
(2011) 01 PAT CK 0143

In the Patna High Court

Case No : LPA No"s. 1790 and 1829 of 2010

Yogendra Prasad Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 24-01-2011

Acts Referred:

Citation : (2012) 1 PLJR 636

Hon'ble Judges : Samarendra Pratap Singh, J;S.K. Katriar, J

Bench : Division Bench

Advocate : Chitranjan Sinha and Tuhin Shankar, for the Appellant; P.K. Verma, For the State, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner, common to both C.W.J.C. No. 1299 of 2010 and C.W.J.C. No. 13006 of 2010, has preferred these two appeals under Clause 10 of the Letters Patent of the High Court of Judicature at Patna, and is aggrieved by the order dated 14.9.2010, passed by a learned Single Judge of this Court, whereby the two writ petitions have been allowed to the extent indicated in the order, and the matter has been remitted to the learned disciplinary authority for a fresh order in accordance with law and the observations made therein. C.W.J.C. No. 12990 of 2010 has given rise to L.P.A. No. 1790 of 2010, and C.W.J.C. No. 13006 of 2010 has given rise to L.P.A. No. 1829 of 2010. A brief statement of facts essential for the disposal of the two appeals may be indicated. The appellant is an Executive Engineer in the services of the Bihar Government, and was transferred from Araria to Ara Municipality as Chief Municipal Engineer and he had joined on 27.10.2009. He received notice dated 17.2.2010, calling him upon to explain the position with respect to the alleged acts of omission and commission mentioned therein. On consideration of the cause shown by him, the learned disciplinary authority passed the order dated 8.4.2010, whereby the punishment of censure and deprivation of three increments with non-cumulative effect was inflicted on him. The order of punishment is impugned in C.W.J.C. No. 13006 of 2010.

1.1. The impugned order of punishment also stated that he should be transferred from his place of posting at Araria to a non-works post. This was followed by the transfer order dated 19.4.2010, whereby he has been transferred to Ara Municipal Corporation in the same capacity. The order dated 19.4.2010 is impugned in C.W.J.C. No. 12990/10.

1.2. The appellant challenged the two orders, namely, the order of punishment and the order of transfer, by preferring the two writ petitions which have been allowed in part by the order of the learned Single Judge, and has remitted the matter to the learned disciplinary authority for a fresh consideration on the question of quantum of punishment in the circumstances indicated therein. The learned Single Judge further held that, out of the four charges, one is vague and, therefore, the same should be discarded. In so far as the remaining three charges are concerned, it has been held that it is not possible to discern whether or not the learned disciplinary authority would have inflicted the same punishment in the absence of the discarded charge. Hence the order of remand.

2. Learned counsel for the appellant submits in support of the appeals that, in view of the tenor of the notice dated 17.2.2010, the same cannot be taken to be a show-cause notice with a view to inflict punishment. Learned counsel for the appellant next submits that the order of punishment and the appellate order are cryptic and do not disclose consideration of the issues raised by the appellant in the cause shown by him before the learned disciplinary authority, or in his memo of appeal. He also submits that after the learned Single Judge has held that charge no. 1, the most significant of the charges, is vague, there is no justification to remit the matter to the learned disciplinary authority to re-determine the quantum of punishment. He submits in the same vein that the notings in the file maintained by the respondent authorities in the routine course of business disclose a clear recommendation to record censure against the appellant. He also submits that the core of his defence, namely, the short period of stay at Araria, and that he had imposed a fine on the Contractor for the delay in completion of the work, has not been taken into account by the learned disciplinary authority, nor by the learned appellate authority. He next submits that the transfer order, being integral part of the order of punishment, is inseparable and punitive in nature. Learned counsel lastly submits that the learned Single Judge has found fault with the order of punishment, as a result of which the order of transfer automatically falls to the ground.

3. Learned Additional Advocate General No. 5 has supported the order passed by the respondent authorities.

4. We have perused the materials on record and considered the submissions of learned counsel for the parties. The notice dated 17.2.2010 creates a clear impression in our minds that the authorities have intended to issue show-cause notice to take action against the appellant. Learned counsel for the appellant has tried to play on the words "

" It was intended to elicit information from the appellant. We do not agree with the submission of the learned counsel for the appellant. In view of the reasonable opportunity given by the notice to show cause with respect to the issues raised therein, we are of the view that it was intended to be a notice with a view to take action against him. The contention is rejected.

