IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1594 of 2015
In
Civil Writ Jurisdiction Case No.1263 of 1999

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Syed Nabi Karim, S/o Late Sharafat Karim, R/o Village- Marufganj, P.S.- Civil Lines, Distt- Gaya.

... ... Appellant

Versus

1. Bihar State Electricity Board through its Chairman, Vidyut Bhawan, At present Now South Bihar Electric Power Supply Division Company, Bailey Road, Patna.
2. The Chairman, Bihar State Electricity Board through its Chairman. Vidyut Bhawan, Bailey Road, Patna
3. The Secretary, Bihar State Electricity Board through its Chairman. Vidyut Bhawan, Bailey Road, Patna.
4. The Joiny Secretary, General Administration Department, Bihar State Electricity Board through its Chairman. Vidyut Bhawan, Bailey Road, Patna.

... ... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ankit Katriar, Advocate

For the Respondent/s : Mr.Vinay Kirti Singh, Sr. Advocate
Mr. Akhileshwar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 18-12-2023

The Appellant has assailed the order of the learned Single Judge dated 21.04.2015 passed in C.W.J.C. No. 1263 of 1999. During the pendency of the present L.P.A., appellant has died and legal heirs of deceased Syed Nabi Karim-Appellant

have been brought on record. Deceased Syed Nabi Karim, who was working as a Typist Category-I in the erstwhile Bihar State Electricity Board, Patna (Now known as Bihar Distribution Company Limited, Patna, the successor body) (hereinafter referred to as the Board). Deceased employee was subjected to disciplinary proceedings and charge was framed on 18.06.1995. The extract of the Charge Memo reads as under:

आरोप–पत्र

श्री एस0 नवी करीम, टंकक वर्ग–1 (निलम्बित) , बोर्ड सचिवालय, पटना के विरूद्ध जाली चिकित्सा– विपत्र कार्यालय को समर्पित कर बोर्ड के साथ धोखाधड़ी एवम् आर्थिक क्षति पहुँचाने का आरोप है, जो बोर्ड के प्रमाणित स्थायी आदेश के नियम 29(बी)(सी)(क्यू) के अन्तर्गत कर्तव्यहीनता, अनुशासनहीनता एवम् कदाचार का द्योतक है।

साक्ष्य तालिका

1. प्रशासी पदाधिकारी(श्री एस0 ए0 सिद्दकी) के कार्यालय के गैर सरकारी प्रेषण संख्या 183 दिनांक 27/3/95 का छायाप्रति सभी अनुलग्नक सहित।

2. संचिका संख्या 15/मेडि–1007/95 का दि0 पृ0 संख्या 3 से 9 का उद्दरण।

गवाह

1. श्री एस0 ए0 सिद्दकी, प्रशासी पदाधिकारी।
2. श्री चन्द्रमोहन लाल, प्रशाखा पदाधिकारी।

(ई0 एल0 एस0 एन0 बाल प्रसाद)

सचिव।

2. The article of charge is supported by two witnesses and two documents. It does not contain statement of imputation. The respondents are stated to have initiated departmental inquiry and it was concluded in imposition of penalty of dismissal from service on 04.05.1996. It was subject matter of appeal before the Appellate Authority and Appellate Authority affirmed the order of dismissal on 29.01.1998. Feeling aggrieved and dissatisfied with the order of the disciplinary and Appellate authorities, deceased employee invoked remedy of filing C.W.J.C. No. 1263 of 1999 under Article 226 of the Constitution.

3. The learned Single Judge proceeded to dismiss the aforementioned writ petition on 21.04.2015, hence the present L.P.A.

4. Learned counsel for the appellant, vehemently, contended that learned Single Judge has not appreciated that article of charge was issued under Clause-29 of the Bihar State Electricity Board, Patna, standing orders (for short standing orders). It is submitted that the relevant Clause for the purpose of initiation of inquiry with reference to the alleged charge should have been under Clause 29 (B)(c) and not (q). The alleged charge is that deceased employee furnished medical

