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Court : Jharkhand

Decided On : Aug-04-2017

Appellant : Nathun Sahu

Respondent : Forest and Environment

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 1455 of 2013
Nathun Sahu, Son of Late Guru Sahay Sahu, Resident of Village-Nawadih, P.O. & P.S.-Hunterganj, District-Chatra. Petitioner Versus 1. The State of Jharkhand.

2. The Secretary, Forest and Environment Department, Government of Jharkhand, Project Building, P.O. & P.S.-Dhurwa, District-Ranchi.

3. The Principal Chief Conservator of Forest, Forest and Environment Department, Jharkhand, VAN BHAWAN, P.O. & P.S.-Doranda, District- Ranchi.

4. The Regional Chief Conservator of Forest, Hazaribagh, P.O., P.S. and District-Hazaribagh.

5. F.B. Singh, Conservator of Forest, Hazaribagh Circle, Hazaribagh, P.O., P.S. & District-Hazaribagh.

6. Divisional Forest Officer, Social Forestry Division, P.O., P.S. and District-Hazaribagh.

7. Divisional Forest Officer, Chatra, South Forest Division, P.O. & P.S.-Chatra, District-Chatra.

8. Sri Mohan Mishra, Former Range Officer, Department Working Range, P.O., P.S. & District-Hazaribagh.

9. B. B. Sinha, Assistant Conservator of Forest, Koderma Forest Division, P.O., P.S. and District-Koderma. ... Respondents --- CORAM : HON'BLE MR. JUSTICE PRAMATH PATNAIK --- For the Petitioners : Mr. Rajiv Ranjan, Sr. Advocate & Mr. Lalan Kr. Singh, Advocate For the Respondents : Ms. Ruchi Rampuriya, J.C to Sr. S.C. I ----- CAV on 04/01/2017 Pronounced on 04/08/2017 Per Pramath Patnaik, J.

Challenging the entire departmental proceeding and order of punishment passed by respondent no.5 vide order dated 12.02.2013 and the 2 order dated 26.02.2013 vide Annexure-19 whereby the recovery of 90% provisional gratuity and leave encashment amount towards post reitral benefits have been ordered, the instant writ petition has been preferred for quashing the aforesaid orders.

2. The brief facts as depicted in the writ petition is that earlier the petitioner approached this Court in W.P.(S) No.5667 of 2009 challenging the departmental proceeding and major punishment of reversion and recovery of huge amount from the petitioner and the said punishment was quashed by this Court dated 07.03.2011 with liberty to respondent to conduct enquiry in a proper manner. The petitioner while working as Forester in Jhumra Forest Depot under the D.F.O. Departmental Working Division, Hazaribagh was transferred to Social Forestry Division, Hazaribagh vide order dated 23.07.2003 and the petitioner was relieved from the charge of Jhumra Forest Depot w.e.f. 12.09.2003 by the order of the Forest Range Officer. On the very next day, the petitioner requested the then D.F.O., Departmental Working Division, Hazaribagh (Controlling Authority) respondent no.5 for handing and taking over the charge of Jhumra Forest Depot. The physical verification of the Jhumra Forest Depot was never made by the respondents in the presence of the petitioner after relinquishing the charge of depot on 12.09.2003 but surprisingly on 10.01.2006 the petitioner received the order by which the charges were framed for initiation of departmental proceeding

