Bhupendra Kumar Vs State Of Bihar

Court: Patna High Court

Date of Decision: Dec. 11, 2023

Acts Referred: Constitution Of India, 1950 â€" Article 14, 226
Bihar Pension Rules, 1950 â€" Rule 43(b)
Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 â€" Rule 17(3), 17(4), 17(5), 17(6)

Hon'ble Judges: Harish Kumar, J

Bench: Single Bench

Advocate: Raju Giri, Harsh Vardhan, S.K. Mandal, Bipin Kumar

Final Decision: Allowed

Judgement

1. Heard Mr. Raju Giri, learned counsel for the petitioner and Mr. S.K. Mandal, learned counsel for the State.

2. The petitioner by invoking the prerogative writ jurisdiction of this Court under Article 226 of the Constitution of India seeking quashing of the Memo

No. 1178 dated 18.04.2022 issued by the Joint Secretary, Scheduled Caste and Scheduled Tribe, Welfare Department, Bihar, Patna, by which in

purported exercise of power under rule 43(b) of the Bihar Pension Rules, 1950 (hereinafter referred to as Ã¢â‚¬Ëœthe Rules, 1950Ã¢â‚¬â„¢) the pension of the

petitioner has reduced to 50%. The petitioner also sought a direction upon the respondent(s) to restore his full pension with all consequential benefits.

3. The necessary facts as gleaned from the records for the purposes of disposal of this case, is/are that while the petitioner was working in the

establishment office of the District Welfare Officer, Gaya, he had filed an application on 29.06.2017 before the District Welfare Officer, Gaya,

requesting for casual leave from 01.07.2017 to 05.07.2017 which was duly accepted and allowed. In the meantime, the District Magistrate, Gaya, vide

his letter no. 4834 dated 30.06.2017 directed the Deputy Development Commissioner, Gaya, to institute an FIR against certain persons, who were

involved in illegal disbursement of fund to fake colleges. By the said letter, it was directed to get the FIR instituted by the petitioner, who was working

as Sub Divisional Welfare Officer at Neem Chak Bathani, Gaya. It is the fact that, as the petitioner had taken casual leave, the FIR got instituted by

Block Welfare Officer, Town, Gaya on 01.07.2017.

4. Treating the aforesaid act, as disobedience on the part of the petitioner, a show-cause notice was issued by the Deputy Development

Commissioner, Gaya, on 01.07.2017.

5. In response to the aforesaid show-cause, the petitioner submitted his reply that from 01.07.2017 to 05.07.2017, he was on casual leave and he has

never been informed nor received any letter or direction to institute the FIR against the accused persons. He denied the allegation that in any manner

he had helped the culprits.

6. The Departmental Authorities on being dissatisfied with the explanation, has opined to initiated a departmental proceeding vide letter no. 5259 dated

16.07.2017.

7. On the basis thereof, a Memo of Charge(s) (Prapatra-Ka) was duly drawn on 18.12.2017 and the same has been communicated to the petitioner

vide letter no. 485 dated 22.02.2018 under the signature of the Joint Secretary, Scheduled Caste and Scheduled Tribe, Welfare Department, Bihar,

Patna, as contained in Annexure-8 to the writ petition. The Deputy Director, Welfare, Munger Division, Munger, was appointed as Enquiry Officer

and the District Welfare Officer, Gaya, as Presenting Officer.

8. The petitioner on receipt of the aforesaid Memo of Charge(s), submitted his reply before the Enquiry Officer (Annexure-12) and categorically

submitted that from 01.07.2017 to 05.07.2017, he was on casual leave, which was sanctioned on 29.06.2017 itself. In the aforesaid reply, he further

submitted that no order as such, to institute the FIR had ever been made available to him till 30.06.2017 or subsequent thereon. He has denied the

charge(s) that he anyhow misled the department or tried to extend help to the accused persons.

