

Surendra Prasad Vs. State of Jharkhand

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Court : Jharkhand

Decided On : Mar-18-2017

Appellant : Surendra Prasad

Respondent : State of Jharkhand

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S) No. 3124 of 2011 with W.P.(S) No. 3125 of 2011 with W.P.(S) No. 3126 of 2011 with W.P.(S) No. 3132 of 2011 with W.P.(S) No. 3134 of 2011 Virendra Kumar Ojha, Son of Late Dhurwa Narayan Ojha, Resident of Court More, Hirapur, P.O. & P.S. Hirapur, District Dhanbad. Petitioner (in W.P.(S) No. 3124 of 2011) Narendra Prasad Singh, Son of Late Jang Bahadur Singh, Resident of Gali No.2, Sri Krishna Puri, P.O. & P.S. Matwari, District Hazaribag. Petitioner (in W.P.(S) No. 3125 of 2011) Surendra Prasad, Son of Late Nanhku Sao, Resident of Gali No.9, Professors Colony, Cheeragora, P.O. & P.S. Cheeragora, District Dhanbad. Petitioner (in W.P.(S) No. 3126 of 2011) Ratneshwar Das, Son of Late Batoran Das, Resident of near Durga Mandir Khas Nirsa, P.O. & P.S. Nirsa, District Dhanbad. Petitioner (in W.P.(S) No. 3132 of 2011) Mirtunjay Kumar, Son of Late Deo Narayan Prasad, Resident of Road No.4, Kesharinagar, P.O. & P.S. Kesharinagar, District Patna-24. Petitioner (in W.P.(S) No. 3134 of 2011) Versus 1. The State of Jharkhand.

2. The Secretary, Road Construction Department, Govt. of Jharkhand, officiating at Project Building, HEC Township, Dhurwa, P.O. & P.S. Jagarnnathpur, Dist-Ranchi.

3. The Deputy Secretary, Road Construction Department, Govt. of Jharkhand, officiating at Project Building, HEC Township, Dhurwa, P.O. & P.S. Jagarnnathpur, Dist-Ranchi.

4. The Engineer-in-Chief, Road Construction Department (PWD), officiating at Project Building, HEC Township, Dhurwa, P.O. & P.S. Jagarnnathpur, Dist-Ranchi.

5. The Executive Engineer, Area Survey Division, Advance Planning, Dumka, P.O. & P.S. & Dist-Dumka.

6. The Additional Secretary, Road Construction Department, Govt. of Jharkhand, officiating at Project Building, HEC Township, Dhurwa, P.O. & P.S. Jagarnnathpur, Dist-Ranchi. . Respondent (in W.P.(S) No. 3124 of 2011) 1. The State of Jharkhand.

2. The Secretary, Road Construction Department, Govt. of Jharkhand, officiating at Project Building, HEC Township, Dhurwa, P.O. & P.S. Jagarnnathpur, Dist-Ranchi.

3. The Deputy Secretary, Road Construction Department, Govt. of Jharkhand, officiating at Project Building, HEC Township, Dhurwa, P.O. & P.S. Jagarnnathpur, Dist-Ranchi. 2 4. The Engineer-in-Chief, Road Construction Department (PWD), officiating at Project Building, HEC Township, Dhurwa, P.O. & P.S. Jagarnnathpur, Dist-Ranchi.

5. The Executive Engineer, Road Circle, Hazaribagh P.O., P.S. & Dist-Hazaribagh.

6. The Additional Secretary, Road Construction Department, Govt. of Jharkhand, officiating at Project Building, HEC Township, Dhurwa, P.O. & P.S. Jagarnnathpur, Dist-Ranchi. . Respondent (in W.P.(S) No. 3125 of 2011) 1. The State of Jharkhand.

2. The Secretary, Road Construction Department, Govt. of Jharkhand, officiating at Project Building, HEC Township, Dhurwa, P.O. & P.S. Jagarnnathpur, Dist-Ranchi.

