

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16997 of 2007

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Shiv Shankar Prasad Gupta, son of late Sitav Chandra Prasad Gupta, Resident of West Lohanipur, P.S. Kadamkuan, Dist. Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Secretary-cum-Commissioner, Road Construction Department, Govt. of Bihar, Patna.
3. The Deputy Secretary-cum-Chief Vigilance Officer, Road Construction Department, Govt. of Bihar, Patna.
4. The Special Officer-cum-Deputy Secretary, Road Construction Department, Govt. of Bihar, Patna.
5. The Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Road Construction Department, Govt. of Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. P.N.Pathak, Adv.

For the Respondent/s : Mr. P.K. Verma, AAG-5

Mr. Suman Kumar Jha, AC to AAG-5

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

Date: 07-08-2015

Heard learned counsel for the parties.

2. The petitioners in this writ application has assailed the order of punishment dated 12.2.2007 and, to that extent, it would be better if the relief sought by the petitioner in paragraph no.1 is reproduced, which reads as follows:-

“1. That by this application, the petitioner is invoking the writ jurisdiction of this Hon’ble Court in the nature of writ of certiorari for quashing the office order No. 54 dated 12-02-2007 passed by Deputy Secretary-cum-Chief Vigilance Officer, Road Construction Department, Govt. of Bihar, Patna whereby and whereunder the following punishment has been inflicted to the petitioner in the departmental

proceeding:-

- (i) *With-holding of increment with non-cumulative effect;*
 - (ii) *Warning;*
 - (iii) *No other payment except subsistence allowance for the period of suspension;*
- which are illegal and without jurisdiction as will be borne out from the facts stated hereinafter.”*

3. Mr. P.N. Pathak, learned counsel of the petitioner, in support of the aforementioned prayer, has basically concentrated on the aspect of violation of principle of natural justice. According to him, when the petitioner was subjected to a departmental proceeding and the enquiry officer had exonerated him in respect of all six charges, the impugned order of punishment, without supply of the enquiry report and/or affording an opportunity of hearing much less giving him the reasons for differing with the enquiry report, will be absolutely unsustainable. He explained that if such procedure is followed, there would be actually no useful purpose of holding of the departmental proceeding.

4. Learned counsel for the State, on the other hand, had sought to defend the impugned order of punishment by taking two pleas. Firstly, according to him, whatever be the reason for non-compliance of the principle of natural justice, since the order of punishment was a minor punishment, there was no requirement of giving any show-cause notice to him. Secondly, he has submitted that

whatever may be the infirmity in the impugned order the same has got cured after passing of the appellate order as contained in Annexure-6 which has been assailed by the petitioner by filing interlocutory application.

5. In the considered opinion of this Court, the authorities of the Road Construction Department has forgotten the basics of the service jurisprudence. A departmental proceeding once initiated, if there be a report of the enquiry officer in favour of the delinquent though, that cannot be the last word and the competent disciplinary authority has always a right to differ with such enquiry report but in such event it has to give reasons for such difference of opinion and communicate the same to the delinquent for soliciting his view by way of a show-cause notice. The authorities again have forgotten that whether it be a minor punishment or a major punishment, once a departmental proceeding is initiated, the copy of the enquiry report has to be given to the delinquent.

6. The rest of the plea in the counter affidavit, as with regard to non-supply of the enquiry report or non-issuance of notice before order of punishment as asserted in paragraph nos. 9, 18 & 19 of the writ application and its reply in paragraph no.11 & 14 will itself show that none of the authorities of the Road Construction Department are aware of the basic rules of holding departmental

proceeding. The petitioner in paragraph no.9 has stated as follows:-

“9. That it is submitted by the petitioner that he was not given a copy of the enquiry report.”

and the reply thereof in paragraph no.11 of the counter affidavit reads as follows:-

“11. That the statement made in para-9 of writ application it is stated that the petitioner never asked for the enquiry report. Rather in his Appeal Petition dated 26.03.2007 he himself had mentioned several points of the enquiry report.”

7. What really further shocks this Court is again the answer of the respondents in response to the statement made by the petitioner in paragraph nos. 18 & 19 of the writ application, which reads as follows:-

“18. That it is submitted by the Petitioner that the petitioner has not been given a copy of enquiry report or any opportunity of showing cause before passing the impugned order.

19. That it is further submitted by the petitioner that the punishment has been imposed without differ with the enquiry report and if the disciplinary authority differs with the enquiry report then he must assigned the reason for his differences and opportunity of showing cause against such differences but in the case of the Petitioner, the same has not been done.”

8. In answer to the aforesaid statement, the respondents in paragraph no.14 of the counter affidavit has taken following stand:-

“14. That the statement made in para-18 to 19 and 23 to 24 of writ application it is stated that as the punishment

awarded to the petitioner are of minor one hence second show cause was not asked from the petitioner."

9. After the judgment of the constitution bench of the Apex Court in the case of ***Managing Director, ECIL, Hyderabad & Ors. Vs. B. Karunakar & Ors.*** reported in (1993) 4 SCC 727, supply of enquiry report is a condition precedent for passing the order of punishment paragraph no.30 whereof reads as follows:-

"30. Hence the incidental questions raised above may be answered as follows:

(i) Since the denial of the report of the Inquiry Officer is a denial of reasonable opportunity and a breach of the principles of natural justice, it follows that the statutory rules, if any, which deny the report to the employee are against the principles of natural justice and, therefore, invalid. The delinquent employee will, therefore, be entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject.

