

In The Court of Commissioner, Saran Division, Chapra
Service Appeal No. 283/2012

Rajendra Prasad

Vrs.

The State of Bihar & Ors.

ORDER

31.05.2014

The instant appeal petition has been filed pursuant to the direction contained in the order dated 03.10.2012 of the Hon'ble High Court passed in CWJC No. 18410 of 2012, Rajendra Prasad Vrs. The State Of Bihar & Ors.

The brief facts of the case are that the appellant Rajendra Prasad S/o Late Tuphani Ram Prasad R/o Village & P.O.- Sasamusa, P.S.- Kuchaikot, Dist- Gopalganj at the relevant time was posted as a Jansewak and also holding the additional charge of panchayat sevak in Block Office, Vijaypur in the Gopalganj district. The further case is that during his posting at Vijaypur Block, an FIR was lodged against the appellant along with other accused persons, registered vide Vijaypur, P.S.- case No. 55/2010 dated 07.08.2010 registered u/s 467, 468, 471, 472, 409, 420/34 of IPC for the alleged offence that the appellant being in charge Panchyat Sachiv in connivance with the Headmaster and the Mukhiya of Gram Raj Majhwaliya has defalcated the Govt Money meant for payment of honorarium to the teachers of the primary school, Piprahi by obtaining forged signature on the attendance register. On the basis of the said allegations in the FIR against the appellant, he was taken in to custody on 7.08.2010 but later on released from Jail on 18.10.2010. Meanwhile as the appellant was taken into custody on 7.08.2010, he was put under suspension by order dated 18.01.2011 and accordingly a departmental proceeding was initiated against him and charges were framed and served on the appellant by D.M. Gopalganj vide memo No. 529 dated 22.06.2011. However, the appellant on being released from Jail reported for joining in Vijaypur block on 19.10.2010 and started to work but the said joining was not accepted by BDO, Vijaypur. This led to filing of writ case before Hon'ble High Court, vide CWJC No. 1402/2011 with a prayer that concerned authorities be directed to accept his joining. The Hon'ble High Court vide order dated 12.07.2011 was pleased to direct the respondent authorities to allow the appellant to join on the place has been offered to the appellant to join. Thereafter, the departmental proceeding as ordered before was initiated and a senior Deputy Collector was made the conducting officer to proceed for the charges framed against the appellant. Two charges were framed against the appellant. The first charge was that the appellant had defalcated Govt money with connivance of other accused persons as mentioned in the FIR and the second charge was that the appellant had not obeyed the order of his superiors and has absented himself from duty without sanction of leave. The appellant actively participated in the said departmental proceeding and refuted all the charges levelled against him and this led to submission of the enquiry report by the conducting officer to the Disciplinary authority, the D.M., Gopalganj. However, the D.M. Gopalganj on not being satisfied with the said enquiry report wherein, the appellant was exonerated from the charges levelled against him, ordered for a second enquiry is to be conducted in the matter vide memo No. 1203 dated 09.11.2011. This led to re-conduct of the enquiry, which was already concluded earlier by the same conducting officer and accordingly second enquiry was conducted and report was submitted to the D.M., Gopalganj vide letter No. 11 dated 31.01.2012. But the Disciplinary Authority the D.M. Gopalganj on not being agreed with the findings of the second enquiry report, in which the appellant was exonerated again, passed the punishment order vide memo No. 821 dated 13.07.2012. The two punishments inflicted upon the appellant were Reduction of pay to the initial stage of the pay band and non-entitlement of pay besides subsistence allowance for the entire period of suspension.



Feeling aggrieved by the said punishment order, the petitioner approached the Hon'ble High Court for relief vide CWJC No. 18410/2012 and the said writ was disposed of vide order dated 03.10.2012 with a direction to the petitioner to approach the appropriate authority by filling an appeal. Thus, this appeal case has come up before this court.

Heard the parties.

The learned counsel appearing on behalf of the appellant submitted at the very outset that the main question of law involved in the present Appeal are:-

- i) Whether the impugned order giving punishment to the Appellant is contrary to the enquiry report submitted by the Inquiry Officer and that also without giving any cogent reason for differing with the report of the Inquiry Officer?
- ii) Whether the respondent District Magistrate being a Disciplinary authority is bound to give reasoning in not accepting the report of the Inquiry Officer, but in the impugned order no such reason has been assigned and as such the impugned order is bad in law?
- iii) Whether the Appellant is entitled to be exonerated from the charges levelled against the appellant as in the First Inquiry report charges levelled against the appellant was not proved, but the respondent District Magistrate without assigning any reason has not accepted the said Inquiry report and directed to conduct another enquiry?
- iv) Whether the Appellant can be punished upon the enquiry reports submitted twice by the Inquiring Officer, and in none of the enquiry report, Appellant has been found guilty of any charges levelled against the appellant?
- v) Whether the action of the respondent authorities in giving punishment without assigning any cogent reason for differing with the enquiry report is violative of Article 14 & 16 of the Constitution of India?