3. The Deputy Secretary, Road Construction Department, Govt. of Jharkhand, officiating at Project Building, HEC Township, Dhurwa, P.O. & P.S. Jagarnnathpur, Dist-Ranchi.

4. The Engineer-in-Chief, Road Construction Department, (PWD) officiating at Project Building, HEC Township, Dhurwa, P.O. & P.S. Jagarnnathpur, Dist-Ranchi.

5. The Executive Engineer, Road Construction Division, Deoghar, officiated at Satsang Nagar, P.O. & P.S. Satsang Nagar, Dist-Deoghar.

6. The Additional Secretary, Road Construction Department, (PWD) Govt. of Jharkhand, officiating at Project Building, HEC Township, Dhurwa, P.O. & P.S. Jagarnnathpur, Dist-Ranchi. . Respondent (in W.P.(S) No. 3126 of 2011) 1. The State of Jharkhand.

2. The Secretary, Road Construction Department, Govt. of Jharkhand, officiating at Project Building, HEC Township, Dhurwa, P.O. & P.S. Jagarnnathpur, Dist-Ranchi.

3. The Deputy Secretary, Road Construction Department, Govt. of Jharkhand, officiating at Project Building, HEC Township, Dhurwa, P.O. & P.S. Jagarnnathpur, Dist-Ranchi.

4. The Engineer-in-Chief, Road Construction Department (PWD), officiating at Project Building, HEC Township, Dhurwa, P.O. & P.S. Jagarnnathpur, Dist-Ranchi.

5. The Executive Engineer, Road Division, Dumka, P.O. & P.S. & Dist- Dumka.

6. The Additional Secretary, Road Construction Department, Govt. of Jharkhand, officiating at Project Building, HEC Township, Dhurwa, P.O. & P.S. Jagarnnathpur, Dist-Ranchi. . Respondent (in W.P.(S) No. 3132 of 2011) 1. The State of Jharkhand.

2. The Secretary, Road Construction Department, Govt. of Jharkhand, officiating at Project Building, HEC Township, Dhurwa, P.O. & P.S. Jagarnnathpur, Dist-Ranchi.

3. The Deputy Secretary, Road Construction Department, Govt. of Jharkhand, officiating at Project Building, HEC Township, Dhurwa, P.O. & P.S. Jagarnnathpur, Dist-Ranchi.

4. The Engineer-in-Chief, Road Construction Department (PWD), officiating at Project Building, HEC Township, Dhurwa, P.O. & P.S. Jagarnnathpur, Dist-Ranchi.

5. The Executive Engineer, Road Division, Kodarma, P.O. & P.S. & Dist-Kodarma. 3 6. The Additional Secretary, Road Construction Department, Govt. of

Jharkhand, officiating at Project Building, HEC Township, Dhurwa, P.O. & P.S. Jagarnnathpur, Dist-Ranchi. . Respondent (in W.P.(S) No. 3134 of 2011) -----

CORAM: HONBLE MR. JUSTICE PRAMATH PATNAIK ----- For the Petitioners : M/s Rajiv Ranjan (Sr. Adv.) & Kumar Sundaram, Adv. For the Respondents : Mr. Anoop Kumar Agrawal, J.C. to S.C-V. CAV on:26th September, 2016 Pronounced on 18/03/2017 Per Pramath Patnaik, J.: Since the relief sought for in the aforesaid writ petitions are identical, with the consent of the respective counsels, all the writ petitions are heard together and are being disposed of by this common order/judgment.

