

Nawalesh Kumar Vs. State of Bihar and ors.

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Court : Patna

Decided On : Aug-08-2005

Reported in : 2006(3)BLJR2163

Judge : Narayan Roy, J.

Appeal No. : C.W.J.C. No. 224 of 2002

Appellant : Nawalesh Kumar

Respondent : State of Bihar and ors.

Advocate for Def. : JC to SC 10

Advocate for Pet/Ap. : Dilip Kumar Tiwari, Adv.

Disposition : Application allowed

Judgement :

1. Heard counsel for the parties.
2. This writ application is directed against the order as contained in annexure 6, issued vide memo No. 6762 (S) dated 26.9.2001, whereby and whereunder certain punishments have been inflicted upon the petitioner on conclusion of a departmental proceeding.
3. It is submitted by learned counsel for the petitioner that for the event of the year 1996-97 a departmental proceeding was initiated against the petitioner for the

charges that the petitioner, who had supervised the work of construction of a bridge, which had collapsed in the year of construction itself it is also submitted that the petitioner was put under suspension and the inquiry proceeded against the petitioner. The Inquiry Officer submitted his final report exonerating the petitioner from the charges on the grounds, inter alia, that during the period of construction of the bridge, the petitioner was not posted at Jehanabad, rather he was transferred to Chakradharpur with effect from 10.8.1996.

4. It is further submitted by learned counsel for the petitioner that since the petitioner was exonerated of the charges by the Inquiry Officer, the disciplinary authority could have accepted the same or in case he was not satisfied with the inquiry report, he could have differed with the same after due notice to the petitioner. But, neither he recorded the opinion of difference nor any opportunity of hearing was given to him for the punishment awarded to him.

5. The action of the State authority in that view of the matter, thus, is wholly without jurisdiction in view of the ratio laid down in the case of Punjab National Bank and Ors. v. Kunj Behari Misra .

6. A counter affidavit has been filed on behalf of the respondents but the fact has not been denied that the petitioner was exonerated by the Inquiry Officer and the disciplinary authority passed the order impugned without giving any opportunity of hearing to the petitioner.

7. In case of Kunj Bihari Misra (supra), the Apex Court has held that in case the disciplinary authority differs with the inquiry report, he is required to record the reasons of difference and also to give an opportunity of hearing to the delinquent.

8. From the pleadings of the parties, it appears to be an admitted fact that no opportunity, whatsoever, was given to the petitioner for the proposed punishment on ground of difference.

9. The order impugned, in that view of the matter, is held to be wholly without jurisdiction and not sustainable in law.

10. In the result, this application is allowed and the order impugned, as contained in annexure 6, is set aside.

However, the authority if so advised, may proceed in the matter in accordance with law.

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