
(2014) 04 PAT CK 0080
In the Patna High Court
Case No : CWJC No. 4359 of 2013

Umesh Kr. Verma

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 21-04-2014

Acts Referred:

Citation : (2015) 2 PLJR 64

Hon'ble Judges : Ajay Kumar Tripathi, J.

Bench : Single Bench

Advocate : Navendu Kumar, for the Appellant; Nivedita Nirvikar, for the Respondent

Judgement

Ajay Kumar Tripathi, J. Initially, when the writ application was filed by the petitioner he had assailed Annexure-21 by virtue of which a departmental proceeding was initiated for having failed to effectively discharge his duties as a superior authority in matter of handling of money for Indira Aawas Yojna as well as for issuance of an integrity certificate for consideration of his claim for inclusion in the IAS cadre, by way of promotion for the vacancies 2006-2007. But now a punishment order has come to visit him vide order contained in Annexure-36 dated 25.7.2013, by virtue of which he has been reduced to the lowest time scale of pay in Bihar Administrative Service at the level of Deputy Secretary. This order of punishment is challenged in I.A. No. 5046 of 2013, which was allowed. Petitioner joined as a Deputy Development Commissioner-cum-CEO of DRDA at Araria on 12.12.2006. The entire controversy relates to his period of posting in that capacity at Araria. Allegation is that large scale money was siphoned off by intermediaries meant for Indira Aawas Yojna by not depositing the said money in a nationalized bank and allowing the Block Development Officers to keep that money with Primary Agricultural Cooperative Societies (PACS). It is alleged that despite directives of the superior authorities, the petitioner failed to take effective action against subordinates which facilitated irregularities running into several hundreds crores.

2. A disciplinary proceeding was initiated on 25.8.2011 for which a memo of charge contained in Annexure-21 came to be issued. The inquiry was conducted by the Additional Commissioner of Inquiry, who submitted his report vide his covering letter dated 26.12.2011, which is Annexure-23 to the writ application.

3. Altogether 10 charges were drawn up against the petitioner but the Inquiry Officer did not find the petitioner guilty on any of the charges. The Court was taken through the inquiry report in quite a detail by the learned senior counsel. In fact, the conclusion of the inquiry officer in the last line as

4. The matter did not end at that because a decision was taken to hold a fresh inquiry because the petitioner had earlier moved the High Court by filing a writ application where the learned Single Judge vide his order dated 3.1.2012 (Annexure-25) gave a direction upon the respondents to complete the inquiry in relation to grant of integrity certificate.

5. The respondent authorities decided to hold a fresh inquiry against the petitioner. The matter was referred to Commissioner of Departmental Inquiries. The fresh inquiry report, which is Annexure-30 to the writ application and dated 5.6.2012, exonerated the petitioner again of all the charges. Then the order of punishment after much deliberations has come to visit the petitioner which not only puts him back to virtually at the place from where he began his service but effectively also sealed his future for any consideration for promotion to the Indian Administrative Service.

6. Learned senior counsel representing the petitioner attacks the entire action of the respondent authorities in the peculiarity of the facts as well as the modality, which has been adopted by the disciplinary authority or other high ups of the State. In the present case counsel for the petitioner has tried to impress upon the Court as to the kind of actions he had taken giving directive upon the Block Development Officers to ensure that money was withdrawn from PACS and deposited with nationalized bank with clear directive to close the accounts. The system of keeping money with the PACS was coming from before. No sooner it came to the knowledge of the petitioner he is the one who initiated steps for redeeming the situation. However, irony of the situation now is that he is being made the victim and also responsible even for things he had not done as the two inquiry reports in favour of the petitioner would establish the said fact.

7. The Court is not inclined to go into the factual aspect of the matter but confines itself to the legal issues, which do emerge for consideration. Learned senior counsel points out to the Court that after the first inquiry report, in favour of the petitioner, contained in Annexure-23. was submitted by the inquiry officer, exonerating the petitioner of all the charges," a notice was issued under the signature of the OSD of the Department of the General Administration to the petitioner dated 6.1.2012. This is Annexure-27 to the writ application. This notice gives a direction upon the petitioner to file his response within 15 days to the inquiry report. This notice is supposed to be under Rule 18(3) of the Bihar

Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as "CCA Rules").

