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Court : Patna

Decided On : Feb-04-2008

Judge : Navin Sinha, J.

Acts : Bihar Civil Services (Classification, Control and Appeal) Rules - Rule 55

Appeal No. : CWJC No. 7292 of 2007

Appellant : Suresh Prasad

Respondent : The State of Bihar and ors.

Disposition : Application allowed

Judgement :

Navin Sinha, J.

1. Heard learned Counsel for the petitioner and learned Counsel for the State.

2. Departmental proceedings were initiated against the petitioner on 2.6.1997, when three charges were framed against him. The petitioner submitted his show cause. The enquiry report came to be submitted on 18.3.1998. The Inquiry Officer exonerated him with regard to charges 1 & 2. On charge 3 it was held that he was partially guilty of not being careful in issuance of cheques. The department not being satisfied with the enquiry report decided to hold a fresh departmental proceeding by order dated 30.9.2002. On 21.10.2002 the petitioner submitted his

reply denying the charges. On 19.8.2003 the Inquiry Officer returned the records for the reason that the Presenting Officer was continuously absent without any intimation, and, therefore, it was not possible for him to proceed with the enquiry. On 22.5.2006 the department again decided to hold re-enquiry against the petitioner under Rule 55 of the Bihar Civil Services (Classification, Control and Appeal) Rules. On receipt of notice, the petitioner stated that he had already filed his show cause on 21.10.2002 and had nothing further to say in the matter. An enquiry report then came to be submitted afresh. The finding this time with regard to item No. 3 of the earlier report was that his intention did not appear to be clear and, therefore, he could not be absolved of the liability; that he could not be absolved of the second charge while the third charge could not be proved against him. A second show cause notice dated 3.4.2007 followed on basis of the same as to why he be not dismissed from service.

3. Learned Counsel for the petitioner submitted that there was no justification for the fresh enquiry by orders dated 30.9.2002 and 22.5.2006. The petitioner had been exonerated in the first enquiry by the report dated 18.3.1998. There were no allegations of procedural impropriety in the earlier departmental proceedings. No evidence or material was alleged to have been left out of consideration and there were no witnesses whose evidence had not been considered or were denied deposition. The order for de novo enquiry was, therefore, bad in law. Even after the fresh enquiry commenced, no fresh evidence was led by the department, no witnesses were examined and only on basis of the show cause submitted by the petitioner earlier on 21.10.2002 read along with the memo of charges only the Inquiry Officer conducted an illegal departmental proceedings by himself to arrive at a finding of guilt of the petitioner with regard to two charges. Even this was not a positive finding of guilt but was based merely on conjecture and surmises unsupported by any evidence or documents.

He relied upon a judgment of the Supreme Court reported in : (2003)IIILLJ557SC (Union of India v. K.D. Pandey and Anr.) and the judgments of this Court reported in 1971(4) PLJR 515 (Ajodhya Prasad Pandey v. Union of India and Ors. 2004(2) PLJR 291 (The Bihar State Electricity Board and Ors. v. Brij Mohan Prasad and Ors.) and 2007(3) PLJR 787 (Arun Kumar Sinha v. The State and Ors.).

4. Learned Counsel for the State submitted that the petitioner having participated in the fresh enquiry initiated by order dated 22.5.2006 cannot be now permitted to challenge the illegality and correctness of the same after the proceedings has been concluded. The matter was still to achieve finality by consideration of his reply to the second show cause notice and that the proposed punishment has already been sent to the Bihar Public Service Commission for its recommendation. The Court should not, therefore, interfere at this stage.

5. The charges against the petitioner were three fold. The first charge was of diversion of funds to other than purposes permitted. The enquiry report dated 18.3.1998 exonerated him. The second charge was that the cheques prepared for deposit in the Bank were cancelled. The finding was that he was not very careful but that he was not guilty of backdating etc. The charge 3 was with regard to grant of illegal promotions for which he was exonerated.

6. The disciplinary authority had the right to differ with the enquiry report and proceed appropriately in the matter. It did not do so. Proposal was initiated for fresh enquiry on 30.9.2002. This order at Annexurer-11 only states that dissatisfied with the earlier enquiry report the Government had decided to hold a fresh enquiry. As noticed above, this enquiry never saw the light of the day as the Inquiry Officer returned the records on 19.8.2003 on the ground that the Presenting Officer was not cooperating in the enquiry. Thereafter followed the order for fresh enquiry dated 22.5.2006. It states that dissatisfied with the earlier enquiry report a decision had been taken to hold fresh enquiry. The Inquiry Officer on the second occasion due to pressure of work was finding it difficult to conduct the proceedings; therefore, the need to appoint a fresh Inquiry Officer which has culminated in the present enquiry report to the prejudice of the petitioner leading to the issuance of a show cause notice.

