

Paritosh Kumar Vs. State of Bihar (Now Jharkhand) and ors.

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Court : Jharkhand

Decided On : Mar-23-2006

Reported in : [2006(2)JCR199(Jhr)]

Judge : R.K. Merathia, J.

Acts : Classification Control and Appeal Rules - Rule 49

Appeal No. : C.W.J.C. No. 781 of 1997 (R)

Appellant : Paritosh Kumar

Respondent : State of Bihar (Now Jharkhand) and ors.

Advocate for Def. : Pradip Mode, G.P.I. and; Azimuddin, J.C. to G.P.I.

Advocate for Pet/Ap. : Sumeet Kumar Gadodia and; Rajiv Agarwal, Advs.

Judgement :

R.K. Merathia, J.

1. Petitioner has prayed for quashing the impugned order contained in Annexure 5 dated 19.12.1996 imposing penalties on him.

2. Petitioner's case is that one of the punishments being major one, the said order could not have been passed without supplying a copy of the enquiry report. It was further submitted that in fact no enquiry was held at all Petitioner was served with

a charge-sheet, inter alia, to the effect that during 1993-94 when he was posted as Assistant Engineer in Konar Canal Sub-Division No. II, Bagodar, there were several consecutive thefts, but inspite of information, he did not take proper steps causing loss to Government. He was charged for dereliction of duty and causing loss to Government amounting to serious misconduct. He was put under suspension. He replied to the said charges. As the proceeding was not completed within a reasonable time, he filed writ petition being C.W.J.C. No. 2810 of 1995 (R) which was disposed of by order dated 19.9.1996 with a direction to the respondents to complete the enquiry proceeding within three months.

3. Learned Counsel for the petitioner submitted that just on the expiry of the three months from the said order dated 19.9.1996, the impugned order dated 19.12.1996 was passed imposing following penalties/punishments:

- (a) Punishment of censure in his Character Roll for 1994-95.
- (b) Stoppage of three annual increment with cumulative effect.
- (c) Recovery of Rs. 1,07,500/- @ of Rs. 500/- per months.
- (d) Payment of subsistence allowance only for the period of suspension.
- (e) Not to post the petitioner in works Sub-Division during his entire service career.

4. Petitioner's contention is that stoppage of three annual increments with cumulative effect is a major punishment. The following portion of the judgment of Raj Kumar Mehrotra v. The State of Bihar and Ors. 2001 (2) PLJR 622, was relied on:

11. Even though the corresponding entry in the CCA Rules [entry (iii) of Rule 49] is somewhat different from entry (v) in the Punjab Rules (supra), following the ratio of the decision in Kulwant Singh Gill's case it would follow that where the annual increments are withheld with cumulative effect the result will be that pay of the delinquent would stand reduced to the lower stage in the time scale of pay making the penalty of withholding of increments a major one.

5. Learned Counsel for the petitioner pointed out to paragraph 38 of the counter affidavit in which it is stated that 'the enquiry report was analysed by the respondent and petitioner was found guilty and minor punishments were imposed on him and hence enquiry report was not necessary to be supplied to him.'

6. Learned Counsel for the State could not dispute this position that punishment of stoppage of three annual increments with cumulative effect is major punishment in view of Raj Kumar Mehrotra (supra). However, he submitted that the petitioner was advised to see the required papers in office and objection of non- supply of papers was not raised by him in his earlier writ petition. He further submitted that the petitioner expressed his desire before the enquiry officer to cross-examine the witnesses.

7. As one of the punishments i.e. stoppage of three annual increments with cumulative effect is a major punishment in view of Raj Kumar Mehrotra (supra), a copy of the enquiry report should have been supplied to the petitioner before passing the order of punishment. Admittedly, enquiry report was not supplied to the petitioner as it is annexed with the counter affidavit. In the circumstances, there is no option but to quash the order of punishment.

8. On 11.5.2000, this Court, ordered that pending hearing this writ petition, the operation of the impugned order so far as it relates to recovery of Rs. 1,07,500/- shall remain stayed but rest of the punishments will be implemented which will be subject to the final result of this writ application. It is submitted by the learned Counsel for the petitioner that before the said order was passed, certain amount was already recovered from him. It is further submitted that petitioner has been finally allocated Jharkhand cadre.

9. In the result, the impugned order of punishment is set aside and the matter is remitted to the Secretary, Water Resources Department, Government of Jharkhand, Ranchi. If the Department wishes to proceed against the petitioner, it may do so by starting a fresh enquiry proceedings from the stage of filing show cause by the petitioner. If such proceedings is started, it should be concluded as early as possible and not beyond six months from the date of its initiation, in accordance with law, if the petitioner co-operates. If such enquiry is not started

within a period of three months from the date of receipt/production of a copy of this order, it will be presumed that the department does not wish to initiate a fresh enquiry and, in that event, the amounts deducted from the petitioner will be refunded/adjusted. No. costs.

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