
(2011) 01 PAT CK 0096

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 6354 of 2010

Tribhuwan Roy

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 28-01-2011

Acts Referred:

Citation : (2011) 01 PAT CK 0096

Final Decision : Dismissed

Judgement

Jayanandan Singh, J.—Petitioner has filed this writ application for quashing of the office order of the State Transport Commissioner, contained in memo No. 571 dated 15.02.2010 (Annexure-19), by which a charge-sheet has been issued against him in respect of a departmental proceeding already pending against him on the basis of an earlier charge-sheet issued in the year 2003. He has also prayed for quashing of the entire departmental proceeding, on the ground that he had already been exonerated of the charges of punishment, and for a direction for reinstated in service.

2. The case of the Petitioner is that, while he was posted as Enforcement Sub-Inspector under the Department of Transport, a raid was conducted by a team of Income Tax authorities at his residence on 30.03.2001. At the time of raid his wife was present in the house in whose presence the house was searched, seizure was made, bank account and locker in the name of Petitioner and his wife was also seized and a proceeding for escaped assessment was initiated against him by the Income Tax authorities. In the light of the said proceeding by the Income Tax Department, the Commissioner, Department of Transport suspended him vide order dated 27.04.2001, as contained in Annexure-1. For quite some time, after his suspension, charge-sheet was not issued to him. Therefore, he represented the authorities on 5.7.2002 with a request to revoke the order of suspension or to increase the suspension allowance to 75%. Since his representation was not considered, he moved this Court through CWJC No. 4475 of 2003. During the pendency of the writ application, he was served with a

charge-sheet dated 12.7.2003 (Annexure-2). Accordingly, his writ application was disposed of, vide order dated 25.7.2003 (Annexure-3), with a direction to the Respondents to conclude the proceeding within a period of four months from the date of submission of written statement by him, with liberty to the disciplinary authority to proceed ex parte if he did not co-operate.

3. After disposal of the writ application Petitioner submitted his written statement (Annexure- 4), denying the charges and requested the Inquiry Officer to keep the proceeding in abeyance till the disposal of his appeal in the Income Tax matter filed before the Commissioner (Appeals), and till the disposal of the writ application of his wife, namely, CWJC No. 5253 of 2003. However, Petitioner was noticed by letter dated 11.09.2003 to appear in the proceeding on 17.09.2003 on which date, though he appeared but the Inquiry Officer was not present. Subsequently, Petitioner received another letter dated 18.09.2003 directing him to appear before the Inquiry Officer on 23.9.2003. On 23.9.2003 he appeared, but was asked by the Inquiry Officer to submit a copy of the appeal filed before the Commissioner of Income Tax and copy of the writ application of his wife. Again he received another letter dated 8.10.2003, asking him to appear before the Inquiry Officer on 11.10.2003, on which date he appeared and submitted copies of the said appeal petition and the said writ petition.

4. Thereafter, the disciplinary proceeding remained pending without any further progress. However, Petitioner came to know that by order dated 30.4.2004 passed by the Commissioner, Department of Transport, another Inquiry Officer, namely, one Dharendra Mohan Jha, Joint Commissioner, was appointed as Inquiry Officer in the pending proceeding against him. Since proceeding had not concluded for almost a year, Petitioner moved this Court again, through CWJC No. 6093 of 2004, with a prayer to quash the suspension order and quash the proceeding, as also the order in respect of appointment of new Inquiry Officer. The said writ application was taken up on 15.4.2005 and notices were issued to the Respondents to show cause as to why the earlier orders of this Court have not been complied with. However, during the pendency of the writ application, by office order of the Commissioner, Department of Transport, contained in memo No. 1121 dated 26.4.2005 (Annexure-8), the suspension of the Petitioner was revoked. The order revoking suspension showed that the Inquiry Officer had submitted his report, finding Petitioner guilty of the charges, which was based on the assessment of the Assistant Commissioner, Income Tax Department. Therefore, the Disciplinary Authority thought it appropriate to release Petitioner from suspension and await for the final orders in the appeal of the Petitioner pending before the Income Tax Authorities.

5. However, subsequently, Petitioner was served with second show cause notice with a copy of the inquiry report, vide order of the Commissioner, Department of Transport dated 9.5.2005 (Annexure-9). Petitioner brought this second show cause notice on the records of the pending writ application through I.A. No. 2537 of 2005 and challenged the same also. Petitioner also filed his reply to the

second show cause notice on 21.5.2005 (Annexure-11), asserting that no proper inquiry was held, no charge was brought to his notice item wise and the documents mentioned in the charge memo were not supplied to him. In spite of the said objections of the Petitioner, by office order bearing No. 1713 dated 6.6.2005 (Annexure-12), Petitioner was dismissed from service by the Commissioner, Department of Transport.