reimbursement bill (claiming on behalf of his wife). It is alleged that petitioner has played fraud in claiming the medical reimbursement. Arising out of the alleged charge, the respondents are of the view that deceased employee was paid a sum of Rs. 15,000/- in advance towards taking treatment in deceased's wife name for which petitioner has failed to give account. Such statement cannot be taken into consideration for the reasons that reading of the aforementioned article of charge does not specify on what date petitioner has claimed medical reimbursement bill and amount and bill has not been cited as a document to prove that the deceased employee has played fraud. It is also submitted that charge is too vague. Further it is submitted that for the purpose of holding departmental/domestic inquiry, the respondents were required to comply four stages in terms of Clause-30 of the standing orders. In the first stage (2) certain documents were required to be furnished. In the second stage, the opening sentence is relating to "on perusal of the explanation, if any, of the workman and the comments, if any, of the reporting officer and the documentary evidence, if any, if the competent authority considers that". Having regard to the alleged charge that crucial document is medical bill insofar as reimbursement is not cited as a document. In absence of such

document, the respondents cannot prove the alleged charge. Further, what is that amount determined in respect of medical reimbursement is also not forthcoming in the charge. These are crucial material information, which are required to be taken note of in the departmental inquiry to prove the alleged charge. In the absence of the same holding of inquiry and further proceedings are liable to be set aside. The learned Single Judge has not appreciated in respect of non-compliance to the standing orders of the Bihar State Electricity Board, Patna, in particularly Clause-29 and 30.

5. The appellant is arguing the legal issues like in not adhering to the standing orders and it is also submitted that it would go to the root of the matter. The same has not been appreciated by the learned Single Judge. It is also submitted that in respect of amount mentioned a sum of Rs. 15,000/- or Rs. 65,494/-, which has been taken note of by the learned Single Judge is not with reference to any of the documents cited along with the article of charge. Therefore, extraneous material has been taken note of by the learned Single Judge while affirming the order of the disciplinary authority and appellate authority insofar as the imposition of penalty of dismissal from service and its affirmation.

6. Learned counsel for the appellant submitted that ordinarily, the Courts will not interfere with the departmental inquiry unless and until there is a violation of statutory provision or in not adhering to the principle of natural justice. The above contentions are relating to procedure lapses and violation of principle of natural justice.

7. Per contra, learned counsel for the respondent resisted the aforementioned contentions and submitted that it is admitted fact that deceased employee's wife was suffering from certain illness. In this regard, a sum of Rs. 15,000/- advance was paid to the deceased employee and he was required to furnish the accounts for taking treatment. Arising out of the above, he had submitted fake medical bills and the same was taken note of and proceeded to initiate the inquiry. In the inquiry, it has come on record in respect of payment of a sum of Rs. 15,000/- and alleged fraud played by the deceased employee. Therefore, there is no infirmity in the order of learned Single Judge in affirming the order of dismissal.

8. At this stage, learned Senior Counsel for the respondents submitted that the petitioner has not challenged the order dated 06.05.1996 vide Annexure-2. Annexure-2 reads as under:

(सामान्य प्रशासन विभाग)

जोडक

बोर्ड के कार्यालय आदेश संख्या–2369 दिनांक–4.5.96 की कंडिका 2 (दो) के अंतिम वाक्य '' इसलिए यह निर्णय लिया गया कि श्री करीम को द्वितीय कारण पृच्छा सूचना दी जाए कि उन्हें बोर्ड की सेवा से क्यों नही बर्खास्त कर दिया जाए'', के पूर्व निम्ललिखित जोड़क के रूप में पढ़ा जाए :–

''साथ ही यह पाया गया है कि श्री करीम ने वर्ष 1992 में 28.10.92 को एक आवेदन देकर पत्नी के इलाज हेतु प्रोग्रामेबुल पेस मेकर लगाने हेतु **मो0** 25,000/–रू0 अग्रिम की प्रार्थना की। तद्नुसार उनकी पत्नी को चिकित्सा के लिए उन्हें रू0 15,000/–रू0 की राशि चिकित्सा अग्रिम के रूप में स्वीकृत की गयी थी। परन्तु उक्त राशि से न तो उन्होंने अपनी पत्नी की चिकित्सा करायी और न ही प्राप्त राशि बोर्ड को लौटाया। इस प्रकार वे बोर्ड की एक बड़ी राशि साढ़े तीन वर्ष तक अपने पास रखे रहे, जो बोर्ड की राशि का अस्थायी गबन है तथा उनके कदाचार का द्योतक है।''

(आर0 एस0 पोद्दार)

सचिव

ज्ञापांक 550 / दिनांक 6–5–96/

प्रतिलिपि : श्री एस0 नवी करीम, टंकक वर्ग–1 (बर्खास्त), बिहार राज्य विद्युत बोर्ड, पटना को सूचनार्थ अग्रसारित।

