

(2003) 03 PAT CK 0057
In the Patna High Court
Case No : C.W.J.C. No. 11398 of 2001

Suresh Prasad Sinha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 11-03-2003

Acts Referred:

Citation : (2003) 03 PAT CK 0057

Final Decision : Allowed

Judgement

Chandramauli Kr. Prasad, J.—In this writ application, originally the prayer of the petitioner was to quash the memo dated 25-8-2001 (Annexure 7) whereby memo of charge was served in a departmental proceeding. However, during the pendency of the writ application, by order date 31-8-2001 (Annexure 13), petitioner has been visited with the penalty of dismissal from service and by way of amendment, his prayer is to quash the said order also.

2. Short facts giving rise to the present application are that by memo dated 17-7-2001, petitioner was informed that the Committee appointed to find out the irregularities in Store Section, has found that from the year 1990 to 1993-94, many registers are not available and in the opinion of the committee, same have been removed by the petitioner under a conspiracy to conceal the pecuniary gain. In the aforesaid premises, the petitioner was asked to show cause as to why a disciplinary proceeding be not initiated against him. By another memo of the same day (Annexure 3), petitioner was informed that the Inquiry Committee on physical verification had found any discrepancies in the stock and interpolations in the Stock register. Petitioner was asked to show cause as to why disciplinary proceeding be not initiated against him for the irregularity and forgery in the records of the store.

3. Petitioner submitted his reply dated 26-7-2001. By order dated 23rd of August, 2001 (Annexure 5), petitioner was found prima facie guilty of not maintaining the stock register during his posting in Store Section and other irregularities and was put under suspensions. By memo dated 24th of August,

2001 and 25th of August 2001 (Annexure 6 and 7) the petitioner was served with the memo of charges containing the same allegations for which earlier explanation was sought for him and asked to submit explanation by 11 a.m. of 27-8-2001 as to why disciplinary action be not initiated against him. By order dated 24-8-2001, the Deputy Secretary (Legal/ Establishment) was appointed as the Inquiry Officer. On receipt of the memos of charges dated 24-8-2001 and 25-8-2001, petitioner asked for relevant documents. By letter dated 27-2-2001 (Annexure 11), petitioner was informed that he can meet the Section Officer during the office hours for making inspection of the relevant documents. At the same time, he was informed that explanation be submitted by 11 a.m. of 30-8-2001 and, in case, no explanation is submitted, it shall be presumed that the petitioner has nothing to say in relation to the charges. According to the petitioner, he went to make inspection of the documents where he was told to see whatever register he desires to see. According to him, as he did not know as to in which register he had made interpolations, by letter dated 30-8-2001, he requested for deputation of a competent person to make available the relevant register. In the meanwhile, the Inquiry Officer submitted his report dated 30-8-2001 holding the petitioner guilty of the charges. The report of the Inquiry Officer was placed for consideration before the disciplinary authority and finding that the petitioner is to retire from service on attaining the age of superannuation on 31 -8-2001, it was observed that second show cause notice is not feasible to be given and the disciplinary authority by order dated 31-8-2001 passed the order dismissing the petitioner from service.

4. Mr. Mahesh Narain Parbat, learned Counsel appearing on behalf of the petitioner submits that in he inquiry petitioner was not given adequate opportunity and the manner in which the respondents had conducted the enquiry it is apparent that they had made up their mind to dismiss the petitioner from service. He Points out that memos of charges dated 24-8-2001 and 25-8-2001, were served on the same day and the petitioner was asked to submit his reply by 27-8-2001. He submits that on 27-8-2001, he asked for furnishing certain documents which was acceded to by the respondents by its letter dated 27-8-2001, But in the absence of any competent person to show to the petitioner relevant documents, in fact, no inspection was made and petitioner informed the said fact to the respondents. He submits that the Inquiry Officer submitted its report on 30-8-2001 itself without giving any opportunity to the petitioner and without holding any inquiry. This, according to Shri Parbat, clearly shows that the inquiry has not been done in proper manner and this itself vitiates the inquiry report.