He further argued that from the Memo of charge it appears that altogether two charges have been levelled against the Appellant. Firstly, defalcation of Govt. money with connivance of other accused persons as mentioned in the FIR. Secondly, the Appellant has not obeyed the order of the higher officials and has absented himself without sanction of leave. In the first charge, it is alleged that one Smt. Pappi Rai (panchayat teacher), who is residing in Dubai along with her husband, has been paid her salary treating her to be present in the School. So far the Second charge is concerned, it is alleged that the Appellant in spite of the direction of the higher officials has not given his joining before the competent authority and has merely sent an application about his illness. On the basis of these two allegations the Appellant was asked to submit his explanation before the Inquiring Officer within period of fortnight from the date of receipt of the memo of charges.

The learned counsel further submitted that the Appellant thereupon submitted his detailed explanation before the Inquiring Officer on 24.08.2011 stating therein that the first allegation levelled against the Appellant is totally wrong and baseless. It has also been stated that in terms of Rule 11(1) of Bihar Panchayat Raj Rules and Regulations, the power has been conferred upon the School Education Committee with respect to the Attendance of the working teachers of the schools. There is no role of Panchayat Sachiv with respect to the attendance of the working teachers and also to see their activities. It has further been stated by the Appellant that the Appellant has not received any such information that the said teacher Smt. Pappi Rai was living in Dubai. The said Pappi Rai was appointed as Panchayat teacher in the year 2005 itself by the then Mukhiya Sri Subhash Prasad. After receipt of absentee report from the Headmaster, primary School, ~~Patna~~ and after identification made by the Mukhiya Sri Subhash Prasad, the Appellant has signed the




Cheque, Smt. Rai has received the cheque in presence of the Mukhiya and put her signature as receipt of the cheque. In such circumstances, the allegation levelled against the Appellant is totally false and baseless.

The learned counsel also pleaded that the appellant has also explained about the second charge and thereby has stated that the appellant immediately after the release from custody, has joined the post on 19.10.2010 itself, before the Block Development Officer, Bijaipur, where the appellant was posted at the time when the appellant was taken into custody. After joining the post, the appellant went on discharging his duties at Bijaipur itself. It has further been stated that in terms of Rule 9 of the Bihar Govt. Servant (Classification, Control & Appeal), Rules, 2005, after release from jail custody, a Govt. employee will be deemed to have been relieved from suspension and his joining has to be accepted. When the appellant joined at Bijaipur block, he was allowed to discharge his duties, but on the instruction of higher authorities of the department, the appellant was not allowed to make his attendance. The learned counsel further assailed the impugned order and stated that the respondent District Magistrate without assigning any cogent reason, has rejected the said Inquiry report dated 12.09.2011 and direct the Inquiry Officer to submit another Inquiry report within 15 days. The respondent Collector vide his Memo No. 1203 dated 09.11.2011 has simply held that the Inquiry report dated 12.09.2011 is not fit to be accepted in terms of Rule - 18 of the Rules, 2005. He also pointed out that on the basis of the said direction of the respondent District Magistrate, the Inquiry Officer again issued a notice to the appellant vide his Memo No. 4504 dated 22.11.2011 asking the appellant to submit another explanation for the charges levelled against the appellant. That the appellant on the basis of the said notice has again submitted his explanation on 15.12.2011 before the Inquiry officer. In the said explanation, the appellant has re-iterated his explanation, the appellant has merely added the order passed by this Hon'ble Court in CWJC No. 1402/2011 dated 12.07.2011, wherein the Hon'ble High Court has been pleased to direct the respondent authorities to allow the appellant to join the post on the place offered to the appellant. He further stated that the Inquiring officer thereafter submitted his report before the respondent District Magistrate on 17.01.2012. In the said Inquiry report, again it has been re-iterated that none of the allegations levelled against the appellant is directly proved, but it appears that the appellant can be held to be a member of the team who made the payments of the honorarium. It has also been stated that since the criminal case is pending against the appellant, the final outcome with respect to the guilt of the appellant will only be judged after the decision of the criminal case. The Inquiry officer has again held that it was the duty of the School Education Committee and the Headmaster to sent the absentee report and the appellant has to make payments on the basis of the said absentee report. The appellant has made payments on the basis of the absentee report sent by the Headmaster, in terms of the direction given by the District Superintendent of Education. Hence, allegation is not proved against the appellant. The said Inquiry report was sent to the respondent District Magistrate by the Inquiry officer vide his Letter No. 11 dated 31.01.2012.

The learned counsel also argued that in the order of punishment, the respondent District Magistrate has not given any reason as to why the Inquiry reports submitted by the Inquiring Officer is not acceptable to the respondent District Magistrate. It is well settled principle of law that if a disciplinary authority is not agreed with the findings of the Inquiring officer, he must give specific reason for the same. In the present case, the respondent District Magistrate has not assigned any reason what-so-ever as to why he is not in agreement with the findings of the Inquiring officer. In such circumstances, the impugned order inflicting punishment upon the appellant is totally a non-speaking and cryptic order, as such, the same is



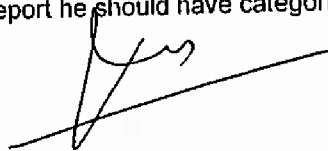
liable to be quashed.

