(2010) 08 PAT CK 0181

Patna High Court

Case No: CWJC No. 16506 of 2004

Md. Hanif Khan		APPELLANT
	Vs	
The State of Bihar and Others		RESPONDENT

Date of Decision: Aug. 13, 2010

Acts Referred:

- Bihar Service Code, 1952 - Rule 97(3)

Citation: (2011) 2 PLJR 599

Hon'ble Judges: Ajay Kr. Tripathi, J

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Ajay Kr. Tripathi, J.
Heard learned Counsel for the parties.

2. The order of punishment has come to visit the Petitioner which he has decided to challenge in the present writ application. The order of punishment is dated 7.10.1987 which has been annexed as Annexure-2 to the writ application.

3. Two kinds of punishment has been imposed upon the Petitioner one, reversion to the post of literate constable for a period of three years and the second is non-payment of salary and other allowances to the Petitioner for the period of suspension except the subsistence allowance.

4. The punishment order has come to be challenged now in the present writ application because the Petitioner had earlier challenged the two orders of punishment which came to visit him in a common writ application. In the earlier writ application learned Single Judge quashed one of the orders of punishment and remanded the matter for fresh enquiry. But so far the present order of punishment contained in Annexure-2 is concerned, Petitioner was given liberty to file or

challenge it in yet another writ application. The order of learned Single Judge passed in the earlier writ application is dated 3.9.2004 and that is the reason why 1987 order of punishment is being challenged now.

5. There are two submissions made assailing the order, both on the count of quantum and the manner in which the punishment has been imposed. Submission of learned Counsel is that the Petitioner was charged on five counts. Enquiry was held by the enquiry officer and, on those charges, he opined that the Petitioner was not guilty on any of the counts. Except one count i.e. misbehaviour with his colleague, other charges related to unauthorized absence of the Petitioner from duty.

6. The enquiry officer in so far as the charge of absence is concerned has categorically recorded that all the absence of the Petitioner has been regularized by grant of various kinds of leave which was available to him and once the competent authority allowed those leaves to be adjusted against his absence it no longer remained unauthorized. If he was not covered by those sanctioned leave then the question would have been otherwise.

7. On the count of misbehaviour there was no clear evidence against the Petitioner and the witness did not support the matter to the extent where the Petitioner could be held to be guilty of that charge.

8. The disciplinary authority however disagreed with the findings and he gave a notice of disagreement with the reason for disagreement. The primary reason given in the notice of disagreement is that merely because leave was authorized it does not make the absence of the Petitioner to be without the sanction of the authority concerned. The authorization of leave was a subsequent event but absence of the Petitioner was an issue, against which he can be proceeded. The exoneration of the Petitioner by the enquiry officer therefore was wrong. He also held that there is evidence that there was exchange of words between the Petitioner and the colleague. But what actually transpired ought to have been thoroughly examined by the enquiry officer. Since it was not done it cannot be presumed that the Petitioner had not misbehaved.

9. Learned Counsel for the Petitioner is correct in saying that disagreement is based more on inference and perverse logic rather than actual material for disagreement. The issue of the Petitioner being unauthorisedly absent no longer remained an issue if the competent authority had regularized that period by grant of leave to the Petitioner. It was open for the concerned authority not to authorise that leave later, on the ground that the Petitioner was habitual in absenting and disappearing from duty and that he was not entitled for the benefit of regularization of the period of absence. But to hold after regularization of leave that the period of absence to be without authority would be doing violence to a benefit which had already accrued in favour of the Petitioner, by action of the Respondents themselves. A charge cannot

be proved on the basis of inference. There has to be categorical evidence to pronounce a person guilty of what he had been charged with.

10. Obviously the above element and components are missing from the order of disagreement or the notice issued by the disciplinary authority. If it is so then the punishment cannot be based merely because the disciplinary authority chose to disagree with the finding recorded by the enquiry officer. This part of the reasoning will be available for both the punishments which came to be imposed against the Petitioner.

11. Learned Counsel brings to my notice a Division Bench decision rendered in the case of Dinesh Prasad Vs. State of Bihar and Others, for the proposition that the second punishment of withholding the payment of salary and other allowances for the period of suspension except the subsistence allowance cannot be passed without taking recourse to Rule 97 (3) of the Bihar Service Code. There is no evidence on record to show that the provision of Rule 97 (3) was pressed into service before imposing the second punishment upon the Petitioner. Non-compliance of the procedure laid down in Rule 97 (3) of the Bihar Service Code would require interference with such an order.

12. Learned Counsel representing the Respondents submits that in a short span of time of service nine kinds of punishments have came to be imposed upon the Petitioner for similar kind of indiscretion in the past and the disciplinary authority has taken note of such a fact before imposing the punishment. The punishment order has been based taking into consideration the service record of the Petitioner which is not complementary to the Petitioner in any manner.

13. The Petitioner is not being punished for earning nine punishments in the past. The punishment is for the current set of charges. Once a punishment is imposed the matter comes to rest. Past punishment cannot be made a ground to impose punishment in the present proceeding. The Petitioner has been punished for a new set of charges for which enquiry was held. There was no finding of guilt by the enquiry officer and so-called material for disagreement and reason given by the disciplinary authority is erroneous and misplaced.

14. For the reasons as above this writ application is allowed and the order of punishment contained in Annexure-2 dated 7.10.1987 stands quashed.