Jyotish Prasad Singh Vs State of Bihar and Others

Court: Jharkhand High Court

Date of Decision: May 10, 2012

Acts Referred: Constitution of India, 1950 â€" Article 14, 226

Citation: (2012) 3 JCR 12

Hon'ble Judges: P.P. Bhatt, J

Bench: Single Bench

Advocate: Ashutosh Anand and Amrendra Pradhan, for the Appellant; S.P. Roy for the State of Bihar and JC to AAG for the State of Jharkhand, for the Respondent

Final Decision: Allowed

Judgement

P.P. Bhatt, J.
Petitioner by way of filing this writ petition under Article 226 of the Constitution of India has prayed for issuance of

appropriate writ, order or direction for quashing the order under memo No. 2486 dated 2-09-1998 (Annexure-3) and also appellate order vide

memo No. 659 dated 14.06.2002 (Annexure-11). whereby and whereunder, punishment of recovery of Rs. 90,750/- from the salary of the

petitioner and also stoppage of promotion for five years from due date has been awarded. The fact in brief of the case is that the petitioner was

initially appointed as Engineering Assistant in February, 1970, and subsequently promoted to the post of Assistant Engineer on 22nd June, 1974.

Thereafter on due recommendation of Bihar Public Service Commission, petitioner was promoted to the post of Executive Engineer, w.e.f. 30th

June, 1987. When petitioner was posted as Executive Engineer, Tube Well Division, Motihari, he received a show cause, vide letter No. 22 dated

13.06.1990 with the allegation :

(i) Upto 10th on a/c bill, agreemented rate of Rs. 950/- was paid for excavation of 20, 35, 502 cft. of wet sand/clay and weathered rock but in

11th on a/c bill this rate was made applicable for only 992039 cft. and the balance quantity of 1043463 cft. was paid at enhanced rate of Rs.

1879/-per thousand cft. on the plea that disintegrated soft rocks were excavated by blasting but the basis for this enhanced rate was not clear and

also no record relating to blasting and account of explosive were made available.

(ii) During construction of Ajay Bar-raj vide agreement No. 87 F-2 (83-84) 1st to 26th on a/c bills by which 388996 cft. of hard rock was paid

and only 160171 cft. of hard rock was taken in surplus A/c. There was neither any a/c for rest 2,28,824 cft. hard rock nor, any consumption

statement for the same. Therefore payment of excavation of hard rock is found suspicious.

Flying squad reported that prima facie charges were proved hence petitioner was asked for reply. Petitioner replied for the show cause on

17.08.1990 with supporting documents and denied the allegation levelled against him.

After lapse of 8 years the petitioner was served with office order (Annexure 3) issued under Memo No. 2486 dated 02.09.1998 whereby

following punishment was passed :-

(i) Recovery of Rs. 72,750/- against the soft rock with blasting and Rs. 18,000/- against Hard rock at the rate of Rs. 2000/- per month. If the

recoverable amount is not recovered during the tenure of petitioner, then the same shall be recovered from the payable post retrial benefit.

(ii) Stoppage of promotion for five years.

Against the said impugned order petitioner preferred departmental appeal before respondent No. 2 on 03.02.1999 which was rejected vide memo

No. 659 dated 14.06.02.

2. The Learned counsel appearing for the petitioner contended that the Major punishment was passed against the petitioner without any

departmental proceeding and also he was not supplied with the report of flying-squad and his defence was not considered by the disciplinary

authority before passing the aforesaid punishment and same is a non-speaking order which is violative of Article 14 of the Constitution of India.

3. The Learned counsel for the respondent replied that on the allegation against the petitioner, the departmental flying-squad made due inquiry and

reported that the charge was found proved against the petitioner and thereafter petitioner was duly asked for show cause under Rule 55-A of Civil

Services (C.C. & A) Rules. In course of examination of reply, some clarification was required from the Flying-Squad and he further inquired at the

site and examined relevant documents in divisional office at Sikatia. He further contended that petitioner''s reply was considered at Govt. level and

charges were found proved, hence punishment was awarded. Petitioner''s appeal petition was also examined at Govt. level and thereafter it was

rejected. The petitioner was supplied with the relevant document as per Rule 55-A of Civil Services (C.C. & A) Rules. He did not ask for the

enquiry report of flying-squad hence the same was not supplied to him. He further replied that the impugned order is as per provisions of Rule 55-

A of Civil Service Code.