8. Stand of the petitioner is that this is bizarre. If the inquiry officer exonerated the petitioner of all the charges the disciplinary authority could disagree with the inquiry officer but he had to give a notice of disagreement with the materials culled out from the inquiry as to why he considered the conclusion and the findings of the inquiry officer to be erroneous. That was not done.

9. For better appreciation, the provisions of Rule 18(1), (2) and (3) have to be reproduced herein below, which is being done:-

"18. Action on the inquiry report.-

(1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, may remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 17 as far as may be.

(2) The disciplinary authority, after receipt of the enquiry report as per rule 17(23)(II) or as per sub-rule (1), if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own finding on such charge, if the evidences on record is sufficient for the purpose.

(3) The disciplinary authority shall forward or cause to be forwarded a copy of the inquiry report, together with its own findings, if any, as provided in sub-rule (2), to the Government servant who may submit, if he or she so desires, his or her written representation or submission to the disciplinary authority within fifteen days."

10. A reading of Rule 18(1)(2) and (3) would show that the notice under Rule 18(3) can only be issued provided ingredients of Rule 18(2) are available. There is nothing to indicate that the prerequisites of Rule 18(2) were available from reading of Annexure-27, which necessitated issuance of a notice under Rule 18(3). In other words, the respondent authorities themselves are totally unaware of the procedure meticulously provided for in matters of holding departmental inquiry and are in breach of the procedure thereof. If there are serious breaches, the benefit will accrue to the delinquent in the above facts.

11. Petitioner did respond to the notice contained in Annexure-27 by filing his explanation contained in Annexure-28 where he took a stand that he has been exonerated of all the charges and nothing is held out or stands out against the petitioner. Instead of closing the matter, a letter under the signature of the Joint Secretary, addressed to the Departmental Inquiry Commissioner was issued that the necessity for holding a fresh inquiry under Rule 18(1) was felt on the basis of a report of the then Sub-Divisional Commissioner, Bala Murgan D and the present District Magistrate, Jehanabad.

12. It was in this background that a fresh inquiry and a report contained in Annexure-30 dated 5.6.2012 was tendered by the Commissioner of Departmental Inquiry exonerating the petitioner again.

13. Learned senior counsel takes serious objection to the procedure adopted by the respondents in holding a second inquiry again in breach of Rule 18(1) of the CCA Rules and that too on a material which was not part and parcel of the inquiry previously conducted by the Additional Commissioner of Departmental Inquiries. This according to the petitioner was a serious breach and the settled law as to under what circumstances a fresh inquiry can be held, has been clearly violated.

14. The Court would like to agree with the legal position urged as above but since the petitioner subjected himself to a fresh inquiry, which resulted in an inquiry report in his favour, that issue is not being pushed beyond a point. The Court would surely like to record its opinion that an illegality remains an illegality.

15. Stand was also taken on behalf of the petitioner that where was the occasion to issue a notice under Rule 18(1) of the CCA Rules after issuance of a notice under Rule 18(3) contained in Annexure-27. The procedure followed is totally in breach and contrary to the rules which would be evident from reading of Rule 18 sub-rules (1), (2) and (3) of CCA Rules.

16. The Court does take serious notice of the modality, which was adopted in this matter and the Court also expresses its astonishment that such senior authorities of the Department of General Administration are not aware of the law and the procedure provided for conduct of departmental proceedings, especially when the 2005 Rules meticulously provided for various steps to be taken at various stages.

17. When the second inquiry report exonerating the petitioner was submitted by the Commissioner of Departmental Inquiries, deliberation in the file came to be made. Extract of some of the notings have been annexed with Annexure-31 to the writ application. A reading of the same would show that again a new kind of proposal was initiated if not a modality that whatever be the inquiry report some punishment was necessitated in the given facts. According to learned senior counsel, this indicates a pre-conceived notion on the part of the respondents. The petitioner has also drawn the attention of this Court to a noting under the signature of one Amir Subhani, the Principal Secretary, General Administration, which is reproduced herein below:-

18. It is clear from the notings that the deliberations continued for a very long time and since the petitioner had filed a contempt application before the High Court for not completing the inquiry and the proceeding within the specified time, some kind of a second show cause was issued and the punishment contained in Annexure-36, dated 25.7.2013 under the signature of the Joint Secretary, General Administration Department came to be imposed upon the petitioner.