6. Petitioner challenged the said order of dismissal before this Court through CWJC No. 8245 of 2005. While the said writ application was pending, finally, the Income Tax Appellate Tribunal, by order dated 21.7.2006, set aside the assessment order of the Assistant Commissioner, Income Tax and held that the various assets found or detected in course of search had to be assessed in the hands of the wife of the Petitioner, and not in his hands. Accordingly, a counter affidavit was filed, in the pending writ matter of the Petitioner, on behalf of the Respondents, with a stand that, in view of the observations of the Tribunal, the Respondents should be given liberty to withdraw the order of dismissal, passed against the Petitioner, and with a further liberty to initiate a fresh departmental proceeding against him in accordance with law. Accordingly, learned Counsel for the Petitioner opted to withdraw the writ application, which was disposed of (Annexure-F), with a direction to the Respondents to proceed as per their statements made in the affidavit, in accordance with law, as early as possible, and in any case within three weeks, and payment of arrears of salary for the period of dismissal was made subject to result of the fresh proceeding. Petitioner was accordingly reinstated in service on 14.8.2007, under the orders of the Principal Secretary, Department of Transport, as contained in memo No. 3937 dated 14.8.2007 (Annexure-14), and he joined on 11.10.2007.

7. After Petitioner joined in the office of the Respondents, he was served with another order, contained in memo No. 4664 dated 11.10.2007, initiating a fresh departmental proceeding against him, under the provisions of Bihar Government Servants (Classification, Control and Appeal) Rules, 2005, vide Annexure-15. Petitioner was directed to file his written statement to the Inquiry Officer within four weeks. Along with the said memo, a memo of charge was also served on him for undisclosed property in terms of Rule 19 of the Bihar Government Servants (Conduct) Rules, 1976. Petitioner, accordingly, submitted his reply to the charge on 11.12.2007 (Annexure-16) stating therein that, in view of Rule 19(2) and 19(3) of the Bihar Government Servant (Conduct) Rules, 1976, the charge framed against him under Rule 19 was not maintainable.

8. In spite of such objection of the Petitioner, a second show cause notice was issued to him, vide letter dated 15.5.2009 (Annexure-17), to show cause as to why decision should not be taken to impose major punishment upon him. Petitioner submitted his reply to the second show cause on 2.6.2009 (Annexure-18). In this reply, he raised several objections in respect of conduct of the proceeding, including defects and illegalities committed in the procedure adopted in the proceeding as well as violation of Principles of Natural Justice at

different stages. It was also stated in the reply that a vigilance case was instituted against him which was still pending before the Special Court, Vigilance, Patna, in which he had already filed the details of movable and immovable properties owned by his wife, in the light of office order No. 7466 dated 17.12.2008, through separate letter dated 27.5.2009 and, as such, Rule 19 of the Bihar Government Servant (Conduct) Rules, 1976 was not applicable in his case. Therefore, he prayed that the inquiry may be dropped and he may be exonerated of the charges. However, instead of accepting his show cause, the impugned office order was issued, vide memo No. 571 dated 15.2.2010, which has been challenged by the Petitioner in this writ application.

9. While presenting the case of the Petitioner, learned Counsel for the Petitioner, at the very outset submitted that he was confining his challenge in this writ application only to the impugned memo dated 15.02.2010, as contained in Annexure-19. He submitted that the Petitioner has no objection if the proceeding initiated on the basis of charge-sheet, as contained in Annexure-15, is continued and concluded. However, while Challenging the impugned office order dated 15.02.2010, he submitted that, by this order, fresh charges were framed by the Respondents in the proceeding, for which the Respondents were not authorized in law. He submitted that these fresh charges, as contained in Annexure-19, were solely based on the findings of the Income Tax authorities, in respect of discovery of disproportionate assets in the raid to the tune of Rs. 1,47,92,784/- and, in the light of his post and service period, property to the tune of Rs. 1,06,31,688/- was found in excess to his known sources of income. He submitted that the findings of the Assistant Commissioner, in this regard, stood reversed by the Tribunal, which found that property discovered in the search was assessable in the name of his wife, and not in his name. Therefore, he submitted that this charge, as contained in impugned Annexure-19, was based on non est grounds. He submitted that, once the Respondents had accepted the order of the Tribunal before this Court in the earlier writ matter of the Petitioner, they could not go behind the same or ignore it and base their charges on the initial order of the Assistant Commissioner of the Income Tax. He also submitted that the impugned Annexure-19 was issued exactly on the lines of the earlier charge memo, as contained in Annexure-2. He also submitted that, Petitioner having been exonerated in the proceeding, on the basis of the proceeding initiated as per the said charge memo (Annexure-2), no fresh proceeding could be initiated against him. In support of this submission, he relied upon a Division Bench judgment of this Court reported in Ajodhya Prasad Pandey Vs. Union of India and Others, and the judgment of the Apex Court reported in Govt. of Andhra Pradesh and Another Vs. C. Muralidhar, .

