

(2014) 04 JH CK 0028
In the Jharkhand High Court
Case No : L.P.A. No. 32 of 2009

Sushil Kumar

APPELLANT

Vs

The State of Jharkhand, The Principal Secretary, Human Resources Development Department, Government of Jharkhand and Joint Secretary, Human Resources Development Department, Government of Jharkhand

RESPONDENT

Date of Decision : 03-04-2014

Acts Referred:

Army Act, 1950 — Section 164, 165
Constitution of India, 1950 — Article 226

Citation : (2014) 2 AJR 746 : (2014) 2 JLJR 532

Hon'ble Judges : R. Banumathi, C.J.; S. Chandrashekhar, J

Bench : Division Bench

Advocate : Manoj Tandon, Advocate for the Appellant; M.S. Akhtar, S.C. (Mines) and Mr. B.K. Prasad, J.C. to S.C. (Mines), Advocate for the Respondent

Final Decision : Dismissed

Judgement

S. Chandrashekhar, J.—Aggrieved by order dated 17.12.2008 in W.P. (S) No. 713 of 2007 in and by which the challenge to the entire departmental proceeding including the enquiry report dated 18.05.2004, final order of penalty dated 27.06.2005 and the appellate order dated 10.01.2007 has been rejected, the appellant has preferred the present Letters Patent Appeal.

2. The brief facts of the case are that, the appellant was appointed on 20.05.1996 on the recommendation of Bihar Public Service Commission and he was posted as an Area Education Officer, Maheshpur. On a complaint made by one Mithilesh Kumar stated to be an office bearer of the association of primary teachers, a Memo dated 22.03.2003 was served upon the appellant whereunder, six charges were framed against him. On conclusion of the departmental enquiry, the enquiry report dated 18.05.2004 was submitted. Vide memo dated 23.08.2004, a second show-cause notice was issued to the appellant to which he submitted his reply on 09.09.2004. By order dated 27.06.2005 the following

penalties were imposed upon the appellant:

- (i) Stoppage of 5 increments with cumulative effects,
- (ii) Sri Kumar shall not be deemed eligible for promotion for next 5 years.
- (iii) Sri Kumar shall not be posted on any post of administrative importance for next 5 years.

3. Challenging the final order dated 29.06.2005, the appellant approached this Court in W.P.(S) No. 4459 of 2005 which was disposed of by order dated 18.10.2005 with liberty to the appellant to approach the appellate authority. The appellant submitted his appeal memo dated 05.11.2005 before the Governor, the State of Jharkhand. As the appeal preferred by the appellant was not disposed of the appellant again approached this Court by filing W.P.(S) No. 1871 of 2006. The writ petition was disposed of vide order dated 22.06.2006 with a direction to the appellate authority to hear and dispose of the appeal within a period of two months from the date of receipt/production of a copy of the order. The appellant also filed Contempt Case (Civil) No. 596 of 2006 however, in the mean-time his departmental appeal was rejected vide notification contained in Memo dated 10.01.2007 and therefore, the appellant approached this Court by filing W.P.(S) No. 713 of 2007 which has been dismissed by the impugned order dated 17.12.2008.

4. We have heard the learned counsel appearing for the parties and perused the documents on record.

5. Referring to the penalty order dated 27.06.2005 and the appellate order dated 10.01.2007, the learned counsel for the appellant has submitted that the disciplinary authority as well as the appellate authority failed to perform their statutory duty and orders passed by them, being cryptic, discloses complete non-application of mind and are thus, liable to be quashed. The learned counsel relied on paragraph No. 25 of the judgment in M.V. Bijlani Vs. Union of India (UOI) and Others, .