क्वाटर नम्बर–एक– 119 पुराना बोर्ड कालोनी, पुनाईचक, पटना

(आर0 एस0 पोद्दार)

सचिव

ज्ञापांक 550 / दिनांक 6–5–96/

प्रतिलिपि : अध्यक्ष के अवर सचिव/सदस्य (प्रशासन) के अवर सचिव/सदस्य (वित्त) के अवर सचिव/ सदस्य (तकनीकी) के अवर सचिव/सचिव के आप्त सचिव, बिहार राज्य विद्युत बोर्ड, पटना को सूचनार्थ अग्रसारित।

(आर0 एस0 पोद्दार)

सचिव

ज्ञापांक 550 / दिनांक 6–5–96/

प्रतिलिपि : वित्त निदेशक/लेखा निदेशक/सभी संयुक्त सचिव/कार्मिक निदेशक उप लेखा निदेशक (सचिवालय)/सभी अवर सचिव/सभी प्रशाखी पदाधिकारी/अधीक्षक (निर्गम), बिहार राज्य विद्युत बोर्ड, पटना को सूचनार्थ अग्रसारित।

(आर0 एस0 पोद्दार)
सचिव

9. The aforementioned order has been passed after

dismissal order dated 04.05.1996 for the reasons that this document would support the dismissal order. In continuation of the dismissal order, the petitioner has not assailed this order.

10. Heard the learned counsel for the respective parties.

11. Deceased employee is governed by standing orders. Paragraph No. 29, 30 and 31 are relating to disciplinary action to be taken against the employee of the respondent. Respective procedures have not been followed in framing article of charge itself. We have quoted the article of charge (Supra). Reading of the article of charge, it is evident that there is no ingredients to constitute a charge, in other words dates and events including the amount of medical reimbursement & disbursed irrespective of advance or in full. Further it is to be noted that the alleged charge is relating to claiming medical reimbursement by means of fraud, if it is so, copy of the medical reimbursement bill has not been cited as a document along with the article of charge so as to prove in the departmental inquiry. Further, there is no statement of imputation relating to payment of advance of Rs. 15,000/-. Even on this issue, relevant document relating to payment of advance of sum of Rs. 15,000/- has not been cited along with the article of charge. On the other

hand, two documents namely, 1. प्रशासी पदाधिकारी(श्री एस0 ए0 सिद्दकी) के कार्यालय के गैर सरकारी प्रेषण संख्या 183 दिनांक 27/3/95 का छायाप्रति सभी अनुलग्नक सहित। 2. संचिका संख्या 15/मेडि–1007/95 का दि0 पृ0 संख्या 3 से 9 का उद्दरण। have been cited. The cited documents have no link with the medical reimbursement bill. These are all the lacunas, which have not been taken note of by the learned Single Judge. On the other hand, certain extraneous materials are stated to have been placed on record by the respondents before the learned Single Judge insofar as payment of Rs. 15,000/- advance and Rs. 64000 + odd bill claimed by the deceased employee. Payment of advance of Rs. 15,000/- and Rs. 64,000/- was not part and parcel of article of charge. These materials have been taken note of while dismissing C.W.J.C. & without noticing that those materials were not part & parcel of article of charges. Therefore, extraneous material has been taken into consideration.

12. The Apex Court in case of ***Union of India and Ors. Vs. Dalbir Singh*** reported in ***(2021) 11 SCC 321*** laid down certain principles under what circumstances writ Court can interfere in a departmental inquiry in paragraphs No. 21 and 22, it is held as under :

> ***"21.*** *This Court in Union of India v. P. Gunasekaran [Union of India v. P. Gunasekaran,*

(2015) 2 SCC 610 : (2015) 1 SCC (L&S) 554] had laid down the broad parameters for the exercise of jurisdiction of judicial review. The Court held as under : (SCC pp. 616-17, paras 12-13)

"12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

(a) the enquiry is held by a competent authority;

(b) the enquiry is held according to the procedure prescribed in that behalf;

(c) there is violation of the principles of natural justice in conducting the proceedings;

(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.

(under line supplied)

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

(i) reappreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based;

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience."