(ii) The relevant portion of Article 311(2) of the Constitution is as follows:

"(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges."

Thus the Article makes it obligatory to hold an inquiry before the employee is dismissed or removed or reduced in rank. The Article, however, cannot be construed to mean that it prevents or prohibits the inquiry when punishment other than that of dismissal, removal or reduction in rank is awarded. The procedure to be followed in awarding other punishments is laid down in the service rules governing the employee. What is further, Article 311(2) applies only to members of the civil services of the Union or an all India

service or a civil service of a State or to the holders of the civil posts under the Union or a State. In the matter of all punishments both Government servants and others are governed by their service rules. Whenever, therefore, the service rules contemplate an inquiry before a punishment is awarded, and when the Inquiry Officer is not the disciplinary authority the delinquent employee will have the right to receive the Inquiry Officer's report notwithstanding the nature of the punishment.

(iii) Since it is the right of the employee to, have the report to defend himself effectively, and he would not know in advance whether the report is in his favour or against him, it will not be proper to construe his failure to ask for the report, as the waiver of his right. Whether, therefore, the employee asks for the, report or not, the report has to be furnished to him.

(iv) In the view that we have taken, viz., that the right to make representation to the disciplinary authority against the findings recorded in the inquiry report is an integral part of the opportunity of defence against the charges and is a breach of principles of natural justice to deny the said right, it is only appropriate that the law laid down in Mohd. Ramzan Khan's case (AIR 1991 SC 471) (supra) should apply to employees in all establishments whether Government or non-Government, public or private. This will be the case whether there are rules governing the disciplinary proceeding or not and whether they expressly prohibit the furnishing of the copy of the report or are silent on the subject. Whatever the nature of punishment, further, whenever the rules require an inquiry to be held, for inflicting the punishment in question, the delinquent employee should have the benefit of the report of the Inquiry Officer before the disciplinary authority records its findings on the charges levelled against him. Hence question (iv) is answered accordingly."

10. Thus it is clear from the aforesaid ratio laid down by Apex Court in the case of Karanukaran (supra) that the delinquent has



not to ask for a copy of the enquiry report and no order of punishment major or minor can be passed without supply of enquiry report. Unfortunately, the authorities of the Road Construction Department have not yet made themselves aware of the basic law of holding departmental proceeding and passing the order of punishment. They appear to have purposely evolved such a practice so that the order of punishment can easily be quashed by the competent court.

11. Nothing now therefore would be left for this Court to conclude that the impugned order of punishment was passed in complete ignorance of the basics of the service jurisprudence by the respondents. They ought to have kept in mind again the observations made in the case of B. Karunakar (supra) that if a departmental proceeding, whether for minor charge or major charge, is initiated, the supply of copy of the enquiry report becomes a must and a show-cause notice is absolutely necessary more so when the disciplinary authority has sought to differ with the findings of enquiry report in view of laid down by Apex Court in the case of Punjab National Bank Vs. Kunj Bihari Mishra reported in (1998) 7 SCC 84.

12. Thus in the present case, the impugned order of punishment cannot be sustained specially when this Court has found that none of the six charges were proved against the petitioner. Once there was a difference of opinion on which the impugned order of

punishment was passed, there was a necessity to issue a show-cause notice irrespective of the nature of punishment in view of law laid down by the Apex Court in the case of Kunj Bihari Mishra (supra).

13. The last plea of the learned counsel for the respondent that the appellate order has cured the defects because same is based on the findings in respect of charge no.6 by the appellate authority, has to be again noted for its being rejected. If the order of punishment was itself found void ab initio in the sense that the basic principle of natural justice was not followed inasmuch as the petitioner was neither given the copy of the enquiry report nor a show-cause notice nor even the reasons for differing with the enquiry report that could not have been cured by the appellate authority in appellate order.

14. What makes the position still worse is that apart from other thing, the initial order was passed by the same authority who has passed the appellate order. True it is that the petitioner was holding the post of Junior Engineer under the relevant rules. The appointing authority of the Junior Engineer is the Engineer-in-Chief and, therefore, if the initial order of punishment had been passed by the Engineering-in-Chief, there was a scope for an appeal to be carried and decided by the State Government. In the present case, this Court would however find that the initial order itself was passed by the State Government and, therefore, the defence of the respondents of there

being an appellate order curing the defect will also be of no avail. The appellate order infact is absolutely without jurisdiction and even if the petitioner had filed such an appeal, the same ought to have been returned by saying that no appeal would lie against the order passed by the State Government.

15. Thus, for the reasons indicated above, this application succeeds and the impugned order is hereby quashed.

16. Since the petitioner has already retired from service in the year 2013, this Court will not give any liberty to the respondents now to reopen the things.

17. Thus whatever amount becomes payable on account of quashing of the impugned order must be paid to the petitioner within a period of three months from the date of receipt of this order.

18. With the aforesaid observations and directions this writ application is disposed of.

(Mihir Kumar Jha, J)

Patna High Court
Dated the 7th August 2015
A.F.R./Rishi/-

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