
(2006) 01 PAT CK 0005
In the Patna High Court
Case No : CWJC No"s. 4796, 5474 of 2003

Tripurari Sharan Singh	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 12-01-2006

Acts Referred:

Bihar Pension Rules, 1950 — Rule 43(b)

Citation : (2006) 2 PLJR 11

Hon'ble Judges : S.K. Katriar, J

Bench : Single Bench

Advocate : Sheema Ali Khan in 4796, Mr. Ganesh Prasad Singh in 5474, for the Appellant; Hemendra Prasad Singh, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Katriar, J.—The petitioner was subjected to departmental proceedings while in service. Respondent No. 2 (Food Commissioner-cum-Secretary, Food Supply & Commerce Department, Govt, of Bihar, Patna), passed the impugned order of punishment dated 5.4.2003 in purported exercise of powers under rule-43(b) of the Bihar Pension Rules 1950 (hereinafter referred to as "the Rules"), whereby his pension to the extent of 50% has been reduced. CWJC No. 54/4 of 2003 seeks to challenge the departmental proceedings, and CWJC No. 4796 of 2003 has been preferred with the prayer for direction to release the post-retirement benefits which have been withheld on account of the departmental proceedings. Both the writ petitions raise common issues of law and facts and, in fact, one set of arguments have been advanced, and are being disposed of by a common judgment. We shall draw the facts from the brief of CWJC No. 4796 of 2003. While the petitioner was posted as Block Supply Officer at Sahadai Buzurg, district Vaishali, he was placed under suspension by order dated 19.1.98 (Annexure 1). He challenged the same by preferring CWJC No. 962 of 1998 which was disposed of by order dated 31.8.98 (Annexure 2) with the following observations:-

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In that view of the matter, this Court disposes of the writ petition and the I.A. with a direction that if no charge sheet is served upon the petitioner by 31st October, 1998, the suspension order which has been served upon the petitioner stands quashed on or from 2nd November, 1998. It is made clear that if an attempt is made to serve the Charge-sheet, the petitioner must accept the said service in default that amount in law to a valid service of charge-sheet.

This Court also expresses its desire, that if such disciplinary proceeding is initiated, such proceeding should be concluded as early as possible preferably within a period of six months from the date of its initiation."

(Emphasis added)

2. The charge-sheet was not served on the petitioner within the time allowed by the Court as a result of which the order of suspension automatically stood revoked and the petitioner had joined on 3.1.98. He superannuated on 31.1.2000. The chargesheet was framed on 1.6.2000 (Annexure 7A), and is reproduced hereinbelow:-

3. The Conducting Officer was appointed by order dated 16.6.2000 (Annexure 7). The State Government issued order dated 7.9.2000 (Annexure 8), whereby the departmental proceeding was converted into one under rule 43(b) of the Rules. Notice of the departmental proceeding in the usual course could not be served on the petitioner leading to publication of notice in a local daily "Aaj", on 22.10.2001, notwithstanding which the petitioner did not appear during the course of the enquiry report dated 17.7.2001 (Annexure 4A,) holding that the charges had been proved. Respondent No. 2, being the disciplinary authority, passed the impugned order dated 5.4.2003 (Annexure 6), whereby he agreed with the enquiry report and reduced the pension to the extent of 50%.

4. While assailing the validity of the departmental proceedings, learned counsel for the petitioner submitted that neither notice of the departmental proceeding, nor copy of the charge-sheet, was served on him. Learned counsel next submitted that the stand taken by the respondent authorities that the petitioner had refused to accept service of notice leading to substituted service is false. Counsel further submitted that substituted service of notice through "Aaj" was not adequate service of notice because of its limited circulation. She relies on the judgment reported in 2005(4) PLJR 374, Para 11 (Ram Dihal Choudhary vs. The State of Bihar & Ors.)

4.1) Learned counsel further submitted that no departmental proceeding was initiated while he was in service. Except the order of suspension, nothing was done till retirement. It was, therefore, submitted that the entire action after retirement was not in continuance of the earlier proceeding but was a fresh proceeding and impermissible in law. It is also hit by the bar of limitation engrafted in rule 43(b) of the Rules. Counsel relies on the following reported

judgments:-

(i) 1999(3) PLJR 514 (Sachchidanand Singh vs.)

(ii) Kartik Prasad Vs. State of Bihar and Others,

4.2) Learned counsel further submitted that the petitioner's entire case was set out in his reply to the second show-cause notice which was not noticed by the respondent authorities. It was further submitted that there is no finding as to the pecuniary loss to the State Government and, therefore, no action could be taken under rule 43(b) of the Rules. Learned counsel relies on the judgment reported in 2005(4) PLJR 375 (supra) (paras, 8 to 10, and 13 and 14).

4.3) Learned counsel lastly submitted that adequate material is not on record to prove the charges. The impugned order has considered only the issue relating to the service of notice ignoring the merits of the case.

5. Learned Govt. Pleader has supported the impugned action. He submitted that the substance of the charges is favouritism. The respondent authorities had conducted a preliminary enquiry leading to the petitioner's suspension. He was determined not to receive the notice leading to substituted service. The enquiry Officer had resorted to substituted service as a last measure, after the notice as per the usual mode could not be served on the petitioner, on account of his determined approach. He next submitted that "Aaj" is a Hindi newspaper of wide circulation in Bihar. He submitted that the petitioner's conduct was really in violation of the order of the High Court directing him to accept the notice and co-operate in the departmental proceeding, and the reason, inter alia, for evading service of notice was that he was involved in criminal case. He did not appear in the departmental proceeding and had purposely refused to co-operate.