The learned counsel for the appellant also said that in the facts and circumstances, the impugned order dated 13.07.2012 is in complete violation of the provisions of Article 311 of the Constitution of the India. The respondent District magistrate, being a disciplinary authority, has not bothered to follow the provisions of the Constitution of India while inflicting punishment upon the appellant.

The learned Counsel also submitted that neither the Inquiring officer nor the Disciplinary authority have verified the genuineness of the signatures of the Panchayat teacher Smt. Pappi Rai, either put on the Attendance Register or on the receipt showing acceptance of cheque given to her. If the signature of said Pappi Rai are genuine both at the Attendance Register as well as on the Receipt, then the allegation that the said Pappi Rai is residing in Dubai, is totally a baseless allegation. But this fact has been totally over-looked both by the Inquiring officer as well as by the Disciplinary authority. The learned D.M. also without mentioning that for what account the said punishment has been imposed upon the appellant. It is also well settled principle of law that the order imposing penalty must be in consonance with the show cause issued for the imposition of penalty, otherwise, the same will be violative of principle of natural justice.

The learned Govt. pleader appearing on behalf of the state submitted that the impugned order of D.M. is just and proper in view of the charges levelled against the petitioner of defalcating Govt. money by making payment without verifying the details also of disobeying the orders of his superiors. The punishment order against the appellant has been passed after the completion of Departmental Proceeding and after asking second show cause notice. Thus the impugned order having no illegality, is fit to be upheld.

Considering the facts and circumstances of the case, pleadings advanced by the learned counsel for the appellant, and on going through the memo of appeal petition, written statements, Enquiry reports and the impugned order, it appears that two sets of enquiry has been conducted against the appellant for the same allegations and in both the enquiry reports the appellant was exonerated of the alleged charges of defalcation for Govt. money and charge of alleged insubordination. Although, the said charges against the appellant were not proved in a duly conducted dept. Proceeding, as it appears from the said enquiry reports, in spite of that the appellant was inflicted with the major punishment at the fag end of his service causing huge monetary loss to him for the remaining period of his service as well as in post retrial benefit payable to him. The learned counsel for the appellant strongly assailed the impugned order of punishment as contained in memo No. 821 dated 13.7.2012 of D.M. Gopalganj and stated that such order inflicting major punishment upon the appellant is totally illegal, arbitrary, mala fide and in complete violation of the protection granted to a Govt. servant in the constitution of India. It is seen that although, clear procedure has been laid down in Bihar Civil Services (classification, Control and Appeal) Rules- 2005 regarding the conduct of departmental proceeding and award of punishment against a delinquent Govt. servant, but from the impugned order it is seen that the D.M. acting as the disciplinary authority has completely overlooked the same. It is also seen that the appellant was exonerated in the first departmental proceeding for the charges as the same was not proved conclusively as held by the conducting officer in his first report submitted to the DM. At this stage, the Disciplinary authority was at liberty to accept the said enquiry report and in case of any disagreement from the said report he should have categorically recorded his



findings and also explained those specific reasons for his such disagreement from the said enquiry report. A second enquiry was also conducted against the appellant and sent to the D.M. However, no reason has been stated by the disciplinary authority as to why he differed from the said second enquiry report. This itself reflects that the action of D.M. Gopalganj in the matter was not fair so far as punishments inflicted on the appellant is concerned.

In the instant case it is seen that charges for which the petitioner was not found guilty in an earlier proceeding conducted against him and a subsequent proceeding was also conducted for the same charges by the same conducting officer on the direction of Disciplinary authority and conducting officer again submitted a report that the charges were proved against the appellant only to the extent that he was also involved in the incident of making payment to a Panchyat teacher without any proper verification of her attendance. But the said charge has not been proved conclusively as to how he was involved in that incident and for which even no discussion is found in the final report of the enquiry officer. In such a situation, if the charges are not proved then the delinquent employee has to be exonerated whatever may be the normal convictions of the disciplinary authority. But here in this case, it appears that in spite the appellant was exonerated of the charges levelled against him, some major punishments have been inflicted on him by the disciplinary authority the D.M Gopalganj without disclosing those specific reasons for said punishments thereby completely ignoring the settled principle of law that the quantum of punishment must commensurate with the gravity of offence.

For the aforesaid reasons, the impugned order of the D.M Gopalganj contained in Memo No.821 dated 13.07.2012 is not sustainable, hence the same is set aside and in the result this appeal is allowed

Dictated & Corrected by me.

Commissioner,
Saran Division, Chapra

31/07/2014

Commissioner,
Saran Division, Chapra

31/07/2014