

(2014) 01 JH CK 0094

Jharkhand High Court

Case No: W.P.(S) No. 2863 of 2012, I.A. No. 219 of 2012, I.A. Nos. 4684 and 8251 of 2013

Gopi Nandan Prasad

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision: Jan. 16, 2014

Acts Referred:

- Constitution of India, 1950 - Article 311(2)

Citation: (2014) 140 FLR 1061

Hon'ble Judges: S. Chandrashekhar, J

Bench: Single Bench

Advocate: Jai Shankar Tripathy, Advocate for the Appellant; Ram Prakash Singh, J.C. to G.P. II, Advocate for the Respondent

Judgement

S. Chandrashekhar, J.

LA. No. 219 of 2013

1. This application has been filed under a misconception by the learned Counsel for the petitioner. As order dated 17.4.2012 has already been challenged by the petitioner in the writ petition, there was no occasion for filing LA. No. 219 of 2013 seeking permission from the Court to challenge order dated 17.4.2012.

W.P. (S) No. 2863 of 2012

Heard the learned Counsel appearing for the parties and perused the documents on record.

2. The petitioner was appointed on 27.8.1984. A departmental proceeding was initiated against the petitioner vide resolution dated 23.5.2009. Subsequently, the enquiry officer was changed and a new enquiry officer was appointed and the departmental proceeding continued by order contained in memo dated 21.12.2011. An enquiry report was submitted on 27.2.2012 finding the charges framed against

the petitioner not proved. A second show-cause notice was issued to the petitioner on 14.3.2012 and the final order dated 17.4.2012 withholding two annual increments with cumulative effect, was passed.

3. A counter-affidavit has been filed stating that as the disciplinary authority decided to disagree with the findings recorded by the enquiry officer, a show-cause notice was issued to the petitioner and after considering the reply submitted by the petitioner, the final order dated 17.4.2012 has been passed. The relevant paragraph of the counter-affidavit is extracted below:

7. That is most humbly stated and submitted that the answer to the above queries made by the Hon"ble Court is as follows:

(i) The enquiry officer had exonerated the delinquent officer of all the charges framed against him. However, the disciplinary authority differed from the enquiry officer on charge Nos. 2 and 3. These two charges related to lifting and distribution of rice under Annapurna Scheme between February, 6 to March, 6 for which hundred per cent utilization report was submitted on 21.9.2007 by the delinquent in his capacity as in charge of Hussainabad Anchal. On his own admission, he has accepted that he had merely forwarded the report of the Circle Inspector, Hussainabad without ascertaining its authenticity. This makes the delinquent guilty of lifting of rice and its distribution under Annapurna Scheme for which he had been given clean chit by the Enquiry Officer.

(ii) As for the 2nd query, it is most humbly stated and submitted that the delinquent had been issued second show cause underlining therein the point of difference as to charge Nos. 2 and 3 with the Enquiry Officer. The report of the enquiry officer and all relevant evidences were also enclosed with it and sent to the delinquent affording him opportunity of defense.

4. The learned Counsel appearing for the petitioner has submitted that, the Enquiry Officer submitted a report on 27.2.2012 finding the charges framed against the petitioner not proved however, the second show-cause notice dated 14.3.2012 does not indicate the reasons of disagreement with the findings recorded by the enquiry officer and therefore, the final order dated 17.4.2012 is liable to be interfered with on the ground of violation of principles of natural justice.

5. Mr. Ram Prakash Singh, J.C. to G.P. II, appearing for the respondent-State of Jharkhand has submitted that, the second show-cause notice dated 14.3.2012 would indicate that, during the enquiry proceeding sufficient evidences in support of charge Nos. 2 and 3 were brought on record and therefore, the disciplinary authority decided to disagree with the findings recorded by the enquiry officer and passed the final order dated 17.4.2012.

6. A perusal of the second show-cause notice indicates that during the departmental proceeding, evidence in support of charge Nos. 2 and 3 was brought on record and

therefore, the disciplinary authority decided to disagree with the findings recorded by the Enquiry Officer. The law on the issue is well settled. The disciplinary authority when decides to disagree with the findings recorded by the Enquiry Officer, is under a duty to record reasons for disagreeing with the findings recorded by the Enquiry Officer. In the present case, it is not indicated from the second show-cause notice dated 14.3.2012 that what is the evidence which was erroneously not considered by the Enquiry Officer and therefore, the disciplinary authority decided to disagree with the findings recorded by the Enquiry Officer. Merely stating that there is evidence in support of the charge is not sufficient. Unless specific evidence is brought to the notice of the delinquent employee, he" would not be able to make an effective representation. The second show-cause notice dated 14.3.2012 does not indicate any other ground, for disagreement with the findings recorded by the Enquiry Officer and therefore, I am of the opinion that the final order dated 17.4.2012 cannot be sustained in law.

7. In [Yoginath D. Bagde Vs. State of Maharashtra and Another](#), the Hon"ble Supreme Court has held as under:

31. ...If the findings recorded by the Enquiry Officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the disciplinary authority has proposed to disagree with the findings of the Enquiry Officer. This is in consonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the disciplinary authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the disciplinary authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent upto the final stage...

8. In [Punjab National Bank and Others Vs. Sh. Kunj Behari Misra](#), . the Hon"ble Supreme Court has held as under:

17. ...The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the Enquiring Officer holds the charges to be proved, then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent

officer. When, like in the present case, the enquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings, what is of ultimate importance is the finding of the disciplinary authority.

9. In [S.P. Malhotra Vs. Punjab National Bank and Others](#), the Hon"ble Supreme Court has observed as under:

16. The view taken by this Court in the aforesaid Kunj Behari Misra case has consistently been approved and followed as is evident from the judgments in *Yoginath D. Bagde v. State of Maharashtra*, *SBI v. K.P. Narayanan Kutty*, *J.A. Naiksatam v. High Court of Bombay*, *P.D. Agrawal v. SBI* and *Ranjit Singh v. Union of India*.

10. In the result, the impugned order dated 17.4.2012 is hereby quashed. The matter is remitted back to the disciplinary authority for deciding the matter afresh after giving fresh show-cause notice to the petitioner indicating the reasons for disagreement with the findings recorded by the Enquiry Officer. This writ petition is disposed of in the aforesaid terms. All I.As. are consequently disposed of.