7. The right of the employer to hold more than one departmental proceedings cannot be interfered with by the Court. This may be done in a case also where the earlier enquiry is still pending. But there has to be justification for it. It would only be in a case where there has been serious procedural irregularity in a departmental proceedings, documents and materials may have escaped attention,

relevant evidence though available may not have been led, violation of principles of natural justice are some of the conditions to hold a fresh enquiry. Merely because the enquiry report is not palatable, it is not open to the authorities on their ipse dixit to hold a de novo enquiry. To permit this to be done, will amount to a carte-blanche to the authorities to keep holding re-enquiries by appointing different Inquiry Officers till such time that a report to their satisfaction is furnished. This shall be more strictly construed when the delinquent has had the benefit of exoneration. In the present case, on the first occasion i.e. 30.9.2002 the only reason given is that the authorities were dissatisfied with the enquiry report. No reasons have been assigned for this dissatisfaction in light of what has been discussed above. The counter affidavit of the Respondents is of no help and does not set out any grounds in justification of the de novo enquiry beyond that mentioned in Annexure-11. Likewise, the order dated 22.5.2006 refers that the earlier Inquiry Officer due to work load was unable to hold the enquiry. This was clearly contrary to the communication dated 19.8.2003 of the second Inquiry Officer returning the records for lack of cooperation from the Presenting Officer. This makes the order dated 22.5.2006 nonest on the face of it for the reasons urged therein. In any event, the subsequent enquiry report is vitiated on another ground also. It is not in controversy that the petitioner in this re-enquiry submitted that he had already filed his show cause on 21.10.2002 and that he had nothing further to say in the matter. Nonetheless, the Inquiry Officer was required to hold a regular proceedings by consideration of evidence, witnesses, documents and the defence. He based his conclusion of the guilt of the petitioner only on the memo of charges and his show cause. Even there the petitioner has been exonerated on one charge while on the other two, there is no positive finding of guilt but only a finding of suspicion based on surmises and conjectures. Suspicion cannot replace proof.

8. In the facts of the case, the Court cannot be oblivious of the fact that departmental proceedings were initiated against the petitioner on 2.6.1997. The enquiry report of exoneration came to be submitted on 18.3.1998. A fresh enquiry was sought to be commenced on 30.9.2002 when the Presenting Officer did not cooperate. A fresh enquiry was then initiated on 22.5.2006 leading to the enquiry report followed by the second show cause on 3.4.2007. The petitioner has had to

face this ignominy from 1997 to 2007, ten years, despite his exoneration by the Inquiry Officer as far back as in 1998.

9. In : (1971)ILLJ427SC (K.R. Deb v. The Collector of Central Excise, Shillong) the appellant was proceeded against departmentally. An enquiry report was submitted holding that the charge was not proved. Notwithstanding the report, a fresh Inquiry Officer was appointed to conduct a supplementary open enquiry, recording that the previous Inquiry Officer had not recorded the evidence of some prosecution witnesses during the course of the enquiry. This fresh enquiry also exonerated the appellant. The disciplinary authority then again wrote to the Inquiry Officer that the report was sketchy and that he has failed to appreciate the importance of the evidence of a prosecution witness. The Inquiry Officer then submitted a final report holding that the conduct of the appellant may not be aboveboard. But that no conclusive evidence was forthcoming. The disciplinary authority then proceeded to pass a fresh order appointing a new Inquiry Officer afresh. The report now was of the guilt of the appellant being proved. Notice was issued to show cause for dismissal, he was then dismissed. The Supreme Court held that it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the enquiry or some important witnesses were not available at the time of enquiry or were not examined for some other reason, the disciplinary authority may ask the Inquiry officer to record further evidence. Ignoring all the previous enquiries on the ground that the report of the Inquiry officer did not appeal to the disciplinary authority was not sound, as the disciplinary authority has enough powers to reconsider the evidence itself and come to its own conclusion. The disciplinary authority clearly did not wish to take any decision with regard to the guilt himself but was attempting to find a surrogate to speak on his behalf. 'The procedure adopted was not only unwarranted by the Rules but was harassing to the appellant.' The appeal was allowed. The enquiry report and the order of punishment were set aside.