2. In the accompanied writ application, the petitioners have inter alia prayed for quashing the order as contained in letter dated 23.08.2010 (in W.P.(S) No.3124/2011, W.P.(S) No.3125/2011 and W.P.(S) No.3132/2011) and 24.08.2010 (in W.P.(S) No.3126/2011) and 25.08.2010 (in W.P.(S) No.3134/2011) issued under the signature of respondent no.4, pertaining to infliction of punishment of stoppage of three annual increments with cumulative effect, no payment of salary for the period of suspension and for posting in the non works post for next three years and the petitioners have further prayed for quashing of the consequential order of posting dated 07.09.2010 issued by the respondent no.3 whereby the petitioners have been posted as punishment on the non works post; and the petitioners have further prayed for quashing the order dated 24.12.2011 (in W.P.(S) No.3124/2011, W.P.(S) No.3126/2011, W.P.(S) No.3132/2011 and W.P.(S) No.3134/2011) and 29.02.2012 (in W.P.(S) No.3125/2011) passed by the appellate authority thereby modifying the impugned order of punishment upholding the punishment of stoppage of three annual

increments with cumulative effect and no payment of salary for the period of suspension.

3. The short facts, as disclosed in the writ applications, is that the petitioners were appointed as Junior Engineer. During the year 2006-07, while they were continuing in service in Road Construction Division, they were informed to be put under suspension under Rule 3A(1) of Bihar and Orissa Subordinate Services (Discipline and Appeal) Rules, 1935 and proceeded departmentally for the alleged charges as contained therein and the order has been passed vide Rule 96 of the Bihar Service Code and the 4 headquarters of the petitioners was fixed at Road Construction Headquarters at Ranchi. In the said order, it was specified that a charge sheet shall be issued to the petitioners separately. After about one year charge sheet dated 31.10.2009 vide Annexure-2 to the writ petitions was served upon the petitioners by respondent no.3 where in Form- K it was alleged that: (a) For the works conducted during years 2006-07 departmentally, the hand receipt used for making payments of the labourers did not contain the quantity of the materials and number of labourers had also not been mentioned. (b) The vouchers did not mention the address of the labourers and mate; (c) The muster roll of all the labourers had not been prepared as per TC Form-49 and because of that the deficiencies in the muster roll could not be pointed out on time. In pursuance to the said charges, the Superintending Engineer, was appointed as inquiry officer to enquire into the charges. The petitioners submitted documentary evidence in their support before the enquiry officer and denied all the charges levelled against them and prayed for their exoneration from the said charges. The enquiry officer proceeded with the departmental enquiry against the petitioners and thereafter submitted his report on 13.03.2010 vide Annexure-4. The enquiry officer in his report gave his finding that the charges levelled against the petitioners could not be proved and the petitioners are entitled to be given benefit of the charges not being proved against them. After lapse of few months, the petitioners received letter issued by respondent no.3, whereby the petitioners were issued second show cause on the ground that the enquiry report submitted by the inquiry officer was not accepted on the ground that: (a) The copy of the hand receipt did not contain the signature of the witnesses. (b) The said hand receipt did not contain the signature of the witnesses. In the second show cause notice, petitioners were

asked to reply on three proposed punishments: (i) Stoppage of three annual increments with cumulative effect. (ii) No payment of any amount over and above subsistence allowance for the period of suspension and (iii) Post at non works post for next three years. 5 In pursuance to the second show cause notice, petitioners submitted their reply wherein they categorically justified the addresses mentioned over the concerned vouchers, because the persons concerned belonged to small villages, mohallas and locality. The petitioners also mentioned that the signature of the witnesses had not been required as the norms because the beneficiaries had not made thumb impressions. The respondent no.4, the appointing authority, who was supposed to apply his mind upon the entire matter and reply of the petitioners, left everything to be decided by the respondent nos.2 and 3 and he upon written directions of the said respondents has yet on further extraneous grounds inflicted the same proposed punishments of petitioners for posting at non works post for further three years, stoppage of three annual increments with cumulative effect and no payment of salary over and above the subsistence allowance as evident from Annexure-7 to the writ petition. Thereafter, vide order dated 07.09.2010 the petitioners were posted in the non-works post as per Annexue-8 to the writ petition. The petitioner being aggrieved by the order of the disciplinary authority preferred appeal before the appellate authority and the appellate authority has been pleased to modify the punishment imposed upon the petitioners to the extent of upholding the punishment of stoppage of three annual increments with cumulative effect and no payments of salary for the period of suspension and whereas the punishment of posting on non-work post has been deleted as per the order 24.12.2011 (in W.P.(S) No.3124/2011, W.P.(S) No.3126/2011, W.P.(S) No.3132/2011 and W.P.(S) No.3134/2011) and 29.02.2012 (in W.P.(S) No.3125/2011). Being aggrieved by the aforesaid orders passed by the disciplinary as well as the appellate authority, the petitioner left with no efficacious and alternative remedy has approached this Court, invoking extraordinary jurisdiction under Article 226 of the Constitution of India for redressal of his grievance.