4. Considering the aforesaid rival submissions and on perusal of the materials on record, it appears that the petitioner has preferred this writ

petition under Article 226 of the Constitution of India being aggrieved and dissatisfied with the order dated 2-09-1998 passed by the disciplinary

authority inflicting following two punishments :

(i) Recovery of Rs. 72,750/- against the soft rock with blasting and Rs. 18,000/- against hard rock at the rate of Rs. 2000/- per month. If the

recoverable amount is not recovered during the tenure of petitioner, then the same shall be recovered from the payable post retiral benefits.

(ii) Stoppage of promotion for five years since due date.

It appears that being aggrieved and dissatisfied with the said order of punishment, petitioner preferred an appeal before the appellate authority but

the said appeal was also rejected. On perusal of the material on record, it appears that the inquiry proceedings were initiated by issuance of

charge-sheet dated 26.6.1990, whereas the disciplinary authority passed an order of inflicting punishment on 2-09-1998, meaning thereby, after

lapse of eight years. It also appears from the counter-affidavit filed by the respondents-State that decision of the disciplinary authority regarding

imposition of punishment was based on the findings recorded by the flying-squad. It also appears that the petitioner demanded/ asked for the

report of the flying-squad vide his communication dated"" 3.2.1999 (Annexure-4). It appears that though this document was specifically demanded

by the petitioner but the same was not supplied to the petitioner even before hearing of an appeal preferred by the petitioner. Therefore, I find

substance in the argument advanced by the learned counsel for the petitioner that the action of the respondents with regard to non-supply of flying-

squad report is in clear contravention of principles of natural justice. It is evident from the order passed by the disciplinary authority that the

disciplinary authority has passed an order mainly relying upon the findings recorded by the flying-squad and the inquiry officer as well as the

disciplinary authority have reached to the conclusion that the charges are proved against the petitioner, which were solely on the basis of findings

recorded by the flying-squad and therefore, in view of the principles of natural justice, it was incumbent upon the inquiry officer as well as

disciplinary authority to supply the copy of the flying-squad report during course of inquiry or before issuance of impugned order inflicting

punishment dated 2-09-1998 so as to give just and reasonable opportunity to the delinquent-petitioner to represent his case before the inquiry

officer, disciplinary authority as well as appellate authority but unfortunately, it emerges from the materials on record that no such report of the

flying-squad was ever supplied to the petitioner before the order passed by the disciplinary authority; moreover, when the petitioner came to

know, on receipt of the order passed by the disciplinary authority inflicting punishment, that the disciplinary authority had relied upon the findings

recorded by the flying-squad, he requested the authorities vide his communication dated 3.2.1999 (Annexure-4) but respondent-authorities did not

supply the said report of the flying-squad though it was specifically demanded by the petitioner. Thus there is reason to believe that the basic

requirement of supplying requisite material/document for the purpose of inquiry was not supplied to the petitioner and this Court is of the view that

only on this ground, the orders passed by the disciplinary authority as well as appellate authority are required to be quashed and set aside.

Argument advanced by the learned counsel for the respondent-State that concurrent findings of fact recorded by the disciplinary authority as well

as appellate authority are not required to be disturbed, cannot be accepted because both the orders were passed in clear contravention of

principles of natural justice, as discussed here-in-above. The scope of judicial review under writ jurisdiction is very limited but the situations and

circumstances where such intervention is called for is very much exit in the present case because the impugned orders, as discussed here-in-above,

are in clear contravention of principles of natural justice. Moreover, it also appears that one Naresh Mohan Prasad Verma, Works Manager,

working on deputation in the Bihar State Construction Corporation Limited, which is Government Corporation, constituted under the Water

Resources Department, Government of Bihar was looking after the construction work at Sikatia, Deoghar was also served with charge-sheet as it

has been served to the present petitioner and the said officer was also inflicted punishment as contained in order dated 2.9.1998 whereby a sum of

Rs. 1,81,500/- was ordered to be recovered from the salary of the said officer. Further a ban was imposed for promotion for five years, which is

almost similar to the punishment inflicted upon the present petitioner. The said officer also being aggrieved and dissatisfied with the order of

punishment, preferred an appeal but the said appeal was rejected and therefore, he preferred W.P.(S) No. 2986 of 2003 before this Court and

the copy of the order passed by this Court is placed on record by the learned counsel for the petitioner. On perusal of the said order passed by

this Court, it appears that in similar set of facts, this Court was pleased to quash and set aside the impugned orders passed against the said officer.

