Bipin Kumar Singh Vs The State of Bihar and Others

Court: Patna High Court

Date of Decision: April 27, 2007

Citation: (2008) 3 PLJR 320

Hon'ble Judges: Barin Ghosh, J

Bench: Single Bench

Advocate: Shivajee Pandey and Nasin, for the Appellant; Arun Kr. Tiwari for the State, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Barin Ghosh, J.
Working as Assistant Jailor, the petitioner was posted during the relevant time at Bagaha Sub-Jail. As such Assistant

Jailor, the petitioner was in-charge of the day to day affairs of the said Sub-Jail. On 24th September, 1998 the petitioner wrote a letter to his

higher authorities asking for more men to guard the said Sub-Jail. On 16th March, 1999 the petitioner wrote yet another letter to his higher

authorities stating that in view of paucity of manpower he is facing difficulty in honouring the mandate of keeping the outer gate of the jail locked up.

On 5th June, 1999 the petitioner wrote yet another letter to his higher authorities and thereby contended that the manpower strength of the said

Sub-Jail has dwindled down to almost half of the sanctioned strength and as a result, he is facing difficulty. On 29th June, 1999, eleven under trial

prisoners escaped from the said Jail. One of them facilitated such escape by wielding a gun. This gentleman was produced in court on the date of

escape while he also received 10 kilograms of Aata. On 5th August, 1999 a chargesheet was issued to the petitioner which contained three

separate charges. The first charge was failure on the part of the petitioner in keeping the outer gate of the said jail locked up. The second charge

was that the body of the said prisoner was not appropriately searched when he returned after having been produced before the Court and at the

same time the bag carrying 10 kilograms of Aata was also not appropriately searched, which facilitated smuggling of the gun into the jail premises.

The third charge was that the prisoners were required to be taken indoors by 6 O"clock in the evening but they were taken indoors in the said jail

at 6.45 in the evening.

2. The petitioner gave a reply to :he show cause. In the show cause he purported to blame inadequate manpower and excess of prisoners as the

reasons for occasion of the incidents being the foundation of the said charges. The matter was then enquired into by an Enquiry Officer. The

Enquiry Officer found as a fact, which is also not being disputed in the instant writ petition that the escapees escaped from the front gate when the

same was unlocked. The Enquiry Officer held that due to unavailability of adequate manpower the front gate could not be kept under lock and on

that ground exonerated the petitioner of the said charge. The Enquiry Officer found as a fact that by a letter the petitioner had instructed all his

subordinates then working in the Jail to ensure that the body of all prisoners entering the prison as well as every goods entering the prison should

be thoroughly checked up and the said instruction was acknowledged in writing by each of the subordinate employees of the said jail. The Enquiry

Officer felt that in the circumstances whatever the petitioner could do having been done, the cannot be made personally liable for smuggling of the

gun inside the jail either through the body of that prisoner or through the bag containing 10 kilograms of Aata destined to him. In relation to the

third charge, the Enquiry Officer found as a fact that the jail housed more prisoners than its capacity. The Enquiry Officer found that because of

such increased number of prisoners, it takes longer time to conclude countdown and also Ipnger time to prepare their meals. The Enquiry Officer

found that during the summer months, sun sets later and accordingly held that taking the prisoners in-house at 6.45 PM is not a serious charge.

3. Under cover of a letter dated 22nd June, 2000, the disciplinary authority while forwarded to the petitioner a copy of the enquiry report, it

disagreed with the opinion of the Enquiry Officer. The reasons for disagreeing were that in relation to Charges 1 & 3 there were clear cut

instructions and there is admission of violation of those instructions and accordingly in relation to those charges, the disciplinary authority is not ad

idem with the opinion of the Enquiry Officer. In so far as Charge No. 2 is concerned, the disciplinary authority opined that the petitioner being the

highest supervisory officer of the Jail in question, he could not disown his responsibility only by issuing instructions to his subordinates as was done

by him.

4. Petitioner then gave a reply and thereby sought to contend that the opinion as expressed by the disciplinary authority contrary to the opinion of

the Enquiry Officer is not justified. The efforts so made by the petitioner was, however, of no use inasmuch as the disciplinary authority imposed

punishment upon the petitioner by the order impugned in the writ petition and the appeal preferred against that order by the petitioner having been

rejected, the petitioner has approached this Court by filing the present writ petition seeking to quash the order of the disciplinary authority as well

as of the appellate authority.

5. In this writ petition the petitioner is seeing to urge principally two points, firstly that on the facts of the case as found by the Enquiry Officer, the

petitioner cannot be made responsible for any of the incidents being the foundation of the said charges and secondly the order passed by the

disciplinary authority as well as the appellate authority are bereft of any reason.

