

Kaushal Kumar Vs. Road Construction

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Court : Jharkhand

Decided On : Aug-17-2017

Appellant : Kaushal Kumar

Respondent : Road Construction

Judgement :

1. IN THE HIGH COURT OF JHARKHAND, RANCHI W.P.(S) No. 2006 of 2017 Kaushal Kumar, son of Late Mangal Prasad, resident of SectorII, HEC, P.O.& P.S.Jagarnathpur, DistrictRanchi(Jharkhand) Petitioner Versus 1.The State of Bihar, through the Principal Secretary, Road Construction Department, Government of Jharkhand, having its office at Project Bhawan, Dhurwa, P.O. & P.S.Dhurwa, DistrictRanchi 2.The Joint Secretary, Road Construction Department, Government of Jharkhand, having its office at Project Bhawan, Dhurwa, P.O. & P.S.Dhurwa, DistrictRanchi 3.The Deputy Secretary, Road Construction Department, Government of Jharkhand, having its office at Project Bhawan, Dhurwa, P.O.& P.S.Dhurwa, DistrictRanchi . Respondents CORAM : HONBLE MR. JUSTICE SHREE CHANDRASHEKHAR For the Petitioner : Mr. Rahul Kumar, Advocate For the State : Mrs. Rakhi Rani, JC to GAIV 9/ 17.08.2017 Aggrieved of Resolution dated 24.03.2017 by which the disciplinary authority disagreed with the enquiry report dated 08.12.2016 and an enquiring officer has been appointed for conducting the departmental proceeding, the petitioner has approached this Court.

2. The petitioner, who was appointed as Junior Engineer on 07.10.1987, was holding the post of Assistant Engineer at the relevant time and, he was given additional charge of Executive Engineer also. On an allegation that he connived with the contractors, a showcause notice was issued to him on 15.05.2015. A departmental proceeding was initiated vide

2. Resolution dated 22.04.2016, in which an enquiry report was submitted on 08.12.2016. There were four charges framed against the petitioner. None of the charges was found proved by the enquiring officer. Disagreeing with the enquiry report, the disciplinary authority has decided to appoint another enquiring officer for conducting the departmental enquiry, which is a fresh enquiry.

3. The learned counsel for the petitioner contends that a fresh enquiry on the ground disclosed in Resolution dated 24.03.2017 is not permissible. All that should have been done in the instant case was to grant an opportunity to the delinquent officer to respond to the note of disagreement on the findings recorded by the enquiring officer, and proceed in the matter under Rule 18(3), but the disciplinary authority could not have initiated a fresh enquiry by appointing another enquiring officer.

4. Mrs. Rakhi Rani, the learned State counsel, supporting the Resolution dated 24.03.2017, submits that under Rule 18 of the Jharkhand Government Servants (Classification, Control and Appeal) Rules, 2016 the competent authority has power to order a fresh enquiry. No final decision has yet been taken in the matter and therefore, the present writpetition is premature. At this stage, it is contended, no occasion for the disciplinary authority to forward a copy of the enquiry report with its decision has arisen.

5. Rule 18 of Jharkhand Government Servants (Classification, Control and Appeal) Rules, 2016 is extracted below : 3.

18. Action on the inquiry report.(1) The Disciplinary Authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold further inquiry, as far as may be according to the

provisions of Rule

17.

(2) The Disciplinary Authority, after receipt of the enquiry report as per Rule 17(23)(ii) or as per sub rule(1), shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own finding on such charge, if the evidences on record is sufficient for the purpose.

(3) The Disciplinary Authority shall forward or cause to be forwarded a copy of the inquiry report, together with its own findings, if any, as provided in sub rule

(2) to the Government Servant who may submit, if he or she so desires, his or her written representation or submission to the Disciplinary Authority within fifteen days.

(4) The Disciplinary Authority if it is different from the inquiry authority shall before making a final order in the case, forward a copy of the inquiry report to the Government Servant concerned who may submit, if he or she so desires, his or her written representation or submission to the Disciplinary Authority within fifteen days. The Disciplinary Authority shall consider the representation or submission, if any, submitted by the Government Servant before proceeding further in the manner specified in sub rule

(5) and (6).

(5) If the Disciplinary Authority having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties

4. specified in clauses (i) to (iv) of Rule 14 should be imposed on the Government Servant, it shall, notwithstanding anything contained in Rule 19, make an order imposing such penalty.

