of necessary documents to the delinquent, the enquiry officer arrived at the finding of guilt.

8. The petitioner in his reply to the second show cause notice dated 4.9.2006 and 11.9.2006 specifically raised the objection that the documents asked for during the enquiry were never supplied to him. The respondents after issuing the second show cause notice and the objection of the petitioner have admittedly supplied him certain documents on 1.12.2006. That these documents may be insufficient, as contended by the petitioner, is not relevant at this stage. The procedure adopted by the respondents in the departmental proceeding is indeed peculiar. Either the documents had to be supplied at the stage of enquiry or the request denied by a reasoned order that it was frivolous and/or irrelevant. Once the respondents acknowledged his request for the documents and gave him the same after the enquiry at the stage of the second show cause notice, the petitioner need not establish any further prejudice caused to him.

9. The defence of the respondents that it was the petitioner who had filled up the concerned account documents and had failed to submit them in the office and was aware of the entries were matters to be proved by the respondents by oral and documentary evidence during the proceedings itself. They have clearly failed to do so. That documents were supplied at the stage of the second show cause notice stands admitted.

10. In State of U.P. and Others Vs. Saroj Kumar Sinha, , the High Court quashed the punishment on the ground that documents necessary to the charge had not been supplied and that the charges had not been proved in departmental proceeding in accordance with law by recording evidence thus vitiating the enquiry for violation of the principles of Natural Justice. A similar defence was taken that the documents asked for were available in the division where the delinquent was posted, therefore, being in knowledge and custody of the documents there was no requirement to supply the documents and the

delinquent had not been prejudiced. Rejecting the arguments the Supreme Court held at paragraph-28, 30, 34 and 39 as follows:

28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

30. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.

34. This Court in *Kashinath Dikshita v. Union of India* (1996) 3 SCC 229, had clearly stated the rationale for the rule requiring supply of copies of the documents, sought to be relied upon by the authorities to prove the charges levelled against a government servant. In that case the enquiry proceedings had been challenged on the ground that non-supply of the statements of the witnesses and copies of the documents had resulted in the breach of rules of natural justice. The appellant therein had requested for supply of the copies of the documents as well as the statements of the witnesses at the preliminary enquiry. The request made by the appellant was in terms turned down by the disciplinary authority.

39. The proposition of law that a government employee facing a departmental enquiry is entitled to all the relevant statements, documents and other materials to enable him to have a reasonable opportunity to defend himself in the departmental enquiry against the charges is too well established to need any further reiteration.

11. The order of punishment dated 31.3.2008 does not deal with these objections of the petitioner at all that the departmental proceeding was vitiated by severe procedural irregularities when the enquiry officer adopted a procedure for completing the enquiry unknown to law. For the same reason the appellate order dated 20.4.2009 also becomes unsustainable. The orders dated 31.3.2008 and 20.4.2009 are accordingly set aside.

12. The matter is remanded to the enquiry officer. The petitioner, if so advised, may file further reply in pursuance of the documents given to him by the

respondents at the stage of second show cause notice with their communication dated 1.12.2006.

13. If the petitioner is dissatisfied with the documents supplied in context of his request dated 2.9.2005 and files any application for more documents and satisfies the enquiry officer, the same have to be supplied as otherwise the enquiry officer has to record his finding of the irrelevance of the documents asked for.

14. Let the enquiry proceed thereafter afresh in accordance with law and in the manner as discussed above, to be concluded within a maximum period of four months from the date of receipt/production of a copy of this order before the disciplinary authority.

15. The original records of the departmental proceedings are directed to be returned to the counsel appearing on behalf of the State.

16. The petitioner shall be deemed to continue under suspension for this period of four months and shall therefore be entitled for his subsistence allowance including arrears, if any.

17. The writ application stands disposed.