6. It was contended that the fact that the jail was facing difficulty due to shortage of manpower having come on record, the Enquiry Officer

correctly held that for not keeping the outer gate of the jail locked up, the petitioner cannot be made responsible. It was also urged that having

regard to the facts found by the Enquiry Officer that the jail was overloaded with prisoners, slight delay in putting the prisoners in-house is not such

a conduct which can be deemed as misconduct resulting in initiation of a disciplinary proceeding and punishment for such conduct. It was also

urged that the Enquiry Officer found as a fact that the petitioner did his best by telling all his subordinate officers and employees that everything

coming inside the jail premises and every person coming in the jail as a prisoner must be thoroughly checked but if despite such instructions his

subordinates did not do it, the petitioner cannot be blamed therefore. It was contended that these are the points which had been highlighted by the

petitioner while giving reply to the letter of the disciplinary authority dated 22nd June, 2000 but unfortunately the disciplinary authority has not

bothered to give reasons why these points as highlighted by the petitioner are inadequate. It was contended that the order of the appellate authority

would amply demonstrate that the same was passed mechanically without application of mind, for not one single reason has been indicated in the

said order as to why the grounds taken by him in the appeal are inadequate.

7. The learned counsel appearing in support of the writ petition cited a judgment of the Division Bench of this Court in the case of Chandradip

Sinha Vs. State of Bihar and Others, for the proposition that an order imposing punishment under Rule 55A of the Civil Services {Classification,

Control and Appeal) Rules must disclose application of mind by the disciplinary authority to the facts of the case and the reasons for conclusion. It

was contended that the impugned order of the disciplinary authority as confirmed by the appellate authority having disclosed no reasons for

conclusion, makes it clear that there was no application of mind by the disciplinary authority.

8. In order to ascertain whether there had been application of mind by the disciplinary authority, every conduct of the disciplinary authority in the

disciplinary proceeding is required to be taken note of. If after having had issued the charge-sheet, the disciplinary authority on the basis of the

enquiry report passes the punishment order, the reasons given in the enquiry report must be deemed to be incorporated in the punishment order. In

the event the Enquiry Officer has exonerated the delinquent, but despite such exoneration, the disciplinary authority imposes punishments

straightway, that would amply demonstrate that there was totally non-application of mind by the disciplinary authority. When, however, the

disciplinary authority discloses the reasons why he is seeking to differ from the opinion of the Enquiry Officer it must be gathered whether the

reasons so given do disclose application of mind by the disciplinary authority. If the delinquent gives a reply to the reasons given by the disciplinary

authority while differing from the opinion of the Enquiry Officer and if the points highlighted in the reply are such that the same would amply

demonstrate that the opinion expressed by the disciplinary authority while differing from the Enquiry Officer is ex facie inappropriate, but while

passing the punishment order the disciplinary authority has not indicated reasons why those points are not applicable, surely it may be concluded

that there is no application of mind by the disciplinary authority. Therefore, to my mind in order to see whether there was application of mind by the

disciplinary authority one is required to look into the charge-sheet, the enquiry report, the opinion of the disciplinary authority differing from the

Enquiry Officer, the reply thereto as well as the punishment order and not the punishment order alone. If all these things are taken note of, in the

facts and circumstances of this case, I do not think it can be said that there was non-application of mind by the disciplinary authority. The charge-

sheet in so far as the first and third charges were concerned were complaints of violation of directions issued in the Jail Manual. There is no dispute

that the Jail Manual did contain such directions. There is also no dispute that those directions were, in fact, violated. The petitioner wanted to justify

such violation. The question is, can such justification be accepted in law? When an officer of the Government is directed by a Rule to do a thing in

a particular manner, can any justification authorizes him not to do the same? I do not think so. The second charge was with regard to his failure to

supervise that his subordinates were checking goods and people coming inside the Jail premises. The petitioner did prove that in fact he had

instructed all his juniors to do that, but he did not make any attempt either in his reply of the chargesheet or in his reply to the letter by which the

disciplinary authority differed from the opinion of the Enquiry Officer that after issuing such instructions he ever made any attempt to ascertain

whether his subordinates were carrying out his instructions.

9. In the circumstances a prudent person on the records before him could only opine in the manner the disciplinary authority ultimately opined. On

such opinion it cannot be said ""that a prudent person could not impose punishment to the extent it had been imposed by the order of the

disciplinary authority, it is true that the appellate authority has not given elaborate reasons for it is not expected that they would give elaborate

reasons but if the reasons are already on the materials considered, I do not think for not furnishing such reasons, the appellate order can be

interfered with. The writ petition accordingly fails and the same is dismissed.