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Court : Jharkhand

Decided On : Sep-12-2006

Reported in : [2006(4)JCR515(Jhr)]

Judge : R.K. Merathia, J.

Appellant : Rakesh Ranjan Sinha and ors.

Respondent : State of Bihar and ors.

Judgement :

R.K. Merathia, J.

1. Petitioners have challenged the orders No. 1320, 1319 and 1318, dated 31.12.1997, issued by respondent No. 5, whereby and whereunder they have been dismissed from service and have claimed consequential reliefs.

2. The relevant facts, in short are as follows. Petitioners were posted as Junior Engineers at Galudih right Canal Division No. 2, Musabani, District, East Singhbhum at the relevant time. In the light of report submitted by the flying squad Division No. 2, petitioners were put under suspension and a departmental proceeding was initiated against them. The main charge was of deliberately making excess payment to the tune of Rs. 16,23,124/- to the contractor. The Enquiry Officer exonerated the petitioners in his report dated 18.4.1996. Petitioners had filed writ petitions challenging the order of suspension but after it

was revoked they prayed for a direction for passing appropriate order on the said enquiry report. The said writ petitions were disposed of on 3.9.1997, the operative portions of which reads as follows:

I make it clear that if the disciplinary authority chooses to differ with the enquiry report, he will pass an order issuing second show cause to the petitioner.

In that view of the matter, the authority may, if he so chooses, issue a second show cause notice to the petitioner within one month from the date of service of a copy of this order and on service of the said show cause notice, the petitioner is at liberty to give his reply within a month thereafter and final order may be passed within a month thereafter. In that view of the matter, this Court directs that disciplinary proceeding must come to an end by 31st December. 1997. If it is not done so the charges framed against the petitioner shall stand quashed on 2nd January. 1998.

3. The Government differing with the said enquiry report issued a second show cause notice. Ultimately the petitioners were dismissed from service.

4. Mr. Shivnath, learned Counsel appearing for the petitioners submitted that (i) the reasons for differing with the enquiry report were not given in the second show cause notice; (ii) one month's time to file show cause was not given as per the aforesaid order of the High Court: and the show cause filed by the petitioner were not considered.

5. On reading the charge-sheet, the enquiry report and the second show cause notice, it appears that the reasons for differing with the enquiry report were given. Therefore, this objection of Mr. Shivnath cannot be accepted. If further appears from the second show cause notice, that due to strike of secretariat staffs, it could not be issued within one month from the date of service of the order and in view of the said direction of the High Court to conclude the disciplinary proceeding by 31st December, 1997, one week's time was granted for filing the show cause in the second show cause notice dated 18.12.1997. According to the petitioners they filed show causes on 26.12.1997. Thus this objection that one month's time was not allowed as per High Court order is also not acceptable.

6. From the enquiry report, it appears that relevant documents were supplied to the petitioners and they were given opportunity to inspect the documents. Petitioners produced evidences in their defence before the Enquiry Officer and the enquiry report exonerating them were supplied to them.

7. A receipt has been annexed to show that second show causes were filed on 26.12.1997 but it is stated in the punishment order that the show causes were not filed in time. Thus, it is not clear whether show causes were filed on 26.12.1997 or not. If the show causes were filed on 26.12.1997, there was delay of one day.

8. Accordingly, respondent No. 8 is directed to verify whether petitioners had actually filed their show causes on 26.12.1997. If he finds that they did not file their show causes, the impugned orders shall stand, and he will send such orders to the petitioners. However, if he finds that show causes were filed on 26.12.1997, he will, consider them and pass fresh orders, with reasons in accordance with law, and will send the orders to the petitioners. Such exercise should be completed within three months from the communication of this order. The impugned orders of dismissal will depend on the orders so passed by respondent No. 8.

9. This writ petition is disposed of with observations and directions aforesaid. No costs.