9. The Eqnuiry Officer, having found the charge(s) proved against the petitioner, submitted his enquiry report vide his letter no. 64 dated 25.02.2020 to

the Disciplinary Authority. In the meantime, the petitioner superannuated from his service on 31.01.2019 and consequently, the proceeding has been

converted under rule 43(b) of the Rules, 1950 vide Memo No. 1234-B dated 09.07.2020 (Annexure-B to the counter affidavit).

10. The second show-cause notice was issued by the Joint Secretary, Scheduled Caste and Scheduled Tribe, Welfare Department, Bihar, Patna,

which could not be replied by the petitioner, as the notice had been sent on the old address entered in his service book at the time of joining of his

service.

11. The Disciplinary Authority, on being satisfied with the enquiry report, passed the impugned order as contained in Memo No. 1178 dated

18.04.2022, inflicting the punishment of reduction of 50% of the pension of the petitioner.

12. The aforesaid order of punishment, had been communicated to the petitioner vide Memo No. 1178 dated 18.04.2022, the copy of which has been

marked as Annexure-16 to the writ petition.

13. While assailing the impugned order, Mr. Giri, learned counsel for the petitioner, submitted that the entire departmental proceeding suffers from

infraction of the mandatory provisions of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as

the Ã¢â‚¬Ëœ Rules, 2005Ã¢â‚¬â„¢) as well as Bihar Pension Rules, 1950. There is complete violation of rule 17 (3)(4) and (5) of the Rules, 2005. Neither any

oral nor any documentary evidence has been brought on record nor examined during the departmental proceeding nor proved the charge(s). The

respondent(s) have failed to appreciate that the petitioner did not receive the second show-cause notice, as it was not sent on proper address, which

was though already furnished by the petitioner. Thus, admittedly, there is a complete violation of the principles of natural justice and violative of Article

14 of the Constitution of India.

14. He further submitted that the impugned order came to be passed by the Disciplinary Authority without appreciating the fact that there was no

evidence before the Enquiry Officer to prove the charge(s) and the enquiry report leading to the punishment order was based upon only surmises and

conjectures. He went on submitting that it was the Enquiry Officer to examine the evidence presented by the Department even in absence of the

delinquent employee, but from the record, it explicits that neither any witness has been examined nor the documents have been proved. Heavy

reliance has been made on a judgment rendered by the Apex Court in State of Uttar Pradesh and others vs. Saroj Kumar Sinha, 2010 (2) SCC 772.

Further reliance has been made on a judgment rendered by the Apex Court in Roop Singh Negi Vs. Punjab National Bank reported in (2009) 2 SCC

570. He next submitted that the impugned order under rule 43(b) of the Rules, 1950 is further bad as there is no allegation against the petitioner that

any misconduct or negligence on his part, leading to pecuniary loss caused to the Government and, thus, the impugned order ought to be quashed and

cancelled. In support of his submissions, he further relied upon the judgments passed by the learned co-ordinate Benches of this Court in Ganesh

Prasad Yadav vs. State of Bihar & Ors. [2021(5) BLJ 256] and Md. Salauddin vs. State of Bihar & Ors. [2021 (3) BLJ 595].

15. Per contra, learned counsel for the State, submitted that despite the direction given to the petitioner vide Memo No. 4834 dated 30.06.2017 to

institute the FIR against the accused persons, who were found involve in illegal disbursement of fund to fake colleges, the petitioner has not obeyed

the direction of his superior officials and knowingly went on leave from the back date. That apart, the petitioner was issued show-cause vide Memo

No. 434 dated 01.07.2017 with a direction to file show-cause reply within twenty four hours, the same has been responded after a week on

08.07.2017. The explanation of the petitioner also did not find consideration for the reason that the petitioner has also been informed on his mobile on

01.07.2017 at 09:00 AM, but despite the information, he did not turn up to institute the FIR. The petitioner also failed to submit his second show-cause

reply and moreover the charge(s) levelled against him stood proved during the departmental enquiry, on the basis whereof, the final order came to be

passed. Thus, in any view of the matter, there is no infirmity in the departmental proceeding or in the impugned order.