4. Learned senior counsel for the petitioners has strenuously urged that the petitioners could not have been inflicted punishment in view of the fact that the enquiry officer submitted enquiry report for exoneration of charges levelled against

them and the disciplinary authority also did not issue any show cause notice to the petitioners regarding disagreement with the findings of the enquiry officer. Learned senior counsel for the petitioners further submits that the second show cause notice has been issued to the petitioners and the ground stated therein is completely extraneous to the 6 charges framed against the petitioners in Form-K. In other words the charges which were not in memo of charges cannot be a charge in the second show cause notice.

5. Learned senior counsel for the petitioners further submits that the impugned orders of punishment passed by the disciplinary as well as the appellate authority being cryptic cannot be legally sustainable. Learned senior counsel for the petitioners further submits that the appellate authority has not applied its mind since he has prejudged the issue. In this respect, learned senior counsel for the petitioners has referred to the decisions reported in: (i) 2015 (4) JBCJ637(ii) (2010) 13 SCC427(iii) (2008) 8 SCC236(iv) (2009) 2 SCC570(v) (2012) 1 SCC2936. Learned senior counsel has further submitted that the appellate authority by suggesting the appointing authority, the respondent no.4 to pass the order of punishment by issuing second show cause has exceeded its jurisdiction rendering the impugned orders nugatory. Learned senior counsel for the petitioner further submits that the punishment inflicted upon the petitioners is harsh and disproportionate and cannot be sustained as the disciplinary authority having not show caused the petitioners for differing with the findings of the inquiry report and the said authority having passed the same on the written directions and dictates of the respondent no.2. Therefore, the impugned orders of punishments passed by the disciplinary as well as the appellate authority are not legally sustainable.

7. Controverting the averments made in the writ applications, a counter affidavit has been filed on behalf of the respondents. In the counter affidavit, it has been inter alia stated that in view of the petitioners involvement in the reported irregularities committed during their posting as Junior Engineer they were under suspension and departmental proceeding was initiated against them. Although the conducting officer did not find the charge levelled against the delinquent Government servant as proved, yet the charges were found proved by the disciplinary authority during the course of the review of the enquiry report.

Thereafter, second show cause notice was issued to the petitioner mentioning therein the points of difference from the 7 enquiry report of the conducting officer. The reply submitted by the petitioners was duly examined in conjunction with other materials on record and in course of such examination, the charges were found to be sustained and finally the decision of the disciplinary authority was notified. So far as contention of the petitioners posting on non work post and non-payment of any emolument other than subsistence allowance for the period of suspension as penalty under Rule 2 of Bihar and Orissa Subordinate Service (Discipline and Appeal) Rules, 1935. It has been clarified that the posting of the petitioners on non works post is an administrative decision and it should be construed as a punishment. Similarly, the decision of non-payment of any emolument other than subsistence allowance for the period of suspension is an administrative decision under Rule 97 of the Jharkhand Service Code.

8. Learned counsel for the State apart from reiterating the submissions made in the counter affidavit has strenuously submitted that the every minute detail cannot be written in the charge. Learned counsel further submits that considering the gravity of charges and on perusal of the second show cause reply and the reasons of disagreement by the disciplinary authority, the impugned orders of punishment have been passed and the appellate authority has been pleased to modify the order of punishment by deleting the punishment of posting on non works post.