Difference between the petitioner of W.P.(S) No. 2986 of 2003 and the present petitioner is that present petitioner was working as Executive

Engineer under the respondents, whereas the petitioner of W.P.(S) No. 2986 of 2003 was working on deputation in the Bihar State Construction

Corporation Limited to whom the work was awarded to construct a barrage known as Ajay Barrage Project. It appears that both the officers

were facing charges In respect of the project known as Ajay Barrage Project. Another difference is that they belong to different establishments but

both the establishments are Government Establishments and both the officers were facing almost similar charges. Therefore, it can be said that the

case of the present petitioner is similar to that of Naresh Mohan Prasad Verma petitioner of W.P.(S) No. 2986 of 2003. As stated above, the said

petition was allowed and the impugned orders therein were ordered to be quashed and set aside, therefore, having similar facts, this writ petition is

also required to be allowed and the impugned orders are required to be quashed and set aside. In the present case also, upon hearing the learned

counsel for the parties and on perusal of the record, it appears that the disciplinary authority as well as appellate authority, while passing the orders

as contained in Annexure-3 dated 2-09-1998 as well as Annexure-11 dated 14.06.2002 did not take into account the explanation submitted by

the petitioner with proof that the payment was made towards soft rock cutting with blasting on the rate which had been approved by the competent

authority of the Department. It also appears that with respect to other allegation, explanations, which appear to be satisfactory, were given but

none of those explanations were ever taken into account while passing the impugned orders. Thus, on account of non-consideration of the

explanations, the impugned orders can certainly be said to be bad and illegal and hence, the same are required to be quashed and set aside.

Learned counsel for the petitioner in support of his submission referred to and relied upon the judgment in the case of Bengali Prasad Sinha v.

State of Bihar & others, reported in 1996(1) PLJR 59 as well as another judgment in the case of Mohan Lal Seth & others v. State of Jharkhand

& others, reported in 2006 (4) JCR 342 (Jhr).

I have perused the judgments referred to and relied upon by the learned counsel for the petitioner.

It appears that while delivering the aforesaid two judgments, judgments reported in Awadh Kishore Tiwari (since deceased) by L.Rs. Vs.

Damodar Valley Coporation, Calcutta and another, as well as Prasan Kumar Nayak and Others Vs. State of Jharkhand and Others, have been

relied upon.

It has been held by the Apex Court that penalty with regard to withholding of increment and deduction from the salary being major punishment, this

cannot be inflicted without holding departmental proceeding.

Paragraph Nos. 2 & 3 of the Mohan Lal Seth''s case (supra) are reproduced here-in-below :

2. One of the affected person, namely, Prasan Kumar Nayak has earlier challenged this order in W.P.(S) No. 5816 of 2003. This writ petition

was allowed by this Court vide judgment dated 10th of August. 2005 reported in Prasan Kumar Nayak and Others Vs. State of Jharkhand and

Others, while allowing this writ petition following order was passed :

5. It is, therefore, clear that even before giving show-cause notice calling for explanation, the punishment of withholding five increments was

recommended by the Committee and in compliance of the aforesaid recommendation a formality was done by calling for explanation from the

petitioners. No full-fledged inquiry much less a departmental inquiry was conducted before passing such an order of punishment. I, therefore,

without going Into the other questions with regard to competency of respondent No. 3 to issue impugned order, hold that the impugned order has

been passed arbitrarily and in violation of principles of natural justice.

6. For the aforesaid reasons, this writ petition is allowed and the impugned order is quashed. However, this order will not come in the way of the

competent authority to proceed in accordance with law before imposing any punishment upon the petitioners.

3. Since the order impugned has already been quashed in the earlier judgment, the direction contained, therein, shall govern the case of the

petitioners also. This writ petition is, accordingly, disposed of in terms of the aforesaid judgment in the case of Prasan Kumar Nayak and Others

Vs. State of Jharkhand and Others, .

