

(2007) 02 PAT CK 0168
In the Patna High Court
Case No : CWJC No. 11699 of 2005

Vinod Kumar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 28-02-2007

Acts Referred:

Citation : (2007) 3 PLJR 92

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Advocate : G. Nandan and D. Sinha, for the Appellant; Sanjiv Kumar for the State, for the Respondent

Final Decision : Allowed

Judgement

Mridula Mishra, J.—Heard the counsel for the parties. Petitioner's prayer in the present application for quashing the order, contained in notification No. 6159(S), dated 11.9.2004, of the Road Construction Department, Government of Bihar, whereby the punishment of stoppage of two annual increments of pay with cumulative effect and entry of censure in confidential character roll in the year 2000-2001 have been awarded to the petitioner. Petitioner has also prayed for a direction to the respondents to pay the consequential benefits to this effect to the petitioner.

2. Petitioner was posted as the Assistant Engineer in the Road Construction Department, Nalanda at Biharsharif, when a departmental proceeding was initiated against him under Rule 55 of the Civil Services (Classification, Control and Appeal) Rules. Two charges were framed against the petitioner in the departmental proceeding. First charge was that he violated the Model Code of Conduct during election period as reported by the District Magistrate, Biharsharif, as well as the Election Commission of India vide its letter dated 15.2.2001. Second charge was relating to deficiency and undue indulgence in course of sale for bill of quantity on 26.12.2000. Sri Ram Sagar Ram, Secretary, Technical, C.D.O., Road Construction Department, was appointed as conducting officer and

Sri Akhauri Birendra Kumar Sinha, Secretary (Non-Technical) to Engineer-in-Chief, Road Construction Department, as presenting officer. Petitioner submitted his show cause before the conducting officer denying both the charges.

3. Regarding charge No. 1, it was stated in the show cause that petitioner had no information regarding foundation of P.C.C. Road from Mahila College, Bihar Sharif, to Canara Bank by the local M.L.A. on 29.1.2001. He had not seen any foundation slab on the said place. He was not present in the alleged two photographs which were taken on the occasion, as such, he has not violated the Model Code of Conduct. Regarding charge No. 2, it was submitted that the sale of tender papers on 26.12.2000 at divisional level was first opportunity in his service career. Initially there was some disturbance, as such, he reported the matter to the District Magistrate, the Executive Engineer and the Superintendent Engineer, who were present there. Subsequently, the work of sale of tender paper was done on the same day as per the order of the Superintendent Engineer and the Executive Engineer, as such, the charge No. 2 regarding deficiency and undue indulgence is without any substance.

4. The enquiry officer exonerated the petitioner from both the charges in the enquiry report submitted by him. The conducting officer issued show cause notice to the petitioner as he differed with the enquiry report and finally awarded the punishment of withholding two increments and censure, which is under challenge.

5. Petitioner has challenged the order of punishment stating that it was mandatory for the disciplinary authority to assign reason in writing, in case of disagreement with the considered finding of the enquiry officer. In absence of any ground or reason in the show cause notice, it is an empty formality which has caused grave prejudice to the petitioner and resulted in injustice to him. The second show cause notice simply indicates the charges and the proposed punishment. Nowhere it is mentioned that which are the specific evidence relying on which the disciplinary authority finds it proper to differ with the enquiry report and impose proposed punishment.

6. In the counter affidavit, filed on behalf of respondents 1 to 4, it has been stated that the matter relating to violation of the Model Code of Conduct was reported by the District Magistrate-cum-District Election Officer, Nalanda, to the Election Commission of India. On the direction of the Election Commissioner, charges were very serious the department after reviewing all aspects of the matter decided to initiate a departmental proceeding. Petitioner was asked for explanation and only after receiving explanation of the petitioner, the District Magistrate, Nalanda, recommended for initiation of the departmental proceeding. Before imposing punishment second show cause was issued to the petitioner by the disciplinary authority as he found himself in disagreement with the enquiry report. Considering the second show cause of the petitioner, punishment has been awarded. There is no reason for interference with the order of punishment. However, in the counter affidavit there is no statement in reply to the specific

point raised by the petitioner regarding non-mentioning of specific evidence, on account of which the disciplinary authority found himself in disagreement with the enquiry report.

7. The counsel appearing for the petitioner has placed reliance on a decision reported in 1999(2) P.L.J.R. 504 (Ramesh Prasad Gupta vs. Chief Manager, State Bank of India & Ors.)- The Single Judge relying on two decisions of the Supreme Court, that is, Ram Kishan Vs. Union of India and others, and Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, has recorded this finding, "it is true that enquiry officer's report is not binding upon the disciplinary authority and he is free to come to his own conclusions where he differs with the enquiry officer, but the disciplinary authority while disagreeing with the finding recorded by the enquiry officer has to follow certain mandatory requirements of the law. In such cases before finally recording its own conclusion and before holding that the charges have been proved, it would be incumbent upon him to give opportunity of hearing to delinquent. The disciplinary authority is not supposed to record a final finding on the charges before issuing show cause notice and before giving an opportunity of hearing to the delinquent. The show cause notice, in such a case must disclose some evidences on the basis of which it proposes to differ with the finding of the enquiry officer and the delinquent is asked to file show cause as to why the charges against him cannot be said to have been proved on the basis of those evidences".

8. In the light of finding recorded in these decisions and considering the material on record, I find that the enquiry officer before submitting enquiry report had given sufficient opportunity for bringing evidence in support of the charges. In spite of opportunity, no evidence was brought and finally the enquiry officer found that there is no evidence in support of charge framed against the petitioner, as a result, he exonerated the petitioner from both the charges. The second show cause notice issued by the disciplinary authority simply mentioned the charge and the proposed punishment. It did not disclose the evidence relying on which the disciplinary authority has come to this conclusion that there are sufficient evidences to prove the charges and award punishment. In a case where the enquiry officer had exonerated the delinquent from the charges and the disciplinary authority differed with the report of enquiry officer, it was mandatory that the delinquent if called upon to file show cause, the second show cause must disclose the evidence on the basis of which the disciplinary authority proposed to differs with the finding of the enquiry officer. In the second show cause this is absent. Punishment has been imposed without disclosing the evidence which, according to disciplinary authority, was sufficient to prove charge. Petitioner has been able to make out a case for quashing the order awarding punishment of stoppage of two annual increments of pay with cumulative effect and entry of censure in the confidential character roll of the petitioner.

9. The notification No. 6159(S), dated 11.9.2004, of Road Construction

Department, Government of Bihar, is quashed. The respondents are directed to make payment of all consequential benefits to the petitioner from which he was debarred on account of the impugned order of punishment. This application is allowed.