6. The learned counsel appearing for the respondents has submitted that the charges against the appellant are serious and during the enquiry 4 out of 6 charges have been found proved. It is submitted that it is more than 10 years since the departmental proceeding was initiated against the appellant and in the mean-time the appellant filed 3 writ petitions before this Court however, still dissatisfied, the appellant has filed the present Letters Patent Appeal. The submission is that, there should be finality to a proceeding and it cannot be permitted to continue for an indefinite period. It is further submitted that the contention raised before this Court by the counsel appearing for appellant was not raised before the Writ Court and therefore, it is prayed that the contention of the appellant may be rejected summarily.

7. There cannot be any quarrel to the proposition that it is desirable that the departmental authorities should indicate conclusions in the enquiry report and

the orders passed by them should be speaking order. However, it has been repeatedly reiterated by the Hon"ble Supreme Court that, it is only desirable that the order of removal should be a speaking order and it cannot be mandated as a matter of rule that in every case the departmental authority must record reasons. A Constitution Bench of the Hon"ble Supreme Court in *State of Madras Vs. A.R. Srinivasan*, has held that, where the State Government agrees with the findings of the Tribunal which are against the delinquent officer, as a matter of law, it cannot be said that the State Government cannot impose the penalty against the delinquent officer in accordance with the findings of the Tribunal, unless it gives reasons to show why the said findings were accepted by it. The Hon"ble Supreme Court has held as under,

15. The proceedings are, no doubt, quasi-judicial, but having regard to the manner in which these enquiries are conducted, we do not think an obligation can be imposed on the State Government to record reasons in every case.

8. In the present case, the enquiry was conducted following the rules of natural justice. The delinquent fully participated in the departmental enquiry and he was afforded reasonable opportunity for defending himself. All the material documents and a copy of the enquiry report were furnished to him and therefore, the delinquent was fully aware of the nature of the proceeding and the evidences led against him during the departmental enquiry. The disciplinary authority has recorded that on the basis of the "Proved Charges" he has proceeded to inflict punishment vide order dated 27.06.2005. We are of the view that the penalty order dated 27.06.2005 conforms to the requirement in law.

9. In *Shilendra Kumar Vs. The State of Jharkhand*, on which the learned counsel for the appellant has placed reliance, the Court has also recorded as under,

14.....However, whether an order is a reasoned order or not, would depend on the facts of the case and can be ascertained upon construction of the order in question. How much reasoning is required and whether an order contains sufficient indication that materials on record have been examined and there is proper application of mind or not, are the issues which can be decided in the facts of each case.

10. The learned counsel for the appellant next relied on a decision of this Court in *"State of Jharkhand and Others Vs. Jaishree Jha"*, reported in 2014 (1) JLR 454. It is well settled that a decision is authority for what it decides and not what can logically be deduced therefrom. The ratio of cases must be understood having regard to the fact situation obtaining therein. In *"Natural Resources Allocation, In Re: Special Reference No. 1 of 2012"*, the Hon"ble Supreme Court has observed as under:

70. Each case entails a different set of facts and a decision is a precedent on its own facts; not everything said by a Judge while giving a judgment can be ascribed precedential value.....

11. The facts in case of "State of Jharkhand and Others Vs. Jaishree Jha" (supra) are entirely different from the facts in the present case. In "Jaishree Jha"(supra) the departmental proceeding continued for more than 18 years and inspite of this Court quashing the order of punishment, the Disciplinary Authority had passed a cryptic order.

12. In so far as, the submission that the appellate authority is required to record reasons is concerned, the law on this issue also is well settled. In cases relating to Army Act, the Hon"ble Supreme Court in Som Datt Datta Vs. Union of India (UOI) and Others, has held that there is no express obligation imposed by Section 164 or by Section 165 of the Army Act on the confirming authority or upon the Central Government to give reasons in support of its decision to confirm the proceedings of the Court Martial.

13. In Narinder Mohan Arya Vs. United India Insurance Co. Ltd. and Others, , 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.