19. Learned senior counsel representing the petitioner again points out from the procedure adopted that if the respondent authorities again did not agree with the outcome of the inquiry held a second time, they should have issued a notice of disagreement to the petitioner, which was not done. How could the disciplinary authority impose a major punishment on the basis of a second show cause, a reading of which will also not indicate that it was a notice of disagreement-cum-second show cause. The order of punishment, therefore, also is vulnerable for not following the procedure both in terms of CCA Rules as well as principle enunciated even by the Apex Court in various decisions including Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, .

20. No doubt, a counter affidavit in support of the decision has been filed by the State authorities but the legal procedural infirmity, which has been pointed out by the learned senior counsel for the petitioner has not been answered in the counter affidavit nor any semblance of effort seems to have been made, even at the bar as to how and why such a modality was adopted by the disciplinary authority in relation to this case. What was the compulsion for them to give a go by to the prescribed procedure and adopt a procedure, which seems to be in clear breach of the rules, some of which have been quoted and recorded above is not being answered.

21. Learned counsel representing the State harps on the fact that it was a very very serious matter where many a Block Development Officers after due inquiry came to be dismissed from service. Petitioner cannot absolve himself of his omission as the controlling authority. Whatever remedial measures he had taken are only a show which led to swindling of crores of rupees of the State meant for the welfare scheme under the Indira Awas Yojna. The petitioner has to answer since he was posted at the relevant time in the district.

22. India is governed by rule of law and is also known worldwide for upholding it. Whatever be the nature of the crime, nobody can be punished without holding a proper inquiry and evidence, which may come in inquiry. This country has noticed occasions where persons seen and involved in the murder of a Prime Minister of the country, were also given opportunity to defend themselves right up till the Apex Court. Another recent example has been that of the terrorist Kasab. The Court cannot disagree that what was done by them was not heinous but still the law did take its course and time.

23. Even in the present case, it is a very serious matter where public money has been swindled and people have to be held accountable but that accountability must be fixed on a set procedure prescribed and adopted.

24. The Court has no hesitation in recording that there is something amiss in the manner in which petitioner has been dealt with. Either it has been done deliberately to help the petitioner when the action of the respondents are put under judicial scrutiny or it shows total incompetence on the part of the respondents in handling such matters or following the procedure prescribed

under Rule 17 and 18 of the CCA Rules, 2005.

25. At various stages of the inquiry, there have been deviations and of glaring kind. Instances has been pointed out by the learned senior counsel, be it holding of a fresh inquiry under Rule 18(1) after issuance of a notice (sic- under?) Rule 18(3) by giving a go by to Rule 18(2) as well as not accepting the findings given by the inquiry officer twice over which exonerated the petitioner of all charges. Even the process and procedure for disagreement with the inquiry officer was not followed by the respondents. The confusion in the mind of superior authorities is evident from reading of some of the notings, which have been brought on record by the petitioner. Merely because, according to State Counsel, it is a case of serious defalcation of large amount of Government money, it does not mean that the petitioner must hang despite the best effort of the respondent authorities to pin him down and the culpability not established.

26. This Court, therefore, will not sustain the decision of the respondent authorities of imposing punishment contained in Annexure-36. The same would be required to be interfered with as punishment order has not been passed in consonance with the prescribed rules.

27. Learned senior counsel before parting also attacks the nature of the punishment, which, according to him, is not prescribed in Rule 14.

28. The Court is not required to go into that aspect of the matter as enough serious legal lacunae has already been noticed in the manner in which the order of punishment has come to visit the petitioner. If the respondent authorities were serious and concerned about what transpired in the district of Araria, they should have at least obtained better legal advice to ensure that their action did not become vulnerable when put to test. Writ is allowed. Annexure-36, dated 25.7.2013 is quashed.