

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.690 of 2018
In
Civil Writ Jurisdiction Case No.450 of 2003

1. The Bihar State Credit And Investment Corporation Limited Through Its Vice Chairman.
2. The Managing Director, Bihar State Credit and Investment Corporation Limited, 4th Floor, Ram Charit
3. The Enquiring Officer, Bihar State Credit and Investment Corporation Limited, 4th Floor, Ram Charit

... .. Appellant/s

Versus

1. Ramjanam Singh, Son of Late Sri Khobari Singh, Resident of Lodi Katra, Patna City, Police Station Khajekalan, Distirct-Patna.
2. The State of Bihar through the Industrial Development Commissioner, Industry Department, Government

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Kumar Ravish

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

and

HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date : 25-09-2020

Heard Mr. Kumar Ravish, learned counsel for the appellant – Bihar State Credit and Investment Corporation Limited.

The present Appeal has been preferred for setting aside the Judgment and order dated 06.02.2018 passed in C.W.J.C. No. 450 of 2003 whereby the learned Single Judge has set aside the order of dismissal dated 23.3.2002 of the respondent being Receptionist



of Patna office of Bihar State Credit and Investment Corporation Limited (hereinafter referred to as 'the BICICO') issued by the Managing Director of BICIO and consequent confirmation by the Board of Directors in its meeting dated 23.3.2002 bearing Agenda No. 176/5, as contained in Annexure 7 to the writ application and 50% salary for the period of suspension from 25.09.2001 till 31.12.2006 has been directed to be paid within twelve weeks from the date of receipt/production of a copy of the order.

I.A. No. 3910 of 2018

The above mentioned I.A. has been preferred for condonation of delay of about 67 days in filing the present Appeal.

Considering the grounds taken in the Interlocutory Application, which explains the reason for not filing the appeal in time, the delay of 67 days in filing the present appeal is condoned.

I.A. No. 3909 of 2018

The above mentioned I.A. has been preferred for stay of the impugned judgment dated 06.02.2018 passed in C.W.J.C. No. 450 of 2003.

The factual matrix of the case is that respondent no. 1 was appointed on the post of Receptionist in February, 1976 in the



office of the BICICO and was confirmed on the said post in 1978. On 21.09.2001, one lady Class IV employee of BICICO made complaint against respondent no. 1 alleging assault and misbehavior to the extent of attempting to establish physical relationship with her. Initially, an enquiry was conducted. Thereafter, a full-fledged departmental enquiry was conducted after framing of charge on the allegation of assaulting the lady Class IV employee and misbehaving with her. During preliminary enquiry, Suhani Kerketta, Typist-cum-Clerk and Smt. Daya Sinha were examined. Though during departmental enquiry, admittedly, neither the Presenting Officer was appointed nor the charge memo indicated any documentary evidence or the names of witnesses, on the basis of which the department proposed to establish the charges. Ultimately, respondent no. 1, vide Memo no. Estt/3300 dated 22.3.2002, issued under the signature of Managing Director, BICICO, as contained in Annexure 7 to the writ application, was dismissed from service with immediate effect subject to the approval of the Board of Directors. The respondent no. 1 had also challenged the Memo no. Estt/3443 dated 28.3.2002, issued under the signature of Managing Director, BICICO, as contained in Annexure 9 to the writ application, whereby he has been dismissed from service with effect from 22.3.2002, in view of the



decision taken by the Board of Directors dated 28.3.2002 vide Agenda No. 176/5.

The respondent no.1 challenged the aforesaid two Memos dated 22.2.2002 and 23.2.2002 in CWJC No. 450 of 2003, whereby the order of punishment inflicted upon the respondent no. 1 and the proceeding was quashed vide judgment dated 6.2.2018 on the ground that the charge memo does not indicate any documentary evidence, nor does it cite any witness, relying upon which, the department proposed to prove the charges against respondent no. 1. The other ground for interference was that the charge memo further reflected that no Presenting Officer was appointed and that the Enquiry Officer assumed the role of the Conducting Officer and found the charges proved by placing reliance upon the statement made in the preliminary enquiry by one Smt. Suhani Kerketta, Typist-cum-Clerk and Mrs. Daya Sinha.

The learned Single Judge came to a definite finding that enquiry report was never supplied to the delinquent employee respondent no. 1. The said order of the learned Single Judge is under challenge in the present Appeal.

Learned counsel for the appellant submits that prior to the present proceeding, respondent no. 1 was transferred to



Jamshedpur in 1989 but due to non-joining, his time bound promotion was withdrawn. At earlier point of time, for a different charge, respondent no. 1 was dismissed from service. However, the said dismissal order was quashed by the High Court. It is further submitted that the lady Class IV employee of the BICICO made complaint against respondent no. 1 of misbehavior, assault and attempting to establish forceful physical relationship with her, for which Sri Krishnapuri P.S. Case No. 152 of 2001 was registered and respondent no. 1 was taken to judicial custody and was put under suspension.

