

Naseem Ali Vs. Road Construction

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Court : Jharkhand

Decided On : Oct-27-2016

Appellant : Naseem Ali

Respondent : Road Construction

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S) No. 4235 of 2015
----- Naseem Ali son of late Amin Ali, Resident of House No. 1/123A, Road No. 1, Risaldar Nagar, Doranda, P.O & P.S.: Doranda, District: Ranchi. ... Petitioner Versus 1.State of Jharkhand 2.Principal Secretary, Road Construction Department, Government of Jharkhand, Project Building, P.O & P.S Dhurwa, District: Ranchi. 3.Under Secretary, Road Construction Department, Government of Jharkhand, Project Building, P.O & P.S Dhurwa, District: Ranchi. 4.Deputy Secretary, Road Construction Department, Government of Jharkhand, Project Building, P.O & P.S Dhurwa, District: Ranchi. Respondents ----- CORAM: HONBLE MR. JUSTICE PRAMATH PATNAIK ----- For the Petitioner : Mr. R. Krishna, Adv. For the Respondents : Mr. Rajesh Kumar, G.P V ----- C.A.V on 15/06/2016 Delivered on 27/10/2016 Per Pramath Patnaik, J.: In the accompanied writ application, the petitioner has inter alia prayed for quashing memo dated 20.11.2014 by which the punishment of censure as well as withholding of two increments with cumulative effect has been imposed upon the petitioner and further for quashing notification dated 28.05.2015 by which the review application preferred by the petitioner has been rejected and further to provide all

consequential benefits to the petitioner; and petitioner has further prayed for quashing enquiry report dated 03.02.2014 communicated to the petitioner vide letter dated 02.05.2014.

2. The factual matrix, as revealed and stated in the writ application, in a nutshell is that the petitioner while posted in the 2 capacity of Assistant Engineer in Building Sub-division No. 3, the construction of State Data Centre was carried out in the year 2012 and some irregularities were found, for which, a show cause notice was issued to the petitioner vide letter dated 31.01.2013, to which, the petitioner replied vide letter dated 30.03.2013. However, in the light of irregularities occurred in construction of State Data Centre, charges in Form-Ka was framed and departmental proceeding was initiated against the petitioner, in which, Smt. Shila Kishku Rapaz (retired IAS) was appointed as conducting officer, who submitted the enquiry report. Thereafter, the disciplinary authority asked for second show cause notice from the petitioner, to which, he replied. But being dissatisfied with the reply submitted by the petitioner, the disciplinary authority imposed the impugned punishment dated 20.11.2014, against which, the petitioner preferred appeal, which was rejected vide notification dated 28.05.2015.

3. Being aggrieved by the impugned order of punishment dated 20.11.2014 and appellate order dated 28.05.2015, the petitioner has approached this Court under Article 226 of the Constitution of India for redressal of his grievances.

4. Learned counsel for the petitioner submitted that the construction of State Data Centre could not be completed within the stipulated time as Officers of the I.T Department used to visit the site and give several instructions relating to changes and accordingly changes were also made. During the process of construction, the I.T Secretary also has written letter to Secretary, Building Construction Department vide letter dated 23.06.2011 3 that certain deficiencies as seepage at some places, improper fitting of some windows etc are there, which were later on removed at the cost of contractor itself and thereafter building was handed over to the I.T Department in July, 2013 and even Engineer-in- Chief at the relevant time has also written in his note-sheet dated 04.06.2013 that the State Data Centre has been satisfactorily constructed and whatever deficiencies were indicated earlier

has been removed at the cost of contractor and no additional expenditure was made by the government. Learned counsel for the petitioner submitted with vehemence that even after such noting by the Engineer-in-chief and all the details have been explained by the petitioner in his show cause notice, for vested reasons departmental proceeding was initiated against the petitioner. Learned counsel for the petitioner further submitted that the charge-sheet which constitutes the allegation against the petitioner does not disclose the responsibility of the petitioner.

5. Learned counsel for the petitioner questioning the competency of the enquiry officer, submitted that as per the guidelines of Department of Personnel & Administrative Reforms, Govt. of Jharkhand, in the departmental enquiry relating to Technical Officer (Engineers), technical person above the rank of Joint Secretary/Superintending Engineer should be appointed as enquiry officer but in the case at hand, a retired IAS officer has been appointed, who has given the findings without understanding the technicalities involved in the construction of building, hence, the findings recorded by her is perverse and suffers from jurisdictional error and is liable to be quashed. In this regard, learned counsel for the petitioner submitted that for the alleged irregularities, charges were also levelled against one Junior Engineer, namely, Mahesh Kumar Singh, and to enquire into the matter, Chief Engineer, being a technical person, was appointed as Enquiry Officer, who considering the technicalities in relation to charges rightly exonerated the delinquent but the petitioner was unfortunate one, in whose case enquiry was done by a retired IAS officer, who is a non-technical person resulting into imposition of impugned punishment.

