

(1997) 02 PAT CK 0015
In the Patna High Court
Case No : C.W.J.C. No. 8674 of 1996

Vishwa Nath Tripathy

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 13-02-1997

Acts Referred:

Civil Services (Classification, Control and Appeal) Rules — Rule 55A

Citation : (1997) 1 PLJR 651

Hon'ble Judges : N. Pandey, J

Bench : Single Bench

Advocate : A.B. Ojha, for the Appellant; Anil Kumar Verma, for the Respondent

Final Decision : Allowed

Judgement

N. Pandey, J.—This writ petition has been filed for quashing a notification dated 11th March, 1994, whereby and whereunder while (sic) the Petitioner from suspension (sic) punishments were imposed, namely (sic), that he would not be entitled for his salary except the amount of subsistence allowance for the period he was under suspension and (b) from the date of the order, no promotion would be granted for three years. By the said notification, the departmental proceeding, started as back as on 6.7.1993, vide memo No. 923 and 924, under the provisions of the Civil Servants (Classification, Control & Appeal) Rules, was also cancelled.

2. It would appear that at the relevant time, the Petitioner was functioning as District Sub Registrar, Begusarai. On account of certain allegations the State Government vide notification dated 6th July, 1993, contained in Annexure-16, placed the Petitioner under suspension and started a departmental proceeding as indicated above. There is no dispute that the Petitioner had challenged his order of suspension before this Court in C.W.J.C. No. 7001 of 1993. A Bench of this Court having found that the authorities had initiated a departmental proceeding and at that stage, charges were yet to be framed, dismissed the writ petition. It would appear the Petitioner also moved the Supreme Court in Civil Appeal No.

18510 of 1993 which was also dismissed on 14.1.1994 with a direction to the authorities to complete the departmental proceeding within a period of six months.

3. It has been contended that a bare reference to the letter of the District Magistrate, Begusarai, dated 3.6.1995 (Annexure-25) which was in response to the query of the Secretary to the Government, it would appear that under some confusion the departmental proceeding was started against the Petitioner. He, therefore, recommended that the departmental proceeding be at once dropped so that the Petitioner can be exonerated from the charges.

It was next contended that the impugned order is also otherwise illegal since it has been mechanically recorded even without due compliance of the principles of natural justice. Because although a departmental proceeding was started as back as on 6.7.1993, but neither any Inquiring Officer was appointed nor the Petitioner was given an opportunity to explain his innocence by producing documents and evidence. Therefore, in absence of the aforementioned formalities, the impugned order of punishment is quite illegal and violative of principles of natural justice.

4. On the other hand, learned Counsel for the State while taking aid from the statements made in the Counter Affidavit, contended that the impugned decision was taken by the Government under Rule 168(a) of the Board Miscellaneous Rules read with Rule 55A of the Civil Servants (Classification, Control & Appeal) Rules. He contended that the State Government was quite competent to record the order of punishment under the aforementioned provisions even without conducting a regular departmental proceeding as required under Rule 49 of the said Rules.

5. In my view, the stand taken by the Learned Counsel for the State cannot have no sanction of law. Admittedly, as would appear from the order contained in Annexure-6, as well as the order passed by this Court at the previous occasion, that a regular departmental proceeding for the alleged charge was started as back as on 6.7.1993. Even a bare reference to the impugned order would reveal that the aforementioned proceeding was dropped after recording the impugned punishment. There is not a single word in the notification to show that such punishments have been imposed by the State Government in exercise of powers under Rule 168 of the Board Miscellaneous Rules. Rather it is quite clear from the impugned notification that while taking a decision to drop the proceeding, the impugned punishment was recorded. Therefore, Respondents have unnecessarily tried to introduce a new case in their counter affidavit to what they had disclosed in the impugned notification.

6. Apart from the aforesaid, even with regard to the allegations which were levelled against the Petitioner, it would reveal from the letter of the District Magistrate, Begusarai, as contained in Annexure-25, that on account of non-disclosure of certain relevant facts in the file by the Officer who had conducted

the inquiry at the initial stage, the then District Magistrate recommended for departmental proceeding against the Petitioners. But the same District Magistrate later, vide his letter No. 405 dated 9.2.1988, has recommended that the Petitioner be released from charges.

7. Therefore, having regard to the facts noticed above as also since the impugned notification was issued without extending the Petitioner adequate opportunity, I have no option but to quash the impugned notification. Since the Petitioner has already retired, therefore, the Respondent authorities shall take steps to grant him consequential reliefs.

8. In the result, this application is allowed to the extent indicated above. However, there shall be no order as to costs.