

indradeo Narayan Singh Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Feb-13-2009

Judge : Navin Sinha, J.

Acts : Conduct, Discipline and Appeal Rules, 1975 - Rule 25F

Appellant : indradeo Narayan Singh

Respondent : The State of Bihar and ors.

Advocate for Def. : Prabhat Kumar Singh, SC 21

Advocate for Pet/Ap. : Ashwani Kumar Singh, Adv.

Disposition : Application allowed

Judgement :

Navin Sinha, J.

1. Heard leaned Counsel for the petitioner and the learned Counsel for the State.
2. The petitioner is aggrieved by the order of punishment dated 12.11.2001 in a departmental proceeding vide Annexure 13 visiting him with the recovery of Rs. 2.45 lacs and that nothing beyond subsistence allowance shall be payable for the period of suspension. The petitioner is stated to have superannuated from the post of Executive Engineer, Water Resources Department on 30.9.2001.

3. A memo of two charges were issued to him on 7.10.1991. He replied to the same. When an enquiry report of exoneration came to be submitted on 23.1.1993. On 7.9.1996 a show cause notice for difference of opinion with the report of exoneration was served when punishment followed on 22.9.1997 for recovery of Rs. 4 lacs. to be recovered from his salary or pension, as the case may be and that nothing beyond subsistence allowance was payable for the period of suspension.

4. The petitioner came to this Court in CWJC No. 6719 of 1998 assailing the same. On 14.10.1999 a Bench of this Court set aside the order of punishment and directed any recovery to be refunded as also full salary for the period of suspension to be paid. In LPA No. 1538 of 1999 preferred against the same by the State, the order of the Single Judge was set aside. It was observed that if there was an enquiry report of exoneration, the Enquiry Officer was required to set out the grounds of difference with an indication of the nature of evidence for the same so that the delinquent could file his reply. The Court declined to permit the State to produce additional evidence on the premise that it was not for the Court to reappraise evidence. A fresh second show cause notice followed on 26.6.2001 and after considerations of petitioner's reply final order of punishment dated 12.1.2001 has followed.

5. The Court has no hesitation in holding that in consequence of the order of remand by the Division Bench for fresh commencement of the departmental proceedings from the stage of the enquiry report; all grounds are now available afresh to the petitioner.

6. Learned Counsel for the petitioner with reference to memo of charges dated 7.10.1991 submits that it contained no list of witnesses or list of documents. The petitioner was exonerated in the enquiry. The law required that if the disciplinary authority differed with the enquiry report of exoneration, the disciplinary authority was required to set out the finding of exoneration, the reasons for difference of opinion and the materials on which this difference of opinion was founded. It was only then that the delinquent would be in a position to appreciate the issues passing in the mind of the disciplinary authority for the difference of opinion to

enable him to file a proper reply. Even if the respondents were under misconception with regard to this procedure, the same no more existed after the order of the Division Bench in LPA No. 1538 of 1999 giving more than sufficient indication to the respondents of the manner in which they had to proceed. Nonetheless the cryptic consequent show cause notice dated 26.6.2001 was issued. It contains rhetorical repetition of charges and no reason for the difference of opinion from the exoneration. Additionally it now sought to include two documents in support of the charges which did not form part of the original chargesheet and was never produced in evidence during enquiry. In effect, the respondents now seek to question him as to why he should not be deprived of the benefits of exoneration based on materials never placed before the enquiry and for which the petitioner had no opportunity to meet. In his reply to the second show cause notice the petitioner specifically stated with regard to charge No. 1 that indent and the price for purchase were fixed by the Director at the Secretariat level. The petitioner did no more than to comply with it and that he had no discretion in the matter to lay down any other price or procedure. With regard to charge No. 2, he contended that the indent along with the price had been placed by an officer, his predecessor, and he had nothing to do with the same except compliance. The order of punishment does not deal with these issues and does not show any application of mind to the cause shown rendering the punishment order perverse.

7. Learned Counsel for the State in support of the impugned order submitted that the petitioner has not been prejudiced in any manner. He filed his reply to the second show cause. The same has been considered. Monetary loss has been caused to the Government by purchase at higher price and that the matter was still pending in Vigilance PS Case No. 51 of 1990.

8. The law with regard to the jurisdiction of the Courts to interfere with the orders in a departmental proceeding and punishment thereupon stands limited. The Court will interfere if there is violation of the procedures inasmuch as the delinquent was not given adequate opportunity to present his case, materials were relied upon behind his back, the findings are perverse etc. are only some of the illustrative grounds. If a report of exoneration in the enquiry is gassed, the delinquent has to

be told for what reason the disciplinary authority was not agreeing with the enquiry officer to enable the delinquent to satisfy the disciplinary authority of the correctness of the findings of the Enquiry Officer. If the disciplinary authority does not disclose its mind or retains relevant facts or grounds in its own mind and only asks the delinquent that the enquiry report is not acceptable, what is the delinquent supposed to reply to? He does not have the benefit of appreciating the case that he has to meet. What justice can follow upon this?

