

(2003) 04 PAT CK 0102
In the Patna High Court
Case No : C.W.J.C. No. 11580 of 1998

Vijay Shankar Shrivastava

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 01-04-2003

Acts Referred:

Citation : (2003) 2 BLJR 911 : (2003) 2 PLJR 460

Hon'ble Judges : Narayan Roy, J

Bench : Single Bench

Advocate : Vinay Kirti Singh, for the Appellant; K.P. Yadav, SC 5, for the Respondent

Final Decision : Allowed

Judgement

Narayan Roy, J.—Heard Counsel for the parties and considered the counter affidavit filed on behalf of the State.

2. This writ application is directed against the order of punishment imposed upon the petitioner by annexure 12 dated 7-12-1998, whereby and whereunder the petitioner has been punished with reduction in rank to his basic scale with adverse effects to salary increments and future promotions and direction has already been issued to recover the excess amount paid to the petitioner.

3. Learned Counsel appearing on behalf of the petitioner assails the order impugned mainly on the ground that though the punishment imposed upon the petitioner was major in nature, no opportunity, whatsoever, was given to him to defend himself. It is submitted by learned Counsel appearing on behalf of the petitioner that initially preliminary show-cause notice was given to the petitioner in the departmental proceeding to explain his conduct and on submission of the show-cause by the petitioner, the authorities without inquiring into the matter submitted charge-sheet against the petitioner and the petitioner replied the same. It is further submitted that the petitioner earlier had come to this Court against the order of suspension and this Court disposed of the aforesaid writ

application vide order, as contained in annexure 6 quashing the order of suspension and directed the authorities to conclude the departmental proceeding preferably within a period of three months from the date of receipt/production of a copy of that order and the authorities pursuant to the direction of this Court concluded the proceeding and passed the order of punishment without affording him an opportunity of hearing.

4. Dr. S N. Jha, learned Counsel appearing on behalf of the petitioner, submitted that in case a departmental proceeding is initiated, the delinquent employee is required to be given an opportunity to explain his conduct and in the instant case, it appear neither the inquiry was conducted nor an opportunity of being heard was afforded to the petitioner, which will be apparent from the record of this case, which has been produced by learned Counsel appearing on behalf of the State.

5. A counter affidavit has been filed on behalf of the respondents stating therein that a full-fledged inquiry is not required to be conducted nor an opportunity of being heard is to be given, as it depend upon the facts and circumstance of each case and in the present case, a notice to show-cause was given to the petitioner and thereafter the departmental proceeding was concluded.

6. In paragraph 18 of the writ application, it has been specifically stated that no opportunity, whatsoever, was given to the petitioner to adduce evidence in support of his case. The statement made in paragraph 18 of the writ application has not been controverted in specific terms.

7. From the record of this case, which has been produced before me, it does not appear that any opportunity was given to the petitioner to adduce evidence in his defence, rather it appears that only a show-cause notice was given to him and thereafter charge-sheet was submitted and he was punished. The proceeding, as it appears, was concluded in most summary way and not in accordance with law. In a case, where a delinquent employee is found guilty for major punishment, a full-fledged inquiry is required to be made in terms of the provisions of the Civil Services (Classification, Control and Appeal) Rules (hereinafter to be referred to as "Rules"). In case of *Kuldip Singh v. Commissioner of Police and Ors.* (1999) 2 SC 10 the apex Court observed as follows:

"32. Apart from the above, Rule 16(3) has to be considered in the light of the provisions contained in Article 311(2) of the Constitution to find out whether it purports to provide reasonable opportunity of hearing to the delinquent. Reasonable opportunity contemplated by Article 311(2) means "hearing" in accordance with the principles of natural justice under which one of the basic requirements is that all the witnesses in the departmental enquiry shall be examined in the presence of the delinquent who shall be given an opportunity to cross-examine them. Where a statement previously made by a witness, either during the course of preliminary enquiry or investigation, is proposed to be brought on record in the departmental proceedings, the law as laid down by this

Court is that a copy of that statement should first be supplied to the delinquent who should thereafter be given an opportunity to cross-examine that witness."

Again in the case of *Ugra Nath Jha v. The Administrator, Biscomaun and Anr.*, (1998 (1) PLJR 129) this Court held that regular inquiry is necessary, where major punishment is to be imposed even if the rules do not specifically provides for the same.

8. In the case at hand, requirement of law, as noticed above, has not been followed nor any opportunity was given to the petitioner to adduce evidence when a major punishment was imposed upon him.

9. Considering the facts and circumstances of the case and the legal propositions aforementioned, the order of punishment, as contained in annexure 12, is not sustainable in law.

10. In the result, this application is allowed and the order, as contained in annexure 12, is set aside, the disciplinary authority, however, will be at liberty to hold a proper inquiry in the matter after giving an opportunity of hearing to the petitioner in accordance with law.

11. No order as to costs.

12. The original record, which was called for, is being returned to JC to SC 5.