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Court : Patna

Decided On : Apr-02-1994

Judge : B.P. Singh and S.K. Chattopadhyaya, JJ.

Appeal No. : C.W.J.C. No. 4682/1991

Appellant : Akhleshwar Singh

Respondent : Bihar State Co-operative Land Development Bank and ors.

Disposition : Petition allowed

Judgement :

1. We have heard counsel for the parties at length and with their consent this writ petition is disposed of at the admission stage itself.
2. The petitioner is aggrieved by the order dated April 5, 1989 (Annexure-6) whereby he has been discharged from the service of Respondent Bank. It appears that the petitioner was suspended by an order dated July 8, 1988 when he was posted as Field Officer at Basantpur. His headquarters was fixed at Bhagalpur. The petitioner says in his writ petition that he was neither paid his arrears of salary nor he was paid any subsistence allowance, he was compelled to leave Bhagalpur in the month of December, 1988, since he was seriously ill and had no means of subsistence in the city of Bhagalpur. While at Bhagalpur, he was served with a

letter of the Bank sent from the headquarters at Patna on January 6, 1989 along with a copy of chargesheet. Unfortunately, the letter was received by the petitioner on January 16, 1989 which was the date fixed for his appearance before the Deputy Managing Director for filing of explanation in regard to the charges. Since the petitioner received a communication on the same date on which he was required to appear at Patna before the competent authority, he could not appear at Patna and, therefore, submitted his written explanation on the basis of what ever material he had in his possession and sent the same by Registered post on January 31, 1989 which was received by the Enquiring Officer on February 4, 1989. The order sheet also bears out the fact that the written explanation furnished by the petitioner was received by him on February 4, 1989. This is recorded in the order dated February 6, 1989 which further directs that the petitioner may produce any evidence in support of the defence on February 13, 1989. Admittedly, the order of the Enquiring Officer was not communicated to the petitioner and the petitioner did not have knowledge about the fact that the matter will be heard further on February 13, 1989. In fact, the matter was heard on several dates thereafter but no notice was sent to the petitioner regarding the date fixed in the disciplinary enquiry. In our view, the procedure followed by Enquiring Officer was clearly in breach of principles of natural justice, because having come to know that the petitioner was at village home from where he had furnished explanation, at the same time submitting that he may produce further evidence. That was accepted by the Enquiring Officer and he should have therefore intimated to the petitioner the next date on which he could produce such evidence. The proceeding was, therefore concluded ex pane. The petitioner has made a grievance that he was never paid his subsistence allowance though he continued to stay at Bhagalpur till December, 1988 and repeatedly claimed subsistence allowance. It is also not pleaded by respondents that subsistence allowance was either offered to him or was paid to him. That apart, atleast a notice ought to have been given to the petitioner about the next date of hearing so that he could appear for his defence.

3. Learned Advocate General submits that the enquiring officer has found the petitioner guilty of the second charge after taking into account the defence submitted by him in his written explanation. No doubt, the Enquiring Officer has coasidered the matter with care and caution but, however, meticulous the

Enquiring Officer may be, that is no substitute for an opportunity of being heard in the proceeding. The right of being heard, though not a fundamental right, is a fundamental principle for judging fairness in action.

4. We, therefore, quash the impugned order (Annexure-6) and direct that Enquiring officer to proceed with the departmental proceeding in accordance with law, from the stage it was on February 6, 1989. We direct the petitioner to appear before the Enquiring Officer on May 4, 1992 at Patna, when he shall give suitable direction regarding the future hearing in the departmental proceeding. In case, the Enquiring Officer is not available on that day, the petitioner shall seek for appointment on the next date on which he is available.

5. The petitioner will be given opportunity of being heard and of producing evidence and further explanation, if so advised.

6. This writ petition is allowed, and, accordingly. Annexure -6 is quashed but the departmental proceeding may be continued as directed earlier in accordance with law. The petitioner will make an application for payment of arrears and subsistence allowance which shall be dealt with according to law within two months from the date of receipt of representation by the concerned authority.

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