
(2004) 09 PAT CK 0068
In the Patna High Court
Case No : CWJC No. 13238 of 2003

Surya Nath Pandey

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 20-09-2004

Acts Referred:

Citation : (2005) 1 PLJR 123

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Advocate : Pramod Mishra, Vivek Kumar and Sabal Kr. Jha, for the Appellant;
A.K. Singh, for the Respondent

Final Decision : Allowed

Judgement

Navin Sinha, J.—Heard learned counsel for the petitioner and learned counsel for the State. A supplementary counter affidavit has been filed in pursuance of the order dated 20.7.2004 by this Court. The petitioner is aggrieved by the order dated 27.8.2001 contained in Memo No. 873 at annexure-9. By the said order the petitioner has been imposed two punishments (a) break in service for the period 10.6.2000 to 2.8.2000 and (b) he would not be entitled to any payment during suspension period except the subsistence allowance.

2. The petitioner, an employee in the Personnel and Administrative Reforms Department, was transferred from Bhagalpur to Patna by order dated 19.5.2000. The petitioner is alleged to have disobeyed the transfer order having refused to join the transferred place of posting. This led to initiation of departmental proceedings against the petitioner on 21.1.2001 when the memo of charges were formally drawn up and served upon him. The petitioner had earlier been put under suspension on 3.8.2000. The suspension order was served upon him at Bhagalpur.

3. Learned counsel for the petitioner submits that though a formal departmental proceeding was drawn up against him and memo of charges were served, the

respondents did not in fact held any regular departmental proceedings giving the petitioner an opportunity to present his defence. No documents were supplied to the petitioner or placed before the Enquiry Officer, neither any witnesses were examined by the Enquiry Officer with opportunity to the petitioner to cross-examine them. Based upon such an enquiry contrary to law an ex-parte enquiry report came to be submitted. The petitioner was never furnished any second show cause notice along with enquiry report with regard to the punishment proposed to be meted out to him.

4. A counter affidavit was filed earlier on behalf of the State. Paragraphs 11,13,14 and 25 admit that a regular departmental proceeding was conducted against the petitioner. In view of the insufficient nature of the pleadings contained in the said paragraphs with regard to the assertion of the petitioner that no departmental proceedings in accordance with law were conducted and that no copy of the enquiry report or second show cause notice was served upon the petitioner, the respondents by order dated 20.7.2004 were required to file supplementary counter affidavit with regard to the same. The supplementary counter affidavit on being perused does not answer the assertions of the petitioners. The assertion, therefore, stand admitted for reasons of non-travers. Paragraph 5 of this counter affidavit now takes a shifting stand that what was imposed upon the petitioner was a minor punishment.

5. This court would have reservation whether break in service would-constitute a minor punishment. This would, however, not be necessary for determination in the actual situation of the present case. If a minor punishment was proposed to be imposed, the respondents were under no obligation to hold a regular proceedings. Once having chosen to hold a departmental proceeding, the respondents were obliged to conduct the same in accordance with law. The respondents cannot be permitted to take vacillating stands as per their convenience, when caught in an uncomfortable situation. In the facts and circumstances of the present case, it stands admitted by the respondents that a regular departmental proceeding was held against the petitioner. It is likewise admitted that no documents were furnished to the petitioner during enquiry, opportunities to cross-examine the witnesses were denied, an opportunity of hearing was also denied, to the petitioner who was not aware when the departmental proceedings were held coupled with the failure to furnish him a copy of the enquiry report along with proposed punishments. All these factors completely vitiated the departmental proceeding. It needs no reiteration that in a departmental proceeding the respondents are required to adhere to the basic principle of natural justice and fair play before condemning the employee. The same admittedly not having been done in the present case. The impugned order of punishment stands vitiated. In the circumstances, annexure-9 to the present application is not sustainable in law and the same is accordingly quashed.

6. This writ application, thus, stands allowed. Since in a case of present nature where the impugned order has been quashed primarily on the ground of non-

compliance of rules and procedures of natural justice, this Court would have been inclined to remand the matter for fresh disposal in accordance with law. However, it is submitted that the petitioner has since retired on 31.7.2001. This court in the aforesaid situation does not consider the present case to be a fit case for remand. The respondents would, therefore, be obliged to make available all consequential benefits to the petitioner within a period of six months from the date of receipt/production of a copy of this order.