9. In (2006) 9 SCC 440 *Lav Nigam v. Chairman & M.D., I.T.I. Limited and Anr.*, the delinquent was exonerated in a departmental enquiry. The disciplinary authority issued the second show cause notice without formally recording the grounds for difference of opinion but merely recording the three articles of charges. It concluded in the following words:

This is a serious misconduct on the part of Sri Lov Nigam an executive Manager level of a Public Sector Undertaking Company.

10. The Supreme Court noticed that the second show cause notice mentioned 'that the disciplinary authority had provisionally come to the conclusion that the appellant was not a fit person to be retained in the service of the company and that a major penalty of removal should be imposed under Rule 25(F) of the Conduct, Discipline and Appeal Rules, 1975 of the I.T.I. Limited.

11. The High Court rejected the challenge of a separate show cause notice if disciplinary authority differed with the enquiry report. It also held that two show cause notices, one for difference of opinion and the other for the punishment were not necessary and they could be combined in one.

The Supreme Court observed in paragraph 10 and 13 as follows:

10. The conclusion of the High Court was contrary to the consistent view taken by this Court that in case the disciplinary authority differs with the view taken by the enquiry officer, he is bound to give a 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.

13. We have already quoted the extracts from the show cause notice issued by the disciplinary authority. It is clear that no notice at all was given before the disciplinary authority recorded its final conclusions differing with the finding of fact of the enquiry officer. The notice to show cause was merely a show cause against the proposed punishment....

12. In the present case no second show cause notice of the grounds of difference of opinion was given and the notice given was similar as that discussed above recording a finding of guilt rather than a show cause issued with an open mind.

13. Additionally, in the facts of the present case there was no Presenting Officer, no evidence was led during enquiry. Presuming that the Department proposes to rely upon the documentary evidence only, surely the petitioner was entitled to the same at the stage of enquiry. This became more important when he has been exonerated. The department cannot be permitted at the stage of the second show cause notice to rely upon documents which were never part of the memo of charges to then pronounce guilt of the delinquent. Learned Counsel for the petitioner therefore rightly relies upon paragraph 39 of the judgment of the Supreme Court reported in : (1999)ILLJ604SC Kuldeep Singh v. Commissioner of Police and Ors. which reads as under:

39. From the findings recorded separately by the Deputy Commissioner of Police, it would appear that there is a voucher indicating payment of Rs. 1000 to Rajpal Singh, one of the labourers, on 8.2.1990. This document was not mentioned in the charge-sheet in which only two documents were proposed to be relied upon against the appellant, namely, copy of the report of SHO Lajpat Nagar dated 5.3.1990 against the appellant and the copy of the labourers' statement. This document has, therefore, to be excluded from consideration as it could not have been relied upon or even referred to by the Deputy Commissioner of Police. Moreover, according to the charge framed against the appellant, payment was made on 22.2.1990 and not on 8.2.1990 as indicated in the voucher and, therefore, the voucher for this reason also has to be excluded.

14. It has rightly been urged that the second show cause notice when it sought to refer to alleged past acts of the petitioner with regard to the punishment proposed was also bad for vagueness. No details have been mentioned of the period of the charge or other details thereof to enable the petitioner to answer the same. In : [1964]4SCR540 (State of Mysore v. K. Manche Gowda) interfering with an order of punishment incorporating the past service record also for imposing punishment without reference to it in the second show cause notice, the Apex Court at paragraph 7 of the judgment held that it was not sufficient that the government servant shall be deemed to be aware of his past facts. It was necessary to make full disclosure of the past conduct in the second show cause notice with regard to the period acts of omission etc...It is only then that he might explain or have an adequate explanation to offer or put forth mitigating circumstances or other explanations. The issue was not whether the explanation would be acceptable but whether he had been given opportunity to give his explanation.

15. This Court additionally finds substance in the submission on behalf of the petitioner that the second show cause notice dated 26.6.2001 was in fact not a second show cause notice but the communication of a final decision fulfilling the mere formality of a second show cause notice. The notice states that he has been found guilty and a decision had been taken against him for recovery.

16. The last contention of the petitioner that in the nature of the allegations, his reply, the report of exoneration, his reply to the second show cause notice on both charges, he was only acting in pursuance of indent placed by others and price negotiated by them with no discretion for him in the matter as a government servant. The impugned order of punishment is non speaking and does not consider his defence at all much less any discussion of reasons for its non acceptability. The order therefore becomes arbitrary and unreasoned.

17. This Court is satisfied that the Division Bench in LPA No. 1538 of 1999 had given more than sufficient indication to the respondents in what manner they were required to proceed with in accordance with law. If they have chosen to disregard the same they may do so at their own peril.

18. The order of punishment dated 12.11.2001 is therefore clearly not sustainable in law. The same is accordingly set aside. The petitioner shall be entitled to be returned a sum of Rs. 2.45 lacs if deducted from him and he shall also be entitled to full salary for the period of suspension.

19. The writ application stands allowed.

20. The present order shall have no bearing on Vigilance PS Case No. 51 of 19909 which shall proceed on its own in accordance with law.

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