Initially, preliminary enquiry was conducted wherein certain witnesses were examined who were present at the place of occurrence in the office of BICICO and on the basis of the evidence of one R.D. Mistri, guard of BICICO, Suhani Kerketta, Typist-cum-Clerk and Smt. Daya Sinha, the charges were found proved. Hence, the order of punishment has been quashed purely on technical ground, though the charge is of gross misconduct by respondent no. 1. Moreover, the respondent no. 1 was given ample opportunity to defend himself.

Having heard learned counsel for the appellant, it appears that he has not controverted the fact in the memo of appeal that no presenting officer was appointed. Hence, the enquiry officer has



himself assumed the role of presenting officer. The role of enquiry officer is of independent adjudicator. Hence, it is a serious lapse on the part of the department. The appellant has also not controverted this fact that the enquiry report was never supplied to the respondent no. 1.

The issue has been well settled by a Constitution bench in the case of Managing Director, ECIL, Hyderabad & Ors. Vs. B. Karunakar & Ors., reported in (1993) 4 Supreme Court Cases 727 where the basic question involved was whether the report of the enquiry officer appointed by the disciplinary authority to hold an enquiry into the charges against the delinquent employee, is required to be furnished to the delinquent employee to enable him to make proper representation to the disciplinary authority, before such authority arrives at its own finding with regard to the guilt or otherwise of the delinquent employee and on the basis of the same the disciplinary authority awards punishment. The right to receive the report of the enquiry officer has been considered as an essential part of reasonable opportunity and also the part of principle of natural justice as non-supply of the enquiry report amounts to denial of fair opportunity to the employee to consider the findings recorded by the enquiry officer but giving the delinquent employee an opportunity to reply as the disciplinary



authority takes into consideration the finding recorded by the enquiry officer along with the evidence on record. Paragraph 26 of the judgment reads as follows:

“26. The reason why the right to receive the report of the enquiry officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the enquiry officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require the employee should have the fair opportunity to meet, explain and controvert it before he is condemned. It is negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the enquiry officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the enquiry officer along with the evidence on record. In the circumstances, the findings of the enquiry officer do constitute an import material before the disciplinary authority which is likely to influence its conclusions. If the enquiry officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no



knowledge. However, when the enquiry officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusions. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the enquiry officer's findings. The disciplinary authority is then required to consider the evidence, the report of the enquiry officer and the representation of the employee against it."

The Constitution Bench ultimately held that the denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence, which amounts to breach of the principles of natural justice. Paragraph 29 of the judgment reads as follows:

"29. Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against them. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice."



In the present case, it appears that no evidence was produced in the departmental proceeding. During initial enquiry, which was a fact finding enquiry, statements of certain employees named above were recorded and those statements were relied upon without examining them or any other witness during the departmental proceeding. Hence, it was, all the more, necessary to supply the enquiry report to the respondent no. 1. The enquiry officer also relied upon some reports submitted by the Mahila Helpline but the said report was never supplied to the respondent no. 1. Hence, the entire proceeding got vitiated since it was not conducted as per the settled and established procedure.

The Constitution Bench, in the case of B. Karunakar (supra) also held that if the enquiry report has not been supplied and the punishment order is set aside, then the authority or the management be given opportunity to proceed with the enquiry from the stage of furnishing enquiry report. But in the present case, it is not only the case of non-supply of the enquiry report to the delinquent employee but it is a case of conducting departmental proceeding *de hors* the settled procedure for conducting departmental proceeding.

The departmental enquiry was initiated in 2002, the order of punishment was passed in March, 2002, while the respondent no.



1 was to retire on 31.12.2006, hence we are not of the view of allowing the authority to conduct the enquiry afresh after fourteen years of the retirement of respondent no. 1.

In similar circumstances, in the case of Punjab National Bank & Ors. Vs. Kunj Behari Misra, reported in (1998) 7 Supreme Court Cases 84, a three-Judge bench of the Supreme Court quashed the punishment order on the ground that the delinquent officer was partially exonerated by the enquiry officer but disagreeing with the same, the disciplinary authority imposed punishment without recording the point of disagreement and being supplied to the delinquent employee and declined to remit the matter continuing proceeding from the stage of supply of the point of disagreement. Paragraph 21 of the judgment reads as follows:

“21. Both the respondents superannuated on 31st December, 1983. During the pendency of these appeals Misra died on 6th January, 1995 and his legal representatives were brought on record. More than 14 years have elapsed since the delinquent officers had superannuated. It will, therefore, not be in the interest of justice that at this stage the cases should be remanded to the disciplinary authority for the start of another innings. We, therefore, do not issue any such directions and while dismissing these appeals we affirm the decisions of the High Court which had set aside the orders imposing penalty and had directed the appellants to release the retirement benefits to the respondents. There will, however, be no order as to costs.”



In view of the discussions made above, we do not find any infirmity in the order impugned. In the result, this appeal is dismissed.

Hence, I.A. No. 3909 of 2018 preferred for stay of the impugned order under appeal also stands dismissed.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

sanjeev/-Anil/

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	NA