10. Counter affidavit has been filed in the case. It was submitted by learned Counsel for the Respondents that, the fact that undisclosed property was discovered in the raid and search by the authorities of the Income Tax, on the premises of the Petitioner, is not in dispute. As such, even if the same was in the name of the wife of the Petitioner, onus lay on him to establish that the same

was generated on the basis of his wife's independent income, failing which, Petitioner would be guilty of criminal misconduct, punishable under the Prevention of Corruption Act, 1988.

11. Before considering the submissions made by learned Counsels for the parties, at the very outset, it has to be made clear that, the entire submissions of learned Counsel for the Petitioner was confined to his challenge to Annexure-19 only. He fairly accepted that, Petitioner has no objection in continuance of the proceeding, based on the charge-sheet issued to him vide Annexure-15 and in its conclusion in accordance with law. Therefore, only the validity of the so-called fresh charges, issued vide impugned Annexure-19, has to be considered in this case. The next submission of learned Counsel for the Petitioner, which requires consideration is that, Petitioner having been exonerated from the charges as framed in Annexure-2, no fresh charges could be framed on the same lines against him, for which he has relied upon two decisions of the Courts as referred above.

12. At the outset, it is appropriate to point out here that, the said two cases, relied upon by learned Counsel for the Petitioner, are of proceedings in which the delinquent was held not guilty by the Inquiry Officer in his report, submitted after the conclusion of the inquiry. On the other hand, so far as inquiry report submitted by the Inquiry Officer against the Petitioner, on the basis of the charge (Annexure-2) is concerned, it is clear that the Inquiry Officer had found the Petitioner guilty of the charges. From the bare reading of the inquiry report, it is clear that, Petitioner had based his defence only on his appeal before the Income Tax authorities and the writ matter before this Court and had not taken any other defence. The Inquiry Officer had found that, the points for consideration before the Income Tax authorities were altogether different and had no bearing on the disciplinary proceeding and, therefore, he found the Petitioner guilty of the charges.

13. Now coming to Annexure-19, along with which the impugned charge memo is enclosed, this Court finds that the impugned charge memo is not an independent charge memo in the proceeding, wrongly read by learned Counsel for the Petitioner as such. It is mentioned in Annexure-19 itself that it is only a supplementary charge-sheet against the Petitioner. The earlier charge-sheet, as contained in Annexure-15, which Petitioner has not challenged in this case, was issued to him, in the light of the findings of the Tribunal, holding him guilty of misconduct, as per Rule 19 of the Government Servants (Conduct) Rules, 1976. It is noticed in the charge that, as per the said Rule 19, Petitioner was required to disclose, every year, the assets acquired by any member of his family, to his employer, which he had not done. The supplementary charge, as enclosed with impugned Annexure-19, is also based on the final assessment of the Income Tax Department, in terms of the Tribunal's order, and in reference to Section 13(1) (e) and 13(2) of the Prevention of Corruption Act, 1988, under which sections a substantive criminal case is already pending against the Petitioner, for the

property amassed in his name and in the name of his family members, beyond his known sources of income. Thus, it is clear that, whereas, Annexure-2 had been issued in the light of assessment of the Assistant Commissioner against the Petitioner, the fresh charges, as contained in Annexure-15, and the supplementary charge, as contained in Annexure-19, have been issued in the light of the orders of the Income Tax Tribunal. Moreover, fresh proceeding has been initiated through Annexure-15, with the specific permission of this Court, to which Petitioner never objected and, acceding to that liberty being granted to the Respondents, he withdrew his writ application. Annexure-19 being only a supplementary charge on the same facts, on which the earlier charges were framed by Annexure-15, no infirmity can be found in the same. As made clear earlier, Petitioner had been found guilty in the inquiry and, therefore, the decisions relied upon by learned Counsel for the Petitioner, are also of no help to him.

14. In the circumstances, this Court does not find any infirmity in the issue of supplementary charge against the Petitioner through Annexure-19 and, therefore, does not find any merit in the writ application.

15. The writ application is, accordingly, dismissed.