5. Learned counsel for the appellant has submitted that the impugned order as well as the appellate order are cryptic in nature and shows non-consideration of the defence put by the appellant. The notings mentioned in the concerned file are part of our records. It appears that the appellant has submitted in his cause shown before the learned disciplinary authority and the learned appellate authority that his tenure at Araria was very short, and he had imposed cost on the contractor for the delay in completion of the work. We find from the orders that both the issues have been considered by the learned authorities. The period of his stay at Araria was good enough to supervise the work in question. He never exercised pressure on the contractor to expedite the work, nor he recommended any action against him, and he was clearly in collusion with the contractor. The second part of the defence is that he had imposed cost on the contractor. The learned authorities have found that the cost was imposed on the contractor by his predecessor officer, and not by the appellant. It was obviously a false plea, and was a blatant attempt to mislead the authorities, and, in view of reiteration of the submission before us, the same approach has been repeated here. We, therefore, find that the respondent authorities have applied their minds while passing the order of censure against the appellant.

6. Learned counsel for the appellant has also found fault with the order of remand passed by the learned Single Judge. It appears to us on a perusal of the show-cause notice that the same can be separated in 4 parts, namely, (i) quality of work was not being ensured, (ii) slow progress of work, (iii) no action was taken, and (iv) no punishment was inflicted on the contractor. He was in collusion with the contractor. The learned Single Judge has observed in his order that there were lack of adequate particulars in the show-cause notice as to in what manner quality of construction was not being ensured as per the prescribed standards. For the sake of argument, we agree with this part of the order of the learned Single Judge and we ignore the first charge for the purpose of disposal of this appeal. As to the remaining charges, we agree with the observations of the learned Single Judge that the cause shown by the appellant with respect to the remaining charges were unacceptable. The delay in construction work seems to be apparent from the notings in the file, and he had not inflicted any punishment on the contractor. On the contrary, he misled the authorities by making a false plea that he had imposed cost on him.

7. All these circumstances taken together give rise to a clear inference that the appellant was in collusion with the contractor. We entirely agree with the findings as to the three charges against the appellant. Law is well settled that in a case where order of punishment is based on a number of proven charges, one or more

than one having failed before the court, the same by itself does not per se render the order bad in law, subject to one exception only discussed hereinbelow. The court is then entitled to examine whether or not the impugned punishment is justified on the basis of the surviving charges held to have been proved, after ignoring the charge held by the court not to have been proved. In the facts and circumstances of the case, we are clearly of the view that the impugned order of punishment is well merited in view of the three issues decided against the appellant. Even if the charge with respect to the quality of work is completely discarded, the impugned order of punishment is justified on the basis of the remaining issues decided by the authorities. The order of punishment is hereby upheld.

7.1. We, therefore, do not feel the necessity to remit the matter to the learned disciplinary authority. The aforesaid exception applies only to one kind of cases, namely, deprivation of personal liberty where the courts have always held that even if one ground of detention having failed, the impugned order of detention per se falls on the ground because it is not possible for the courts to determine as to what extent and in what manner the discarded ground had operated in the mind of the detaining authority. The contention of appellant is rejected.

8. L.P.A. No. 1829 of 2010 is hereby dismissed.

9. We now come to L.P.A. No. 1790 of 2010, arising out of C.W.J.C. No. 12990 of 2010, which is confined to the issue of transfer. The order of transfer is clearly separate from the order of punishment, and is a valid order. It was separately considered by the Establishment Committee. We, therefore, clarify that the impugned order of transfer from Araria to Ara Municipality will not be taken to be punitive in nature. L.P.A. No. 1790 of 2010, arising out of C.W.J.C. No. 12990 of 2010, is hereby dismissed. In the result, both the appeals as well as the writ petitions are dismissed. In the circumstances of the case, there shall be no order as to costs.