16. This Court has carefully heard the submissions advanced on behalf of the learned counsels for the respective parties and also perused the

materials available on record.

17. Before coming to the merit(s) of the case, it would be apt to observe that admittedly, it is within the exclusive domain of the Disciplinary Authority

to consider the evidence on record and to record findings whether charge(s) stood proved or not. It is equally settled law that in judicial review, the

Court has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. It is trite law that the judicial review is

not an appeal from a decision but a review of the manner in which decision has been made. It is meant to ensure that delinquent receives fair

treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eyes of the Court/Tribunal (vide State of

Tamil Nadu and Another vs. S. Subramaniam, AIR 1996 SC 1232). Time without number, the highest Court of the land has held that the Court can

review to correct error(s) of law and fundamental procedural requirement, which may lead to manifest injustice and can interfere with the impugned

order, if need arises.

18. Now coming to the merit(s) of the case, admittedly, the Memo of Charge(s) does not contain the list of witnesses by whom the article of charge(s)

proposed to be sustained. Sub rules (3) (4) and (6) of rule 17 of the Rules, 2005 reads as follows:

Ã¢â‚¬Å“(3) Where it is proposed to hold an inquiry against a government servant under this Rule, the disciplinary authority shall draw up or cause to be

drawn up-

(i) the substance of the imputations of misconduct or misbehaviour as a definite and distinct article of charge;

(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain-

(a) a statement of all relevant facts including any admission or confession made by the Government Servant;

(b) a list of such document by which, and a list of such witnesses by whom, the articles of charge are proposed to be sustained.

(4) The disciplinary authority shall deliver or cause to be delivered to the Government Servant a copy of the articles of charge, such statement of the

imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall

require the Government Servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to

be heard in person.

x x x x x

(6) The disciplinary authority shall, where it is not the inquiring authority, forward the following records to the inquiring authority-

(i) a copy of the articles of charge and the statement of the imputations of misconduct or misbehaviour;

(ii) a copy of the written statement of defence, if any, submitted by the government servant:

(iii) a copy of the statement of witnesses, if any, specified in sub-rule (3) of this Rule.

(iv) evidence proving the delivery of the documents specified to in sub-Rule (3) to the Government Servant; and

(v) a copy of the order appointing the ""Presenting officer"".Ã¢â‚¬‹

19. The afore-noted provisions clearly explicits that where the Disciplinary Authority is proposed to hold an enquiry against a government servant

under this Rule and proposed to sustain the articles of charge(s) there must be witness(s) by whom the charge(s) are to be proved.

20. Learned counsel for the petitioner has rightly made reliance upon a judgment rendered by the Apex Court in Roop Singh Negi (supra) wherein it

has been held in paragraph nos. 14 and 15 which reads as under:

Ã¢â‚¬Å“14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges

levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into

consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against

all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The

management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer

on the FIR which could not have been treated as evidence.

15. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the enquiry officer was the purported

confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the

police station. The appellant being an employee of the Bank, the said confession should have been proved. Some evidence should have been brought

on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence.

The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the

basis that the offence was committed in such a manner that no evidence was left.Ã¢â‚¬â€‹

21. It is needless to observe that the aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice.

These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it.

The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely

(1) no one shall be a judge in his own case (Nemo debet esse judex propria causa) and (2) no decision shall be given against a party without affording

him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held

in good faith, without bias and not arbitrarily or unreasonably (vide A. K. Karaipak and Ors. vs. Union of India and Ors, AIR 1970 SC 150).

22. In the State of Uttar Pradesh (supra), highlighting the duties and obligations of the Enquiry Officer, the Apex Court has held in so many words that

an inquiry officer acting in a quasi-judicial proceeding is in the position of an independent adjudicator. His function is to examine the evidence

presented by the department, even in the absence of delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the

charges are proved.