Judgment in the case of Bengali Prasad Sinha v. State of Bihar & others, reported in 1996 (1) PLJR 59 is also reproduced here- in-below :

Heard learned counsel for the petitioner and the State respondents. In this writ application, the petitioner has challenged the order, dated

1.12.1994 by which a major punishment by way of withholding five annual increments of the petitioners with commulative effect has been inflicted

on him, besides an order of deduction of Rs. 1,500/- per month till recovery of Rs. 15,000/- including an adverse entry in his service record.

Accordingly, learned counsel for the petitioner submits that this is a major punishment in terms of Rule 55 of the Civil Services (Classification,

Control and Appeal) Rules, 1930 and, as such, the impugned order could not have been passed without initiating a departmental proceeding

against the petitioner. In support of his contention, learned counsel for the petitioner has relied upon a decision of the Supreme Court in the case of

Awadh Kishore Tiwari (since deceased) by L.Rs. Vs. Damodar Valley Coporation, Calcutta and another, , wherein it has been held that such

major punishment cannot be inflicted without holding the departmental proceeding. It is stated that a counter-affidavit has been filed on 8.9.1995,

but the same is not placed on the record. However, learned counsel, appearing on behalf of the State, has produced a copy of the same

wherefrom it appears that the statement to the effect that the impugned order has been passed without initiating a departmental proceeding against

the petitioner has not been controverted nor the same is being denied in course of his argument. Withholding of increments with commulative effect

has been held to be the major punishment. In this view of the matter, the order, dated 1.12.1994, as contained in Annexure-1 to this writ

application, is hereby quashed. This writ application is, accordingly, allowed.

In the case of Raj Kumar Mehrotra v. State of Bihar and others, reported in (2005) 12 SCC 256, Hon''ble Supreme Court in para-5 has

observed as under :

5. Without going into other issues raised, we are of the view that the impugned order of the respondent authority imposing punishment on the

appellant cannot be sustained. Even if we assume that Rule 55-A which pertains to minor punishment was applicable and not Rule 55 which relates

to major punishments, nevertheless Rule 55-A requires that the punishment prescribed therein cannot be passed unless the representation made

pursuant to the show-cause notice, has been taken into consideration before the order is passed. There is nothing in the impugned order which

shows that any of the several issues raised by the appellant in his answer to the show-cause notice were, in fact, considered. No reason has been

given by the respondent authority for holding that the charges were proved except for the ipse dixit of the disciplinary authority. The order,

therefore, cannot be sustained and must be and is set aside.

Ratio laid down in the aforesaid judgments is very much relevant and applicable to the facts of the present case because in the present case also,

the petitioner was given show-cause dated 13.06.1990 and in response to the said show-cause, petitioner submitted his reply and after lapse of

eight years, the disciplinary authority straightway issued an order, inflicting punishment of recovery of Rs. 90,750/- from the salary of the petitioner

and also stoppage of promotion for five years from the due date. It also appears that no regular departmental inquiry has been conducted; there is

no report of the inquiry officer on record to show that the regular departmental inquiry was conducted in the present case. It also appears that the

disciplinary authority has passed an order inflicting punishment of recovery as well as stoppage of promotion for five years on the basis of report of

the flying-squad. It also appears that the disciplinary authority has not stated anything or referred in its order about the report submitted by the

inquiry officer or the findings recorded by the inquiry officer. The quantum of punishment has been decided on the basis of findings recorded by the

flying-squad. It also appears that the copy of the said flying-squad report was never supplied to the petitioner, though it was specifically demanded.

It appears that regular departmental inquiry has not been conducted in the present case and therefore, the facts of the present case are squarely

covered by the judgments referred to and relied upon by the learned counsel for the petitioner.

5. In view of the facts, and circumstances discussed here-in-above and in the light of the principles laid down in the aforesaid judgments, this Court

is of the view that the impugned orders dated 2-09-1998 (Annexure-3) as well as dated 14.06.2002 (Annexure-11) are required to be quashed

and set aside. Accordingly, the same are hereby ordered to be quashed and set aside. In view of the above, this writ petition is allowed.