10. In : AIR 1999 SC449 (Union of India and Ors. v. P. Thayagarajan) it has been held that 'if in a particular case, where there has been no proper enquiry because of some serious defect having crept into the enquiry or some important witnesses were not available at the time of enquiry or were not examined, the disciplinary

authority may ask the enquiry officer to record further evidence but that provision would not enable the disciplinary authority to set aside the previous enquiries on the ground that the report of the enquiry officer does not appeal to the disciplinary authority.'

11. In : (2003)IIILLJ557SC (Union of India v. K.D. Pandey and Anr.) relied upon by the petitioner, disciplinary proceedings was initiated. The delinquent was exonerated. The disciplinary authority examined the matter and found that four of the six charges could be substantially proved beyond doubt with the available documentary evidence. Fresh enquiry was ordered. The delinquent was dismissed. The Tribunal and the High Court were of the view that on the same materials a fresh opinion had been furnished and it was not a case of further enquiry. It was not a case where the earlier enquiry was held to be bad or that the management or the establishment did not have proper opportunity to lead evidence or that the findings were perverse. It was held that thus, there was no justification to commence fresh enquiry on the same charges. The Apex Court held that what had been done was a second enquiry on the same set of charges and materials. If this process was allowed the enquiries could go on perpetually until the view of the enquiring authority is in accord with that of the disciplinary authority. This would clearly be an abuse of process of law. The appeal was dismissed.

12. In 1971 (4) PLJR 515 (Ajodhya Prasad Pandey v. Union of India and Ors.) relied upon by the petitioner, departmental enquiry was held against the delinquent. The petitioner was exonerated from the charges. The recommendation was accepted, when the file was put up to the higher authorities. The superior authority directed issuance of a fresh charge sheet purported to be on fresh allegations of facts. This was challenged that there were no fresh facts and all the circumstances were the same. The Court held that repeated charges had been framed against the delinquent on the same allegations of fact and to permit the same to continue will only be harassment to the petitioner. The respondents were, therefore, restrained from continuing with the fresh proceedings.

13. In 2004 (2) PLJR 291 (The Bihar State Electricity Board and Ors. v. Brij Mohan Prasad and Ors.) it has been held that earlier departmental proceedings were held against the petitioners. Evidence was adduced when the delinquent was exonerated. A fresh departmental proceedings came to be initiated in pursuance of certain observation of the Supreme Court in a case preferred by certain other persons when they were found to be guilty. The Division Bench held that in the earlier enquiry proper opportunity was given to the parties. All materials were placed and it was not the case of the Board that any of the materials were not available at that time or that there had been any procedural irregularity. It was, therefore, held that the Hon'ble Single Judge was justified in his finding that there was no justification in law for a fresh enquiry. With regard to the participation in the second enquiry by the delinquent, it was in paragraph 18 as follows:

18. So far as the second point is concerned if the proceeding is without jurisdiction in that case participation by itself does not debar the person to challenge the same. When the Board was not justified in initiating a second enquiry only because of their participation, the writ petitioners-respondents cannot be deprived of the right to challenge the same on the ground of lack of jurisdiction.

14. Learned Counsel for the petitioner lastly relied upon a judgment of this Court in 2007(3) PLJR 787 (Arun Kumar Sinha v. State and Ors.). In the relevant extract at paragraph 6 of the judgment, it has been held 'Once enquiry report is submitted it is open to the disciplinary authority to either accept it or reject it or accept or reject part of it and give reasons thereof.' Again at paragraph 7 in the relevant extract it was held 'Fresh enquiry cannot be ordered to fill up the lacuna left by the department itself.'

15. Coming to the facts of the present case, a finding has already been arrived at hereinabove of the absence of any grounds for a de novo enquiry. The fresh enquiry has proceeded on the same charges for which the petitioner had been exonerated earlier. Mere filing of a show cause to the second enquiry would not tantamount to submission to the jurisdiction when the same be initially lacking in the disciplinary authority inasmuch as no grounds for de novo enquiry has been made out. In any event, there has been no enquiry in law in pursuance of which a

fresh enquiry report has been submitted.

16. This Court, therefore, holds that there was no justification in law for the respondents to hold a de novo enquiry after the earlier enquiry report dated 18.3.1998 came to be submitted. The orders dated 30.9.2002 and 22.5.2006 initiating the fresh enquiry are consequently set aside. As a result, the second enquiry report automatically collapses and is set aside. In consequence, the second show cause notice issued to the petitioner dated 3.4.2007 also collapses and is quashed.

The writ application is allowed.

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