5.1) He next submitted that no procedural irregularity has been pointed out by the petitioner.

6. I have perused the materials on record and considered the submissions of learned counsel for the parties. Service of notice is, perhaps, the most important point to be considered in the present proceedings. We may first of all remind ourselves of the order of this Court in the previous writ petition the relevant portion of which is set out hereinabove. This Court had shown a very liberal approach and had with alacrity quashed the order of suspension of 19.1.98, by order dt. 31.8.98, subject to the condition(s) mentioned therein. It was further accompanied with the condition that if an attempt was made to serve the chargesheet, the petitioner must accept the said service, in default that will amount in law to be a valid service of charge-sheet. It is in this background that we have to examine the attempts made to serve the chargesheet in the usual course. The chargesheet could not be framed till the petitioner's superannuation on 31.1.2000. It was framed on 1.6.2000, followed by conversion of the proceeding under rule 43(b) of the Rules. In the meantime, the petitioner was sought to be prosecuted and sanction for prosecution was accorded by order

dated 3.5.2001. Thereafter the Conducting Officer had dispatched the charge-sheet to the petitioner per registered post on 25.4.2001, and again on 19.8.2001, as per his permanent address which he declined to accept. This by itself was in violation of the order of the High Court and, in fact, in terms thereof will be deemed in law to be valid service of the charge-sheet. In view of the order of the High Court, there was no necessity to take further steps for service of notice. However, as a matter of abundant precaution, the Conducting Officer had taken care to cause substituted service of the departmental proceeding by publication of the notice in a local daily "Aaj" on 22.10.2001. The petitioner had thus become fully aware that the departmental proceeding had commenced notwithstanding which he completely ignored the proceeding and refused to appear before the Enquiry Officer and had equally refused to file his show-cause/written statement to the charge-sheet, resulting in ex-parte proceeding which was entirely attributable to him. I am convinced in the facts and circumstances of the case, as well as in the background of the order of the High Court, that adequate steps were taken to ensure service of notice on the petitioner which he had purposely and wilfully refused to receive.

7. It is relevant to state that notice of the departmental proceeding enclosing thereto the charge-sheet twice on the one hand, and the second show-cause notice enclosing thereto a copy of the enquiry report, on the other were despatched to the petitioner after his retirement in registered covers as per his home address. The petitioner refused to accept the first two registered covers, but did receive the second show-cause notice. It was an obvious attempt to purposely and wilfully, and in clear defiance of the order of this Court, refusal to accept service of the charge-sheet.

8. Learned Government Counsel is right in his submission that the substance of the charges were gross favouritism. There is no allegation of causing pecuniary loss to the State Government. The petitioner seems to be under a mistaken impression that rule-43(b) of the Rules is confined to cases where the employee had caused pecuniary loss to the Government. The correct position is that it is only one of the circumstances justifying reduction of pension. Rule 43(b) takes within its sweep cases leading to reduction of pension or any part of it, whether permanently or for a specified period, inter alia, on account of grave misconduct established in a departmental proceeding. I am equally in no doubt that the petitioner's conduct established during the course of the departmental proceeding amounts to grave misconduct while in service.

9. It is not possible to agree with the petitioner's submission that the departmental proceeding was hit by the bar of limitation engrafted in rule 43(b). The Explanation (a) to 43(b) provides that "departmental proceeding shall be deemed to have been instituted when the charges framed against the petitioner are issued to him or if the government servant has been placed under suspension from an earlier date, on such date."

(Emphasis added).

The petitioner had been placed under suspension on 19.1.98 which will, therefore, be deemed to be the date of commencement of departmental proceeding in the present case.

10. The Enquiry Officer has held in his enquiry report that the charges have been proved by means of documentary evidence placed before him. The learned Enquiry Officer has found that the petitioner had given extra allotment of Kerosene to chosen shop-keepers. He failed to inspect twenty shops each month in his block which was in violation of the Rules. He did not inspect even one shop of the Public Distribution System during the months of September and October, 1997. He did not inspect the goods lifted by the shop-keepers. He has further found that the petitioner had allotted in a most arbitrary manner, being acts of favouritism, thousands and thousands of litres of kerosene oil to his favourites. He has given number of examples to support his conclusion. These findings are based on documentary evidence. The disciplinary authority considered the enquiry report and agreed with the findings. Law is well settled that the disciplinary authority is not required to assign reasons in case he agrees with the enquiry report.

11. Learned govt, pleader is right in his submission that this is not a court of appeal and the grounds of interference in exercise of writ jurisdiction are very limited and well known. The petitioner has not been able to make out a case for interference in exercise of writ jurisdiction. I do not find any infirmity in the departmental proceeding. The rules of natural justice were fully observed, sincere attempts were made by the Enquiry Officer to serve the charge-sheet per registered post on the petitioner twice which he refused to accept purposely and wilfully. That apart, it will be deemed in law to be valid service of notice in view of the order of the High Court in the previous writ petition. In any case, as matter of abundant precaution, substituted service was also effected. No procedural infirmity has been brought to my notice which goes to the root of the matter so as to render the departmental proceeding invalid. The charges have been proved by means of cogent, documentary evidence.

12. The departmental proceeding was validly conducted as a result of which CWJC No. 5474 of 2003 fails and is accordingly dismissed. Consequently, the analogous CWJC No. 4796 of 2003, praying for payment of post-retirement benefits automatically fails because no post-retirement benefit other than those withheld on account of the departmental proceeding is being, claimed. There is no merit in these two writ petitions and are accordingly dismissed, in the facts and circumstances of the cases, however, there will be no order as to costs.