5. Mr. J.P. Shukla, however, appearing on behalf of the respondents submits that the petitioner was earlier given time to submit his explanation but 27-8-2001 and while permitting inspection of the documents (Annexure 11), he was directed to file his show cause by 11 a.m. of 30-8-2001 and when he failed to do the same, the Inquiry Officer had no option than to proceed with the Inquiry and submit the report. He submits that for that petitioner has to blame himself. He

refers to the order of the disciplinary authority and submits that from its perusal it is evident that the petitioner had accepted the charge, hence, there was no necessity at all for holding a detailed enquiry and not making available the documents shall have no bearing on the enquiry. In support of his submission he has placed reliance on a judgment of the Supreme Court in the case of Additional District Magistrate (City) Agra Vs. Prabhakar Chaturvedi and Another, and my attention has been drawn to the following passage from paragraph 4 which reads as follows:

"So far as the grievance about the non-examination of witnesses and non-supply of documents is concerned, in our view, the High Court has erred in ignoring the salient features of the case, namely, that respondent 1 himself by his statement dated 14-12-1984 admitted to have received an amount of Rs. 21,000 and odd and which could not be deposited by him along with his associate on account of their carelessness and fault. It is difficult to appreciate how the said statement could be said to have been brought about by any coercion as tried to be submitted on behalf of respondent 1. But even apart from that the order sheet of the Enquiry Officer clearly shows that respondent 1 Prabhakar as well as Sajan Kumar had submitted that they have not to give any documentary or oral evidence and that is how their evidence was closed. Under these circumstances, the subsequent request by respondent 1 to examine four more witnesses was rightly considered by the Enquiry Officer to be an afterthought and accordingly such request was rightly rejected. In fact on account of the clear admission contained in writing given by respondent 1 on 14-12-1984 the charge against him stood proved on admission and the only question that remained to be considered was about the nature of punishment to be imposed on him."

6. Having appreciated the rival submissions, I do not have the slightest hesitation in rejecting the submission of Shri Shukla. Plea of the respondents that petitioner admitted his guilt is preposterous. Nothing has been placed on record to show that petitioner ever admitted his guilt. The observation made by the disciplinary authority is in fact a conclusion based on no material at all. Having held so the decision relied on by Sri Shukla is of no consequence.

7. Now one is to examine as to whether petitioner was given opportunity to defend his case. As stated earlier, the memos of charges are dated 24-8-2001 and 25-8-2001. Petitioner was given time to submit his show cause by 27-8-2001. On 27-8-2001, the petitioner asked for supply of certain documents which prayer was allowed but in the absence of any competent person, the petitioner could not see the relevant registers and made a request for deputation of a competent person on 30-8-2001 itself. The Inquiry Officer submitted its report on the same day itself and the disciplinary authority passed the order of dismissal without giving opportunity to the petitioner on the following day i.e. 31-8-2001. Thus, everything was over for the petitioner in a week. Before the Inquiry Officer, neither any document has been proved nor any witness examined. From the facts stated above, it is evident that the respondents were

in hurry and inquiry has been conducted by throwing all the procedure to winds and without giving adequate opportunity to the petitioner to defend his case.

8. Mr. Parbhat further submits that admittedly, after the report of the Inquiry Officer, no show cause notice was given to the petitioner and this itself vitiates the order. Mr. Shukla however, submits that mere non-supply of the inquiry report itself shall not vitiate the impugned order of dismissal as no prejudice has been caused to the petitioner. In view of my conclusion that the petitioner was not given adequate opportunity to defend his case. I deem it inexpedient to answer this question.

9. Having held that the petitioner was not given adequate opportunity to defend his case, the inquiry report holding the petitioner guilty of charges, is fit to be quashed so also the order of dismissal passed on the said inquiry report.

10. It is relevant here to state that had the petitioner not been dismissed from service on 31-8-2001, he would have superannuated on the said date itself. I have held the inquiry report and consequential order to be bad in law. But this will not preclude the respondents to proceed against the petitioner for withholding of pension or any other benefit or taking disciplinary action after extending the service in accordance with law from the stage after the framing of the charges.

11. In the result, this writ application is allowed. The impugned inquiry report as also the order of dismissal is set aside with the liberty aforesaid. No costs.