

Shailendra Kumar Vs. Bihar State Pollution Control Board and ors.

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Court : Patna

Decided On : Jul-22-2008

Judge : Barin Ghosh and C.M. Prasad, JJ.

Appellant : Shailendra Kumar

Respondent : Bihar State Pollution Control Board and ors.

Disposition : Appeal allowed

Judgement :

Barin Ghosh and C.M. Prasad, JJ.

1. Heard learned Counsel for the parties.

2. The charges against the appellant are quite serious. Some of them stood proved at the enquiry. The Enquiry Officer gave benefit of doubt to the appellant in respect of some of the charges. The disciplinary authority, for the reasons recorded, did not accept the views of the Enquiry Officer pertaining to those charges for which the appellant had been given benefit of doubt. The appellant was given appropriate opportunity to deal with the opinion of the disciplinary authority as was expressed by him while dealing with the enquiry report.

2. In the circumstances, having regard to the nature of allegations against the appellant and the outcome of the enquiry, there was hardly any scope of

interference and, accordingly, when the order of discharge, as was passed while concluding the disciplinary proceedings, was assailed in the writ petition, a learned Judge of this Court for reasons well recorded dismissed the writ petition.

3. One of the contentions before the learned Judge was whether the Chairman of the Board, who passed the order, could be said to be the disciplinary authority within the meaning of the Act. Admittedly, it is the Board and not the Chairman of the Board, who is the disciplinary authority. However, Section 11-A of the Act authorizes the Board to delegate to the Chairman of the Board any of the powers of the Board.

4. The question in the instant case was whether an appropriate delegation was made by the Board in favour of the Chairman authorizing him to act as the disciplinary authority of the appellant. Our attention has been drawn to the resolution of the Board taken on August 14, 1993 whereby and under which the action of the Chairman to suspend the appellant was approved, it was further resolved that during the suspension period the headquarters of the appellant would be at Ranchi and unless he reports there within 15 days, the Chairman is authorized to take disciplinary action against the appellant.

5. It was submitted before us that the delegation was conditional upon failure on the part of the appellant to report within fifteen days and inasmuch as within fifteen days the appellant reported, the effect of the delegation by the said resolution came to an end.

6. A look at the proposal in respect whereof the said resolution was adopted would amply make it clear that the appellant was suspended for acts, which according to the proposer of the said proposal, amounted to gross indiscipline. The logical conclusion, therefore, would be that the suspension of the appellant was in contemplation of a disciplinary proceedings and that had to be brought to a logical conclusion upon conclusion of such proceedings. In that background, when the Chairman of the Board was authorized to take disciplinary action against the appellant, the same tantamounted to authorizing the Chairman to conclude the contemplated disciplinary proceedings. We are, therefore, *ad idem* with the views of the learned Judge, who dealt with the aforesaid writ petition, that in the facts

and circumstances of the case the Chairman of the Board was delegated the power of disciplinary authority in relation to the actions of the appellant for which he was suspended.

7. However, the learned Judge who dealt with the writ petition did not notice the most important letter dated December 8, 1994 written by the Enquiry Officer to the disciplinary authority, namely, the Chairman of the Board, whereby and under he informed the Chairman that he was not keeping good health since August 2, 1994 till November 30, 1994 and, accordingly, could not take up the enquiry matter. By the said letter he requested for assistance of Sri Vidyanand Singh, Sr. Law Officer of the Board. In response to the letter of the Enquiry Officer dated December 8, 1994, the Chairman of the Board authorized Sri Vidyanand Singh to assist the Enquiry Officer, as had been stated in the counter affidavit filed before the Writ Court. Sri Vidyanand Singh not only assisted the Enquiry Officer, who held the enquiry proceedings only on one day and recorded evidence of 19 witnesses, but also deposed himself as a prosecution witness. We think that by reason of obtaining such assistance, the Enquiry Officer vitiated the enquiry proceedings and everything done subsequent thereto equally stands vitiated.

In the circumstances, we allow the appeal, set aside the judgment and order under appeal and allow the writ petition to the extent of quashing the order of discharge, the second show cause alongwith the reasons furnished by the disciplinary authority while differing from the views of the Enquiry Officer and the enquiry report and permit de novo conclusion of the disciplinary proceedings after holding the enquiry afresh and thereupon by taking such subsequent steps, as are required to be taken in law, for conclusion of disciplinary proceedings.