14. A perusal of Annexure-8 dated 10.01.2007 would disclose that the matter was placed before the Cabinet for considering the appeal preferred by the appellant and the Cabinet took a decision to reject the appeal of the appellant. The communication dated 10.01.2007 indicates that after due consideration the Cabinet decided to reject the appeal. In the aforesaid facts it cannot be said that the penalty order and the appellate order do not confirm to the requirement of law and are liable to be quashed. The reliance placed by the counsel for the appellant on "M.V. Bijlani Vs. Union of India and Others" (supra) is misplaced. In paragraph No. 25 of the said judgment, the Hon"ble Supreme Court has dealt with the nature of the proceeding in the disciplinary proceeding and observed that the enquiry officer or the disciplinary authority cannot take into consideration any irrelevant factor or shift the burden of proof.

15. In view of the provision contained in Rule 49 of the Civil Services (Classification, Control and Appeal) Rules, 1930, a submission is made that the penalty of (i) withholding of 5 increments with cumulative effect and (ii) ineligibility for promotion for next five years imposed upon the appellant are not permissible in law and therefore, the penalty order is liable to be quashed. Relying on a decision of a Division Bench of the Patna High Court in L.P.A. No. 727 of 1996, a submission is made that either punishment of "withholding of increment" can be imposed or "withholding of promotion" and both the punishments cannot be simultaneously awarded. Further submission is that, multiple penalty in one punishment order cannot be imposed on a delinquent employee.

16. Per contra, the learned counsel appearing for the respondents has submitted that the order of punishment was passed on 27.06.2005 and thus the period of 5 years has already gone, the submission of the counsel for the appellant remains academic only and therefore, should not be considered by this Court.

17. Rule 49 of Civil Services (Classification, Control and Appeal) Rules, 1930, provides the penalties which may be imposed upon the members of the services specified in Rule 14. Rule 49 (ii) of Civil Services (Classification Control and Appeal), Rules is extracted below:

49. The following penalties may, for good and sufficient reason and as hereinafter provided, be imposed upon members of the services comprised in any of the classes (1) to (5) specified in rule 14, namely:--

(i)

(ii) Withholding of increments or promotion including stoppage at an efficiency bar.

18. A perusal of order dated 26.07.2005 passed by the Disciplinary Authority would disclose that five annual increments of the appellant were withheld with cumulative effect and it has been ordered that the appellant would not be eligible for promotion for the next five years. Plainly speaking ineligibility of the appellant for promotion for the next five years is only the resultant effect of the penalty of withholding of five increments with cumulative effect awarded to the appellant. The order passed by the Disciplinary Authority cannot be construed to mean that the promotion of the appellant has been withheld for next five years as a measure of punishment independent of the punishment of withholding of five annual increments.

19. In *Sri Nageshwar Prasad Sinha Vs. The State of Bihar and Others*, , the only issue was whether the order passed in the writ petition required any clarification by the Court. In paragraph No. 8, the Division Bench has held that "this Court being called upon to interpret the situation whether the word "or" or for that matter "of" was there does not arise". However, in the present case without going into the controversy whether penalty of withholding of increments and withholding of promotion both can simultaneously be imposed or not, since we have held that the appellant would not have been eligible for promotion for the next five years in view of the penalty of withholding of five annual increments imposed upon him, we do not find any merit in the contention of the appellant.

20. The issue whether multiple penalty can be imposed in one punishment order or not is no longer *res integra* and it has been settled by the decision of the Hon'ble Supreme Court in *Commissioner of Rural Development and Others Vs. A.S. Jagannathan*, . In the said case the Disciplinary Authority while imposing penalty of stoppage of increments ordered recovery of loss caused by the charged employee and it was further ordered that the period of suspension would be treated as service without pay. The Hon'ble Supreme Court held that the

Administrative Tribunal was not correct in interfering with the order on the ground that the Disciplinary Authority has imposed multiple punishments.

