

(2004) 03 PAT CK 0038
In the Patna High Court
Case No : CWJC No. 8475 of 2002

Umesh Chandra Sinha

APPELLANT

Vs

Bihar State Ware Housing Corporation and Others

RESPONDENT

Date of Decision : 18-03-2004

Acts Referred:

Citation : (2004) 03 PAT CK 0038

Judgement

R.S. Garg, J.—Heard learned counsel for the parties.

2. The petitioner was posted as incharge of Naugachhia branch of the respondent, Bihar State Ware Housing Corporation. During the said period certain goods which were stored in ware house were not ensured, therefore, the goods worth Rs. 18,27,512.52 p. suffered damage in floods. He was subjected to an enquiry and ultimately by order dated 12.6.1996 he was terminated from service. The said order was challenged in CWJC No. 7537 of 1999. The High Court allowed the writ application and required the respondent-Corporation to proceed in accordance with law. The order dated 12.6.1996 was set aside and the petitioner was reinstated with effect from 31.7.1997.

3. In accordance with the directions issued by this Court on 31.3.1997 the department observed that an enquiry be held against the petitioner. The petitioner was placed under suspension, the enquiry continued. The petitioner again came to this Court in CWJC No. 4845 of 1997 which was disposed of on 23.9.1997 with an observation that the petitioner should co-operate in the departmental enquiry and the enquiry be finally concluded by 31.1.1998. Holding the petitioner guilty, by order No. 56 dated 29.1.1998 the petitioner was terminated from service with a further direction that for the period of suspension he would not be entitled to anything beyond the subsistence allowance. Against the said order the petitioner preferred an appeal. The said appeal was dismissed on 26.8.2000. The appeal was dismissed under order contained in Annexure-31. The petitioner again came to this Court in CWJC No. 8862 of 2000. This Court quashed the said appellate order and directed the respondent-appellate authority

to pass a speaking order. Thereafter the appellate forum took up the matter again, issued notices to the petitioner, heard him and passed the impugned order dated 25.6.2002, contained in Annexure- 33 of this writ application.

4. The petitioner is again before this Court with a complaint that the order contained in Annexure-33 is perfunctory and cavalier and is in the teeth of the earlier orders of this Court. After taking me through the entire order, it is contended by the learned counsel for the petitioner that the appellate authority has not considered the defence raised by the petitioner, the ground raised in appeal and the reason for rejecting the said ground or the submission. According to him, though the order runs into two pages but in effect it is a bad order.

5. The learned senior counsel for the respondents submitted that if the appellate authority is in general agreement with the findings recorded by the original authority then it is simply required to affirm the order of the authority and is not required to give specific findings on a subject. He has placed his strong reliance upon a judgment of the Supreme Court in the matter of S.N. Mukherjee Vs. Union of India, . Placing reliance upon paragraphs 36 of the said judgment it is contended that if the appellate authority or the revisional authority affirms such order, it need not give separate reasons if the appellate or the revisional authority agrees with the reasons contained in the order under challenge.

6. Contending contrary to the submission learned counsel for the petitioner has placed reliance upon paragraph 40 of the same judgment to say that except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising his judicial or quasi-judicial function is required to record the reasons for its decision.

7. Before appreciating the rival contention it is necessary to refer to the order contained in Annexure-32, the order passed in CWJC No. 8862 of 2000. This Court while allowing the said CWJC directed the appellate authority for a fresh consideration of the matter after giving due opportunity to the petitioner of personal hearing in accordance with law.

8. When this Court sets aside the order on the ground that it is non-speaking and it has not considered the merits of the appeal then in such circumstances while reconsidering the appeal it is expected of the appellate authority that it would observe the directions issued by this Court.

9. When this Court directed that the authority should re-consider the appeal then it was expected of the authority that it would at least refer to the grounds of the appeal or to be honest to the appellant before it, refer to the defence raised before the subordinate authority and the grounds of attack against the order passed by the sub-ordinate/disciplinary authority. A perusal of Annexure-33 would show that in the first three paragraph of page 1 it does not refer to the appeal, on page 2 in paragraphs 4.5 and 6 the order does not say anything except recording the history of the matter. In paragraph 4 it says that the petitioner was heard and he could not project any ground to show that the

charges levelled against him were false or bad. In the next paragraph it has simply referred to the facts that the petitioner was incharge at a particular place. He was issued information about the insurance, the petitioner did not act diligently, the goods could not be insured and in floods of 1987 losses were suffered and if right in time information had been sent and Naugachhia branch had also been insured then the losses could have been avoided and the damages also could have been avoided. It is further stated in that paragraph that in the background of those facts it was clear that the petitioner was irresponsible person and if a person is irresponsible in discharge of his duties he is not entitled to continue in service.

10. I have referred to those paragraphs in extenso because the senior counsel says that these are the considerations of the appeal. It is agreed by him that the grounds of appeal and the defences raised by the petitioner have not been discussed, but the submission continues to be that the appellate order is fit to be sustained.

11. In the opinion of this Court, the appellate order in fact is in teeth of the earlier order of the High Court. When an appellate authority considers the appeal and records its general agreement with the order passed by the sub-ordinate authority then at least it is required to be honest in recording the grounds of appeal, the attacks made by the appellants against the impugned order. It may not be required to pass a very detailed order, but the order must be intelligible to show that what was the defence raised. Unfortunately, the order contained in Annexure-33 does not show application of wisdom which is expected of the appellate authority. It simply says that it has confirmed the order after referring to the facts that the petitioner acted carelessly or irresponsibly. What was the reason for the petitioner not to make a request at all has not been adverted to what was the ground of defence and what illegality in the order passed by the subordinate authority were raised by the petitioner is not known to this Court. The judgment of the Supreme Court in the matter of S.N. Mukherjee (supra) cannot be read to mean that the appellate or the revisional authority is given a free hand to pass one line order or pass an order which records nothing and sans ground of attack or the defence raised by the appellant.

12. The order contained in Annexure-33 deserves to and is accordingly quashed. The matter is remitted to the appellate authority with a direction that it shall give an opportunity of hearing to the petitioner and consider the ground of appeal and pass its reasoned order after meeting the grounds of appeal raised by the petitioner, within a period of four months from the date of submission/receipt of a copy of this order.

13. The petitioner may appear before the appellate authority with a copy of this order on 29th March, 2004 and may inform the authority that within a period of three months the appellate authority is obliged to dispose of the appeal.