23. It would be worth benefiting here to quote paragraphs 28 and 30 of the afore-noted judgment, which reads as follows:

Ã¢â‚¬Å“28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative

of the department/disciplinary authority/ Government. His function is to examine the evidence presented by the Department, even in the absence of

the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid

procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into

consideration to conclude that the charges have been proved against the respondents.

30. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also

cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to

ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is

treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.Ã¢â‚¬‹

24. Further it would also be worth noting here that rule 43(b) of the Rules, 1950 empowers the State Government to withhold or withdraw pension or

any part of it, whether permanently or a specified period on the contingencies of fact that any pecuniary loss causes to the government if the officer is

found in departmental or judicial proceeding to have been guilty of grave misconduct or to have caused pecuniary loss to the Government by

misconduct or negligence during his service including service rendered on re-employment after retirement.

25. Bare reading of the charge(s), it prima facie alleges that inspite of the direction of the District Magistrate, the petitioner did not institute the FIR

against the persons, who fraudulently made payment of scholarship amount and he had disobeyed the order of his superior and tried to save those

persons.

26. From the materials available on record, it appears that the petitioner had submitted his leave application on 29.06.2017, which was duly accepted

and allowed on 29.06.2017 itself. The letter which is made the very basis of initiation of departmental proceeding dated 30.06.2017 was issued by the

District Magistrate, Gaya, addressed to the Deputy Development Commissioner, Gaya, directing him to get the FIR instituted against the accused

persons by the petitioner, have never been communicated to the petitioner nor in pursuance thereof any consequential letter/direction has been given to

the petitioner. Moreover, the allegation on the part of the respondent(s) that the petitioner had taken leave from the back date, was neither proved nor

it was even charge. The reply of the petitioner is also to the effect that he was in the office on 30.06.2017 but he was never informed regarding any

direction issued by the higher authorities to get get the FIR instituted, all the more, it is admitted that the FIR has been instituted by the Block Welfare

Officer, Gaya, on 01.07.2017 itself. The Enquiry Officer also does not suggest that the department is able to prove the charge that the petitioner has

anyhow extended help to the accused persons or knowingly went on leave nor extend the help to those persons. Any inference drawn by the Eqniry

Officer is nothing but based on suspicion. Thus, it can safely be observed that suspicion howsoever strong cannot take the place of proof.

27. From the materials available on record, it is also evident that the second show-cause notice issued to the petitioner had been sent to his old address

entered in his service book at the time of joining his service, which has subsequently been changed and the present address is duly mentioned in his

pension paper book, nonetheless, the show-cause was sent to the old address. Thus, in absence of any acknowledgment of the receipt of the show-

cause notice, the stand of the petitioner that the second show-cause notice has never been served upon him, cannot be ignored, which makes further

proceeding in the departmental proceeding leading to the impugned order bad and not sustainable.

28. This Court also finds that the action of the petitioner which is termed as disobedience, neither lead to any pecuniary loss caused to the Government

nor the action of the petitioner in the facts and circumstances of this case, can be said to be grave misconduct. Thus, in that view of the matter also,

the impugned order inflicting the punishment of reduction of 50% pension of the petitioner shocks the conscience of this Court and held to be

disproportionate to the charge(s) proved in the departmental proceeding. Thus, on this count also, the impugned order is not sustainable in the eyes of

law.

29. In the aforesaid facts and circumstances and the position obtaining in law, the impugned order as contained in Memo No. 1178 dated 18.04.2022

issued by respondent no.3, the Joint Secretary, Scheduled Caste and Scheduled Tribe, Welfare Department, Bihar, Patna, is hereby set aside.

30. The respondent authorities are directed to ensure all the consequential benefits accruing on account of quashing of Memo No. 1178 dated

18.04.2022 to the petitioner, preferably within a period of twelve weeks from the date of receipt/production of a copy of this order.

31. The writ application stands allowed.