6. Learned counsel for the petitioner further submitted that certain documents relating to charges were asked for by the petitioner to defend his case by the enquiry officer, but the same was denied on the ground that the said documents are not related with the allegation levelled against the petitioner, which itself shows the arbitrary action of the respondents-authorities and refusal of the same makes the impugned order vulnerable on the ground of violation of principles of natural justice. Learned counsel for the petitioner further submitted that the petitioner has also requested before the enquiry officer to summon the officers, who have written

letter/report enclosed in the charge-sheet as an evidence but the same has been turned down, which caused prejudice to the petitioner for defending his case in the departmental proceeding. Learned counsel further submitted that enquiry report is based on conjecture and surmises and nowhere the enquiry officer has referred any evidence legally accepted in the departmental proceeding to sustain charges against the petitioner. Learned counsel for the petitioner further submitted that no show 5 cause notice has ever been issued to the petitioner on the point of proposed punishment which has also caused prejudice to his right for submitting his reply over the proposed punishment.

7. Learned counsel for the petitioner further submitted that as per letter dated 03.10.1977 of the Public Works Department offer of work/tender below 10 % of the current schedule rate is unworkable but in the case at hand, work allotted to the contractor was below 15 %, and visualizing the situation, the authorities concerned allowed for rectification of work at the cost of contractor itself and not on State exchequer.

8. Controverting the averments made in the writ application, learned counsel appearing for the respondents-State submitted that it is an admitted case that defective work was done under the supervision of petitioner, which itself constitutes a misconduct. So far as competency of enquiry officer is concerned, it has been submitted that the enquiry officer has concluded the enquiry on the basis of documentary proof provided to her and on the basis of enquiry report submitted by her order of impugned punishment has been passed. Learned counsel for the respondents further categorically submitted that prior to infliction of impugned punishment second show cause notice vide letter 02.05.2014 has been issued to the petitioner. Hence, there is no procedural irregularities in conducting the departmental proceeding.

9. Having heard learned counsel for the parties at length and on perusal of the record, I am of the considered view that the petitioner has been able to make out a case of interference in the 6 impugned order for the following facts, reasons and judicial pronouncements: (a).Admittedly, in the case at hand, for certain irregularities/deficiencies in the construction of State Data Centre; separate

departmental proceeding was initiated against the petitioner, the then Assistant Engineer, Mr. Mahesh Kumar Singh, Junior Engineer and the then Executive Engineer. (ii). In the case of Mr. Mahesh Kumar Singh, Junior Engineer enquiry has been done by Chief Engineer, who is a technical person, and in the case of petitioner enquiry has been conducted by retired IAS officer. Here, learned counsel for the petitioner has questioned the competency/qualification of conducting officer stating that in technical matter, the technical knowing conducting officer should be appointed as has been done in the case of Mr. Mahesh Kumar Singh, the then Junior Engineer resulting into his exoneration from the charges, but, in the case of petitioner non-technical person has been appointed, and it is difficult for her to understand the technicalities involved in the irregularities concerned, resulting into passing of impugned order. In this regard, reliance has been placed upon the guidelines of the Department of Personnel & Administrative Reforms, Govt. of Jharkhand, according to which, in the departmental enquiry relating to Technical Officer (Engineers), technical person above the rank of Joint Secretary/Superintending Engineer should be appointed as enquiry officer. I find force in the 7 submission of learned counsel for the petitioner and on the ground of parity also the impugned order is vulnerable. (iii). Furthermore, reliance has placed on Clause 16 of the agreement, which inter alia says as under: Clause 16. if any damage shall happen to the work while in progress from any cause what so ever or any imperfection become apparent within three months after a certificate final of its completion shall have been given by the Engineer-in-Charge, the contractor shall make the same good at his own expense In the case at hand, admittedly the deficiencies crept up has been removed at the cost of the contractor and it further appears that Engineer-in-Chief at the relevant time has also written in his note-sheet dated 4.6.2013 that the State Data Centre has been satisfactorily constructed and whatever deficiencies were indicated earlier has been removed at the cost of contractor and no additional expenditure was made by the government. From perusal of Annexure 14, the enquiry report submitted in case of Mr. Mahesh Kumar Singh, the then Junior Engineer, it appears that he was exonerated on that ground. (iv) Furthermore, on the ground of parity in quantum of punishment among the delinquents, the case of petitioner also deserves to be considered. Here, it would be profitable to refer to a

decision rendered by the Honble Apex Court in the case of Rajendra Yadav Vs. State of Madhya Pradesh 8 and Others as reported in (2013) 3 SCC73 in particular paragraph 9, which is quoted herein below:

9. The doctrine of equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The disciplinary authority cannot impose punishment which is disproportionate i.e. lesser punishment for serious offences and stringent punishment for lesser offences. Applying the same principle, as laid down by the Honble Apex Court in the above-referred case, the petitioner deserves the same benefit as has been given to co-delinquent.

9. On the cumulative effect of aforesaid facts, reasons and judicial pronouncement and as logical sequitur to the discussion made in the foregoing paragraphs, the impugned memo dated 20.11.2014 and impugned notification dated 28.05.2015 are hereby quashed and set aside and the matter is remitted back to the respondents-authorities to consider the case of the petitioner afresh mainly on the question of quantum of punishment taking into account the observations made by this Court, within a period of twelve weeks from the date of receipt/production of copy of this order.

10. Accordingly, the writ petition stands allowed. (Pramath Patnaik, J.) Alankar/-

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