against the petitioner by Conservator of Forest, Departmental Working Circle, Hazaribagh. The charges contained are as follows:- (i) Misappropriation of Rs. 7,85,705/-; (ii) Loss of Rs. 3,53,598.75 towards shortage in wood blocks; (iii) Higher authorities were kept in dark; 3 (iv) For personal gain losing to the Government property; (v) Non-compliance of the order of the Higher authority; (vi) Selling of the wood blocks in conspiracy with the purchasers. Thereafter, office vide order dated 11.10.2007, the Conservator of Forest, Aforestation and Social Forestry Circle, Hazaribagh awarded punishment, which are as follows:- (i) Recovery of Rs.7,85,705.00 towards loss in Katha Biscuit; (ii) Recovery of Rs.3,53,598/- towards loss of wooden blocks; (iii) For future of two annual increments; (iv) Censure and (v) Warning for future. Thereafter, the petitioner filed an appeal before the Regional Chief Conservator of Forest on 29.11.2007 and Appellate authority passed office order dated 07.01.2008, which was communicated to the petitioner by the D.F.O., Social Forestry Division, Hazaribagh by memo dated 18.01.2008. Thereafter, vide officer order dated 15.05.2008, direction was issued to conduct the enquiry by Conservator of Forest, Hazaribagh Circle, Hazaribagh on the same charges which was framed vide office order dated 10.01.2006. The petitioner was called to appear before the inquiry officer. No witnesses were examined nor any documentary evidence was exhibited in the departmental proceeding and the inquiry officer submitted report, a copy of which was supplied to the petitioner by the D.F.O., Hazaribagh, West Division by letter dated 04.08.2009 vide Annexure-11 to the writ petition. Thereafter, second show cause served on the petitioner which was duly replied by the petitioner and ultimately order of punishment was imposed vide order dated 05.11.2009. The petitioner challenged the aforesaid order of 4 punishment in W.P.(S) No.5667 of 2009 which was allowed by this Court and the order of punishment was quashed by this Court vide order dated 07.03.2011 with liberty to the respondent to conduct enquiry in a proper manner. Thereafter, the petitioner was directed to submit show cause reply. The petitioner requested the enquiry officer for supply of certain documents which was declined by the inquiry officer saying that it is not permissible and the petitioner was asked to submit second show cause, pursuant to which petitioner submitted himself and the disciplinary authority vide order dated 12.02.2013 vide Annexure-18 passed the following punishment order:- (i) A sum of

Rs.7,30,205/- be recovered towards loss caused to the Government by misappropriation of Kattha Biscuit; (ii) A sum of Rs. 3,53,598/- be recovered from the petitioner for causing loss towards wooden blocks; (iii) Punishment of warning; (iv) Entry of the same in the service book. During pendency of the writ application, the petitioner has received the office order vide Annexure-19 passed by the Divisional Forest Officer, Chatra, South Forest Division, Chatra whereby the order has been passed for recovery of the alleged amount Rs.15,000/- per month and for adjustment of the balance amount from the amount of gratuity, leave encashment and other entitlements after superannuation. Being aggrieved by the aforesaid orders, the petitioner left with no other alternative remedy has knocked the door of this Court under Article 226 of the Constitution of India for redressal of his grievance.

3. Learned senior counsel for the petitioner has strenuously urged that there has been violation of Rule 55 of the C.C.A Rules, since the petitioner was not given opportunity to cross examine the witness oral or documentary evidence, nor was any evidence brought on record by the enquiry officer and simply on the basis of hypothetical considerations, surmises and conjectures, the impugned order of punishment has been passed. Learned senior counsel further submits that the impugned order of punishment vide Annexure-19 has been issued by the Subordinate Officer like D.F.O., who has enhanced the scope of recovery in contravention of the service/disciplinary rules, which is not tenable in the eye of law. The D.F.O by ordering recovery has exceeded his jurisdiction which is dehors service rules and disciplinary procedure. Learned senior counsel has submitted that the order passed by the disciplinary authority is fit to be set aside, when the petitioner has not been provided adequate opportunity as claimed at the time of inquiry stage and as such inquiry proceeding is vitiated in the eye of law. Learned senior counsel has further submitted that the impugned order is liable to be set aside because the respondents have not provided opportunity even to cross examine the witnesses for which he made specific request before the authority as per mandatory provisions under Rule 55 of Civil Service (Classification, Control & Appeal Rule) read with section 10 of the Public Servant Enquiries Act, 1850. Learned senior counsel has referred to decision rendered in the case of State of Uttar Pradesh and Ors. Vs. Saroj Kumar Sinha reported in (2010) 2 SCC772 In

para -28 of the said judgment the Honble Apex Court has been pleased to hold:

28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the un rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

4. Learned senior counsel appearing for the petitioner by referring para 14 and 15 of the judgment reported in 2009 (2) SCC570(Roop Singh Negi Vs. Punjab National Bank and Ors.) has submitted that similar view has been taken by the Honble Apex Court in the case. Para 14 and 15 of the said judgment has been referred to hereinbelow:-

14. Indisputably, a departmental proceeding is a quasi judicial proceeding. The enquiry officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigating by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.

15. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the enquiry officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. The appellant being an employee of the Bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had

indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.

5. Controverting the averments made in the writ petition, a counter- affidavit has been filed on behalf of respondent no.7. It has been stated in the counter-affidavit that in course of the detailed enquiry of the departmental proceeding by the duly appointed enquiry officer cum the Assistant Conservator of Forest, Koderma Forest Division, during verbal cross 7 examination the petitioner had excepted in para 3 and 4 that he had not handed over khair Biscuit to his reliever and the cross examination paper is duly signed by the petitioner in presence of the presenting officer as evident from Annexure-C to the counter-affidavit. All opportunity was provided to the petitioner to put his defense which he could not. After detailed enquiry conducted in proper manner, the show cause submitted by the petitioner was duly entertained and thoroughly examined. Since, all the charges levelled against the petitioner have been proved by the inquiry officer and there is defalcation of Government money. The punishment has been awarded by the competent authority. It has been submitted that prayer made by the petitioner is misconceived, frivolous and legally not sustainable either in law or on facts.

6. Learned counsel for the State, J.C to Sr. S.C.I has reiterated the submissions made in the counter-affidavit and has assiduously submitted that the relevant documents have been supplied to the petitioner and in the inquiry shortage has been found in the verification. Learned counsel for the respondents has submitted that it is not a case where no opportunity was given but all opportunity has been afforded to the petitioner and there has been no breach of principle of natural justice. Therefore, the writ petition deserves to be dismissed in limine.

7. Having heard, learned counsel for the parties and on perusal of the documents, I am of the considered view that the impugned orders dated 12.02.2013 (Annexure-18) and 26.02.2013 (Annexure-19) are not legally sustainable in view of the following facts, reasons and judicial pronouncements:

8. (I) On perusal of the records, it appears that the departmental proceeding proceeded in a very perfunctory manner since no witnesses have been examined by the prosecution to prove the charges. The documents produced by the respondent authorities have only been tendered but not proved. Therefore, the entire proceeding was only window dressing whereby the petitioner was found guilty and visited with major punishment. (II) In the instant departmental proceeding, nothing worth evidence was adduced or proved and no oral evidence has been led yet the enquiry officer on ipsi dixit and on mere conjectures, surmises and suspicion has held the petitioner guilty. It appears that the inquiry report is not based on scrutiny of materials of departmental proceeding but on mere opinion of the inquiry officer. (III) Assuming that charges levelled against the petitioner have been proved basing on the own admission of the petitioner but considering the gravity of charges and the misconduct committed by the petitioner, the punishment awarded by the impugned orders dated 12.02.2013 and 26.02.2013 appear to be grossly disproportionate and excessive. (IV) The Hon'ble Apex Court in the case of Lucknow Kshetriya Gramin Bank & Anr. Vs. Rajendra Singh as reported in (2013) 12 SCC372 in the placitum held as under: However, the judicial review of the quantum of punishment is available with a very limited scope. The court would frown upon only when the penalty imposed appears to be so disproportionate to the nature of misconduct that it is shocking to the conscience of the court. Even in such a case when the punishment is set aside as shockingly disproportionate, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The court by itself cannot mandate as to what should be the penalty in such a case. 9 8. As a cumulative effect of the facts, reasons, judicial pronouncements and as a logical sequitur to the reasons stated in the forgoing paragraphs, the impugned order dated 12.02.2013 vide Annexure-18 and the order dated 26.02.2013 vide Annexure-19 passed by the respondent no.7 are not legally sustainable and are hereby quashed and set aside and the matter is remitted to the disciplinary authority with a direction to pass appropriate order on the quantum of punishment/delinquency proved against the petitioner within a period of two months from the date of receipt/production of a copy of this order, in accordance with law.

9. With the aforesaid directions, the writ petition stands allowed and consequently, I.A. No.1364 of 2013 stands disposed of. (Pramath Patnaik, J.) RKM/- N.A.F.R.

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