9. After hearing respective counsels at the bar and on perusal of the documents on record, I am of the considered view that the petitioners have been able to make out a case for interference due to the following reasons: (I) In the case in hand, while the petitioners were continuing as Junior Engineer, charge sheet in Form K containing the allegations was served on the petitioners and in the said charge, it was alleged: (a) For the works conducted during years 2006-07 departmentally, the hand receipt used for making payments of the labourers did not contain the quantity of the materials and number of labourers had also not been mentioned. (b) The vouchers did not mention the address of the labourers and mate; (c) The muster roll of all the labourers had not been prepared as per TC Form-49 and because of that the deficiencies in the muster roll could not be pointed out on time. 8 Aforesaid charges were enquired into by the enquiry officer, who was none other

than the Superintending Engineer, National Highway Circle, Ranchi. The enquiry officer proceeded with the departmental enquiry and submitted report. In the said report, the enquiry officer opined that the charges levelled against the petitioner could not be proved and the petitioner be given benefit of the charges not proved against them. But the disciplinary authority without recording the reasons of disagreement issued second show cause notice to the petitioners and the ground mentioned in the second show cause notice is at variance with the original charges levelled against the petitioner. Moreover, the respondent no.4, who is the appointing authority who was supposed to apply his mind on the entire matter and the reply of the petitioner to the second show cause notice, has acted as per the dictates of respondent nos.2 and 3 and finally the impugned orders of punishment has been passed. (II) The disciplinary authority while differing with the findings of the enquiry officer ought to have given cogent reasons of disagreement before infliction of punishment to the petitioners and the same having not been done, the impugned orders of punishment being confirmed by the appellate authority cannot be legally sustainable. The view of this Court gets fortified by the decision of the Honble Apex Court reported in (1998) 7 SCC84(Punjab National Bank and Ors. vs. Kunj Behari Misra) wherein the Honble Apex Court has been pleased to hold that the order of punishment would stand vitiated in case the reasons so recorded by the disciplinary authority for disagreement with the enquiry officer had not been supplied to the delinquent and his explanation had not been sought. While deciding the said case, the Honble Apex Court relied upon the earlier judgment reported in case of Institute of Chartered Accountants of India vs. L.K. Ratna and Ors. (1986) 4 SCC537 The view taken by the Honble Apex Court in the case of Kunj Behari Misra has consistently been approved and followed as is evident from the judgments in Yoginath D. Bagde vs. State of Maharashtra and Anr. (1999) 7 SCC739 SBI vs. K.P. Narayanan Kutty (2003) 2 SCC449 J.A Naiksatham vs. Prothonotary and Senior Master. High Court of Bombay and Ors. (2004) 8 SCC653 P.D. 9 Agrawal vs. State Bank of India and Ors. (2006) 8 SCC776and Ranjit Singh vs. Union of India and Ors. (2006) 4 SCC153 Therefore, the consistent view of the Honble Apex Court that in case the disciplinary authority differs with the view taken by the enquiry officer, he is bound to give notice setting out his tentative conclusions to the appellant. It is only after hearing the appellant

that the disciplinary authority would at all arrive at a final finding of guilt. Thereafter, the employee would again have to be served with a notice relating to the punishment proposed. (III) On perusal of the impugned order, it would be crystal clear that the said orders are devoid of any reasons being cryptic and on that score, the impugned orders are assailable. So far as order passed by the appellate authority is concerned, the same is not a reasoned order as per the Rule 55 of the Civil Services (Classification, Control and Appeal) Rules.

10. In view of the reasons stated in the foregoing paragraphs and as a logical sequitur to the aforesaid observations, the impugned orders passed by the disciplinary authority and the appellate authority as aforesaid are hereby quashed and set aside. However, it would be left open to the respondent authority to proceed afresh from the stage of issuance of fresh second show cause notice to the petitioners, indicating tentative disagreement with the findings of the enquiry officer. In that eventuality, the proceeding may be concluded as expeditiously as possible, preferably within a period of six months, after affording reasonable opportunity to the petitioners in accordance with law.

11. Accordingly, the writ applications stand allowed with the aforesaid direction. (Pramath Patnaik, J.) Saket/-

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