(6) If the Disciplinary Authority, having regard to its findings on all or any of the articles of charge and on the basis of the evidences adduced during the inquiry is of the opinion that any of the penalties specified in clauses (v) to (xi) of Rule 14

should be imposed on the Government Servant, it shall make an order imposing such penalty and it shall be necessary to give the Government Servant an opportunity of making representation on the penalty proposed to be imposed.

(7) Notwithstanding anything contained in sub rule

(5) and

(6) in every case where it is necessary to consult the Commission, the Commission shall be consulted and its advice shall be taken into consideration before making any order imposing any penalty on the Government Servant.

6. The enquiry report dated 08.12.2016 is an elaborate one, which deals with all 4 charges separately. Specific finding recorded by the enquiry officer is that charges framed against the petitioner are not proved. Resolution dated 24.03.2017 records that the disciplinary authority has rejected the enquiry report on the ground that the enquiring officer has overlooked the stand of the delinquent officer that for defect in road construction penalty was recovered from the contractors and, thus, he admits the charge. The contention raised by the learned State counsel that a final decision has not been taken in the matter is untenable, in view of the fact that when the disciplinary authority has already

5. appointed another enquiring officer, who also proceeded with the enquiry and it is stated that the said enquiry by now has concluded, he has taken a decision under Rule 18(1). A final decision under Rule 18(4) to

(6) contemplates penalty to be imposed. The impugned resolution is under Rule 18(1) and it is the final decision on enquiry report which has been challenged by the petitioner.

7. The law on the subject is quite clear. Even in cases where the enquiring officer finds the charges framed against the delinquent officer proved, an opportunity is granted to the delinquent officer to meet the adverse findings recorded by the enquiring officer. In a case where the enquiring officer has recorded findings favourable to the delinquent officer, it is more so a reason to give an opportunity to the delinquent officer to persuade the disciplinary authority to agree with the

favourable findings recorded during the enquiry. Present is not a case where the disciplinary authority has disagreed with the findings recorded by the enquiry officer on the ground that the enquiry suffered from serious infirmity, may be on the ground that important witnesses were not examined or important documents could not be produced by the department during the domestic enquiry. The disciplinary authority has disagreed with the enquiry report dated 08.12.2016 on a specific issue, and in fact, rejected the enquiry report (ekU;rk ugha nh tk ldrh gS) and appointed another enquiring officer.

8. It has been categorically held that only in cases, where

6. the inquiry report suffers from some technical lacuna, a *denovo* inquiry can be instituted. In all other cases, only a further inquiry can be conducted into the matter and not a fresh inquiry altogether. In *K.R. Deb vs the Collector of Central Excise Shilling* reported in (1971) 2 SCC 102, the Hon'ble Supreme Court has held as under: 12. It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in Rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under Rule 9.

9. In *Nand Kumar Verma vs State of Jharkhand and Others*, reported in (2012) 3 SCC 580, the Hon'ble Supreme Court has held as under:

26. On general principles, there can be only one enquiry in respect of a charge for a particular misconduct and that is also what the rules usually provide. If, for some technical or other good ground, procedural or otherwise, the first enquiry or punishment or exoneration is found bad in law, there is no principle that a second enquiry cannot be initiated. Therefore, when a 7. completed enquiry proceedings is set aside by a competent forum on a technical or on the ground of

procedural infirmity, fresh proceedings on the same charge is permissible. 10. In view of the above settled legal position, the disciplinary authority could have either accepted the enquiry report or disagreed with the enquiry report and proceeded in the matter further, however, it could not have rejected the enquiry report dated 08.12.2016 and appointed another enquiring officer. 11. For the aforesaid reasons, Resolution dated 24.03.2017 becomes unsustainable and accordingly, it is quashed. The disciplinary authority may proceed in the matter after issuing a second showcause notice to the petitioner with the disagreement note and granting opportunity to the delinquent officer to respond to the same, however, the enquiry report, if any, submitted by the enquiring officer appointed vide Resolution dated 24.03.2017 shall not be taken into consideration, for when the foundation falls superstructure must fail. 12. The writpetition stands allowed, in the aforesaid terms. (Shree Chandrashekhar, J.) SI/, A.F.R.

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