

Kameshwar Singh Vs. State of Bihar and ors.

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Court : Patna

Decided On : Mar-26-2003

Judge : Narayan Roy, J.

Acts : Service Law

Appeal No. : C.W.J.C. No. 83 of 2003

Appellant : Kameshwar Singh

Respondent : State of Bihar and ors.

Advocate for Def. : Azfar Hussain, SC 7

Advocate for Pet/Ap. : Rajendra Pd. Singh, Sr. Adv. and Rajeev Kumar Singh and Arvind Kumar Singh

Disposition : Application allowed

Prior history : Narayan Roy, J. 1. Heard Counsel for the parties. 2. The order of punishment, as contained in Annexure-1, issued vide Memo No. 82250 dated 5-8-2000, is under challenge, whereby and whereunder respondent No. 3 has passed order of punishment against the petitioner on conclusion of the departmental proceeding. 3. Learned Counsel appearing on behalf of the petitioner assails the order impugned mainly on two grounds--firstly, the copy of the inquiry report dated 10-1-2000 was not served upon hi

Judgement :

Narayan Roy, J.

1. Heard Counsel for the parties.

2. The order of punishment, as contained in Annexure-1, issued vide Memo No. 82250 dated 5-8-2000, is under challenge, whereby and whereunder respondent No. 3 has passed order of punishment against the petitioner on conclusion of the departmental proceeding.

3. Learned Counsel appearing on behalf of the petitioner assails the order impugned mainly on two grounds--firstly, the copy of the inquiry report dated 10-1-2000 was not served upon him, and, secondly, the disciplinary authority has not given opportunity to the petitioner to represent his case as it proposed to impose punishment differing with the inquiry report. Learned Counsel appearing on behalf of the petitioner submitted that a copy of the inquiry report was required to be served on the petitioner and since it was not done, the principles of Natural Justice were violated in view of the judgments rendered in the case of the Union of India and Ors. v. Md. Ramzan Khan (AIR 1991 (1) Supreme Court, 471). Learned Counsel further submitted that it would be evident from Annexure-C to the counter-affidavit that the inquiry officer submitted his inquiry report saying that the charges were not established against the petitioner and the disciplinary authority differing with the inquiry report has passed the order of punishment without giving any opportunity to the petitioner to represent his case, and therefore, the order of punishment vitiates in view of the ratio laid down in the cases of Managing Director, ECIL, Hyderabad and Ors. v. B. Karunakar and Ors., (1993) 4 Supreme Court Cases, 727) and Punjab National Bank and Ors. v. Kunj

Behari Misra, (1998 (7) Supreme Court Cases, 84).

4. A counter-affidavit has been filed on behalf of the State, wherein these parts of the submission have not been rebutted.

5. From the pleadings of the parties, it appears that the copy of the inquiry report was not made over to the petitioner and when the disciplinary authority proposed to pass an order of punishment against the petitioner differing with the inquiry report it did not give any opportunity, to him to represent his case. Non-compliance of these requirements is in violation of the principles of Natural Justice, and, therefore, the impugned order of punishment vitiates.

6. For the reasons aforementioned, the order of punishment, as contained in Annexure-1, is not sustainable in law.

7. In the result, this application is allowed and the order impugned, as contained in Annexure-1, is set aside, However, the authorities will be at liberty to proceed in the matter in accordance with law.

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