

(1996) 10 PAT CK 0044
In the Patna High Court
Case No : C.W.J.C. No. 13130 of 1993

Swapan Kumar Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 17-10-1996

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : (1996) 2 PLJR 882

Hon'ble Judges : A.K. Ganguly, J

Bench : Single Bench

Advocate : Madhusudan Kumar and Madan Mohan Prasad, for the Appellant;
P.K. Shahi and Sarvadeo Singh, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Ganguly, J.—This writ petition is directed against the order of dismissal of the Petitioner from the post of Assistant Depot Manager of Bihar State Co-operative Marketing Union Limited (shortly called the BISCOMAUN) on 17th November, 1993. A copy of the said order is Annexure-1 to the writ petition.

2. It is not in dispute that prior to the passing of the order of dismissal, a disciplinary proceeding was initiated against the Petitioner and a chargesheet was served upon him along with supplementary chargesheet. The charges related to allegation of financial irregularities and mis-appropriation of fund of the BISCOMAUN by the Petitioner. The Petitioner was called upon to give his reply to the said charges.

3. The main grievance on which the matter has been argued before me by the learned Counsel for the Petitioner is that in the departmental proceeding proper opportunity of defence was not given to the Petitioner. In support of the aforesaid fact learned Counsel for the Petitioner refers to paragraph 4 of the counter affidavit used by the Respondents in this proceeding from which it appears that one Sri Jagarnath Singh, Senior Range Officer, Muzaffarpur conducted a

preliminary inquiry and submitted a report. The Petitioner's grievance is that the said Jagarnath Singh was not produced in the enquiry and as such the Petitioner could not cross examine him. The further grievance of the Petitioner is that the report filed by Jagarnath Singh was not served upon the Petitioner but the Enquiry Officer has relied upon the same. Therefore, relying on these facts the learned Counsel for the Petitioner has submitted that the Petitioner has been substantially prejudiced in the said inquiry and the said inquiry has been held in violation of the principles of natural justice.

4. In support of this contention, learned Counsel for the Petitioner has placed reliance on the following judgments of this Court as well as of the Supreme Court:

(i) Vaidanath Thakur v. The Punjab National Bank and Ors. reported in 1987 P.L.J.R. 254.

(ii) Kashinath Dikshita Vs. Union of India (UOI) and Others, .

(iii) State of Madhya Pradesh v. Chintaman Sadashiva Waishampayan reported in AIR 1961 S.C. 1623.

(iv) Mahendra Kumar Sinha v. The Vice Chancellor and Ors. reported in 1984 P.L.J.R. 177.

5. In all the aforesaid judgments the learned Judges have held that in a disciplinary inquiry the delinquent must be given proper opportunity of defence and the principles of natural justice must be complied with by giving the delinquent copies of documents on which reliance is placed by the Enquiry Officer. The copy of the preliminary enquiry is one of the documents on which reliance has been placed by the Enquiry Officer while passing the order of dismissal of the Petitioner. Here admittedly the copy of the said preliminary enquiry report has not been supplied to the Petitioner.

6. Normally on the basis of the aforesaid contention this Court would have held that in absence of furnishing a copy of the preliminary Enquiry Officer's report and when the said Officer was not produced before the Enquiry Officer, the Petitioner has been substantially prejudiced and has not received proper opportunity of defence in violation of the principles of natural justice. But the facts of this case are such that this Court cannot say that the Petitioner has been denied proper opportunity of defence.

7. In the statement of defence filed by the Petitioner in answer to the charges, the Petitioner has admitted the main charge of defalcation of the amount of Rs. 50,000/-. The Petitioner's stand is that he is ready to refund the said amount in four instalments and the further stand is that if the Petitioner's prayer is allowed, in that case neither the said organisation nor the Petitioner will suffer and the Petitioner should be given an opportunity to return the money. In respect of other charges, the Petitioner has admitted his mistake about the shortage. However, so far as the main charge is concerned, the Petitioner admits the

charge of defalcation.

8. It is well known that the principles of natural justice which are engrafted in various service rules and also under Article 311(2) of the Constitution (here the Petitioner is, of course, not entitled to the protection) are all meant to give all delinquent a proper opportunity of defence. But where the delinquent himself does not deny a charge rather pleads guilty to the charges and admits the same, he cannot be heard to say that he has been denied the proper opportunity of defence by contending that the copy of the preliminary inquiry report has not been supplied to him. An admission is one of the best mode of proof and in many cases operates as waiver of proof. After admission by the Petitioner of the main charge against him, the grievance of the Petitioner of denial of opportunity of defence loses all its significance.

9. It is well known that the principles of natural justice are not to be put in a strait jacket formula and I am of the view that the principles of natural justice cannot be so interpreted as to bring about unnatural consequences. Here if this Court quashes the orders passed in the said disciplinary proceedings on the ground that the principles of natural justice were not followed, to my mind, the same would bring about an unnatural result.

10. Even after that admission if the Court quashes the disciplinary proceedings against the Petitioner on the ground of inadequate opportunities of defence, the same will be, in my view, an un-natural exercise of judicial discretion by the Court. An employee who admits to have indulged in defalcation of fund has no right in law to continue in service of the organisation. The employee should remember that to ensure security of service, all the safeguards have been evolved by Courts by various pronouncements and most of them are now recognized in law. But they are not meant to be pressed into service by an employee, who, on his own admission, has acted in a corrupt manner. In this case after admitting the commission of defalcation, the Petitioner cannot be allowed to say that he has been denied the proper opportunity of defence by non-supply of a copy of the preliminary enquiry report and by non-production of Sri Jagarnath Singh before the Enquiry Officer to enable the Petitioner to cross examine him. The principles of natural justice are not meant to aid an employee who has admitted the commission of the misconduct in answer to a chargesheet, which alleges inter alia, the same misconduct against him.

11. In the facts of this case, this Court exercising its jurisdiction in connection with a discretionary remedy cannot interfere with the impugned order dated 17.11.1993 passed by the Administrator, BISCOAUN, Patna, a copy of which is at Annexure-1.

12. This writ petition being devoid of any merit is accordingly dismissed. There will be no order as to cost.