21. The learned counsel appearing for the appellant lastly submitted that no legal evidence was brought during the departmental enquiry in support of the charges framed against the appellant. By memo dated 22.03.2003 the following charges were framed against the appellant:

Charge No. 1:

Sri Sushil Kumar in his capacity of Area Education Officer, Maheshpur, during his tenure sanctioned leave of 112 days of Sri Gangadhar Bhandari, a Primary Teacher, Dongo (Littipara East).

By letter No. 225 dated 21.4.1990, para-10(ka) the Area Education Officer is authorized to sanction leave of 60 days only.

Therefore, Mr. Kumar exceeded his jurisdiction in sanctioning leave for more than 60 days.

Charge No. 2:

Shri Shushil Kumar granted B.A. Trained Scale to one Md. Rezul Hussain by memo No. 181 dated 28.06.2001, which was beyond his jurisdiction. As a result whereof a sum of Rs. 21539.00 was withdrawn illegally from public exchequer. For this Sri Sushil Kumar is guilty.

Charge No. 3:

Shri Sushil Kumar did not take any action against one Sri Jitendra Kumar Singh, Headmaster Middle/School, Jamugaria (Amrapara) inspite of the complaint being made by a joint petition of Assistant Teachers that he was absent without any information from 20/02/2000 to 13/03/2000.

Without exonerating Sri Singh, the appellant sanctioned leave to him. This was totally against the Rules.

Charge No. 4:

Shri Sushil Kumar, the then Area Education Officer, Maheshpur, Pakur deputed one Sri Anil Kumar Dohar, Assistant Teacher, Middle School Amarapara in Primary School, Solapur (Maheshpur) by order No. 2 dated 06.01.2000.

For this type of deputation the Area Education Officer is not competent. In this way Sri Kumar acted beyond his jurisdiction.

Charge No. 5:

Sri Sushil Kumar, the then Area Education Officer, Maheshpur, Pakur deputed one Rohit Kumar Yadav, Teacher Primary School, Ratanur, in his officer for disposal of work. This order of his was against the rule of posting a teacher to a non-teaching work. This act of Sri Kumar was beyond his jurisdiction and against the

order of higher officers.

Charge No. 6:

Sri Sushil Kumar, the then District Superintendent of Education, Lohardagga tried to do political parivee for his transfer. This act of Sri Kumar is against Rule 22 of Government Servant Conduct Rules.

22. According to the appellant the charge No. 1 and 6 have not been found proved and only charge No. 4 has been found proved whereas, charge Nos. 2, 3 & 5 have been found partly proved. Before the Writ Court, it was submitted that the findings in the enquiry report are based on "no evidence". The learned Single Judge held that under Article 226 of the Constitution of India, the Court does not have the power and jurisdiction to re-appreciate the concurrent finding of the facts and evidence.

23. From perusal of the enquiry report, it is apparent that charge Nos. 2 & 3 have also been found proved by the Enquiry Officer and with respect to charge No. 5 it was recommended that the explanation of the delinquent officer may be accepted. The Enquiry Officer has considered the defence of the appellant and the learned counsel appearing for the appellant could not demonstrate how on the basis of the materials brought during the departmental proceeding it can be said that the case against the appellant is of "no evidence". The learned Single Judge was right in holding that the Writ Court cannot re-appreciate the evidence brought on record during the departmental enquiry and find out adequacy or otherwise of the evidence so adduced.

24. In Union of India (UOI) Vs. Sardar Bahadur, , the Hon"ble Supreme Court has observed as under:

Where there are some relevant materials which the authority has accepted and which materials may reasonably support the conclusion that the officer is guilty, it is not the function of the High Court, exercising its jurisdiction under Article 226, to review the materials and to arrive at an independent finding on the materials. If the enquiry has been properly held, the question of adequacy or reliability of the evidence cannot be canvassed before the High Court.

25. In view of the aforesaid discussion, we find no merit in the Letters Patent Appeal and accordingly it is dismissed.