

(2019) 07 PAT CK 0136

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 13155 Of 2018

Vijay Kumar Singh

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 08-07-2019

Acts Referred:

Citation : (2019) 3 PLJR 928

Hon'ble Judges : Ashutosh Kumar, J

Bench : Single Bench

Advocate : Y.V. Giri, Binod Kumar, Sumant Kumar Singh

Final Decision : Allowed

Judgement

1. The petitioner had initially preferred the present petition for setting aside the second show-cause notice issued to him in the departmental proceeding and additionally for staying the continuance of the departmental proceeding which was initiated against him vide Resolution No. 1672 dated 20.09.2017. However, during the pendency of the writ petition, the petitioner was terminated from service vide order dated 19.07.2018 contained in Memo No. 1540.

2. By I.A. No. 5836 of 2018, the aforesaid order of dismissal was brought on record and a request was made to amend the prayer made in the writ petition, with the addition of a request for quashing of the order of termination. The aforesaid interlocutory application was allowed by order dated 21.08.2018.

3. While the petitioner was serving as an Executive Engineer in the Water Resources Department, Flood Control Division No. 1, Padrauna, he was suspended on 14.09.2017 for remaining absent from duty and displaying carelessness and negligence in performing his functions towards flood control.

4. A departmental proceeding was initiated against the petitioner vide resolution dated 20.09.2017 and charge was framed against him. It was alleged that on 15.08.2017 at about 4:00 O'clock in the morning, between 88.00 Kms. To 98.11

Kms. on CRL point, piping had started, about which information was not sent by the petitioner to superior authorities. Because of the piping at about 7:45 A.M., the embankment was damaged in about 15 meters of length resulting in heavy loss of lives and property. It was charged that the petitioner was not available in the night and in the morning and thus, he had made himself liable for being subjected to departmental proceeding for displaying poor performance and negligence towards his work/duty.

5. It has been submitted on behalf of the petitioner that despite the petitioner's objection to the faulty manner in which the proceeding was conducted by the enquiry Officer, the enquiry Officer submitted an enquiry report, holding the petitioner guilty of the charges. Accepting the report of the enquiry officer, vide order dated 26.04.2018, a second show-cause was issued to the petitioner to which he replied. Thereafter, vide order dated 19.07.2018, contained in Memo No. 1540, the petitioner has been terminated from service.

6. It has further been submitted that the disciplinary authority/Government did not apply itself to the facts of the case and merely reiterated the report of the enquiry Officer. It has been averred that the petitioner had sent proposal for restoration of damaged apron and slope as per the design to the Superintending Engineer, Padrauna, but the proposal was rejected by him. It has also been submitted that it was wrong to allege that the petitioner did not inform the superior authorities of the damage to the embankment. In the night, intervening between 13.08.2017 to 14.08.2017, two wireless messages were sent by the petitioner intimating about the seepage in the embankment. The reason why the petitioner's telephone was found to be switched off or beyond the network area was that he was on a visit at another place on the direction of the Chief Engineer and at that place, the network was absolutely weak.

7. The learned counsel for the petitioner has argued that the request of the petitioner for being given some time to respond to the second show-cause notice also was rejected. Even then, the reply of the second show-cause notice was filed by the petitioner on 15.06.2018. The grounds urged in the second show-cause notice has not at all been adverted to in the order of punishment.

8. The further ground of challenge is that the charge was framed against the petitioner under only one head, but the enquiry officer has given his opinion on several charges, which is impermissible. Lastly, it has been urged that the most extreme punishment has been given to the petitioner which is disproportionate to the charge framed against him.

9. From the perusal of the records and the order of punishment, it appears that the petitioner has been held guilty for his not informing the superior authorities about the piping in the embankment and that he was not available on telephone. In the order impugned, the explanation offered by the petitioner has not at all been adverted to.

10. The law with respect to departmental proceeding is very well settled by now.

The explanation of a delinquent has to be considered and rejected before he is held guilty for the charges. In the order impugned, I do not find reference of any explanation of the petitioner and merely on the ground that he was not available on telephone and that no information was provided by him about piping in the embankment to the superior authorities, the petitioner has been subjected to the maximum punishment.

11. The impugned order further suffers from being strikingly disproportionate to the charges which have been levelled against the petitioner.

12. In *Ranjit Thakur Vs. Union of India & Ors.*; (1987) 4 SCC 611, the Supreme Court cautioned that even though the choice and quantum of punishment is within the jurisdiction and discretion of the disciplinary authority, nonetheless it should not be vindictive or unduly harsh. It should also not be disproportionate to the offence. Similarly, in *Dev Singh Vs. Punjab Tourism Development Corporation Ltd. & Anr.*; (2003) 8 SCC 9, following *Ranjit Thakur (supra)*, the Supreme Court has held that a Court of law will normally not substitute its own conclusion on penalty, unless the punishment imposed is disproportionate [also refer to *Union of India & Anr. Vs. G. Ganayutham*; (1997) 7 SCC 463, *Ex-Naik Sardar Singh Vs. Union of India & Ors.*; (1991) 3 SCC 213 and *Om Kumar & Ors. Vs. Union of India*; (2001) 2 SCC 386].

13. Coming to the case at hand, I am of the view that the disciplinary authority did not at all consider the explanation furnished by the petitioner and the punishment awarded to him for the kind of misconduct is grossly disproportionate.

14. For the aforesaid two reasons, I hold the order dated 19.07.2018, dismissing the petitioner, to be unsustainable in the eyes of law and, therefore, set it aside.

15. The matter is remitted to the disciplinary authority for writing out a fresh order in accordance with law after adverting to the explanation offered by the petitioner. The order shall be passed by the disciplinary authority within a period of three months from the date of receipt/production of a copy of this order. The decision to keep the petitioner under suspension during this period shall lie with the disciplinary authority.

16. The petition stands allowed to the extent indicated above.