22. *In another judgment reported as B.C. Chaturvedi v. Union of India, it was held that the power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. The judicial review is not an appeal from a decision but a review of the manner in which the decision is made. The Court is to examine as to whether the enquiry was held by a competent officer or whether rules of natural justice are complied with. This Court held as under : (SCC pp. 759-60, paras 12-13)*

"12. Judicial review is not an appeal from a decision but a review of the manner in which the

decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an enquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the enquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold enquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of the Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the

appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary enquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

Further in case of ***Kumaon Mandal Vikas Nigam Ltd. vs. Girja Shankar Pant and Others*** reported in ***(2001) 1 SCC 182*** in paragraphs no. 22, it is held as under:

"22. *The sixty-five page report has been sent to the Managing Director of the Nigam against the petitioner recording therein that the charges against him stand proved — what is the basis? Was the enquiry officer justified in coming to such a conclusion on the basis of the charge-sheet only? The answer cannot possibly be in the affirmative; if the records have been considered, the immediate necessity would be to consider as to who is the person who has produced the same and the next issue could be as regards the nature of the records — unfortunately there is not a whisper in the rather longish report in that regard. Where is the presenting officer? Where is the notice fixing the date of hearing? Where is the list of witnesses? What has happened to the defence witnesses? All these questions arise but unfortunately no answer*

is to be found in the rather longish report. But if one does not have it — can it be termed to be in consonance with the concept of justice or the same tantamounts to a total miscarriage of justice. The High Court answers it as miscarriage of justice and we do lend our concurrence therewith. The whole issue has been dealt with in such a way that it cannot but be termed to be totally devoid of any justifiable reason and in this context a decision of the King's Bench Division in the case of Denby (William) and Sons Ltd. v. Minister of Health [(1936) 1 KB 337 : 105 LJKB 134 : 154 LT 180] may be considered. Swift, J. while dealing with the administrative duties of the Minister has the following to state:

"I do not think that it is right to say that the Minister of Health or any other officer of the State who has to administer an Act of Parliament is a judicial officer. He is an administrative officer, carrying out the duties of an administrative office, and administering the provisions of particular Acts of Parliament. From time to time, in the course of administrative duties, he has to perform acts which require him to interfere with the rights and property of individuals, and in doing that the courts have said that he must act fairly and reasonably; not capriciously, but in accordance with the ordinary dictates of justice. The performance of those duties entails the exercise of the Minister's discretion, and I think what was said

by Lord Halsbury in Sharp v. Wakefield [1891 AC 173 : 60 LJ MC 73 : 64 LT 180 (HL)] (AC at p. 179) is important to consider with reference to the exercise of such discretion. He there said:

' "Discretion" means when it is said that something is to be done within the discretion of the authorities that that something is to be done according to the rules of reason and justice, not according to private opinion: Rooke case [(1598) 5 Co Rep 99b, 100a] ; according to law, and not humour. It is to be, not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to the discharge of his office ought to confine himself.' "

Further in case of ***Coal India Ltd. v. Ananta Saha,*** *reported in* ***(2011) 5 SCC 142*** in paragraphs no. 32 and 33, it is held as under:

"32. *It is a settled legal proposition that if initial action is not in consonance with law, subsequent proceedings would not sanctify the same. In such a fact situation, the legal maxim sublato fundamento cadit opus is applicable, meaning thereby, in case a foundation is removed, the superstructure falls.*

33. *In Badrinath v. Govt. of T.N. [(2000) 8 SCC 395 : 2001 SCC (L&S) 13 : AIR*

2000 SC 3243] this Court observed that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle of consequential order which is applicable to judicial and quasi-judicial proceedings is equally applicable to administrative orders."

13. One of the principle is that Courts shall not interfere with the departmental inquiry unless and until certain procedure, lapses or violation of principles of natural justice etc. The present case falls under the principle of not adhering to the standing orders and not adhering to statutory rules or regulation. In the present case, paragraph 29 to 31 of standing orders have not been followed. Therefore, the aforementioned decision of the Apex Court is aptly applicable to the case in hand.

14. Reading of the charge read with the list of documents, it has no nexus. Time and again, Courts are held that vagueness of the charge leads to vitiation of inquiry proceedings.

15. The present case is warranted for remand, however, having regard to the fact that deceased employee was dismissed from service on 04.05.1996 and he is no more, therefore, question of remanding the matter at this distance of time is not warranted & it is impracticable to hold fresh inquiry.

16. Accordingly, the order of the learned Single Judge dated 21.04.2015 passed in C.W.J.C. No. 1263 of 1999, order of dismissal dated 04.05.1996 and Appellate Authority's order dated 29.01.1998 are set aside.

17. Writ petition stands allowed.

18. In the above analysis, the LPA stands allowed. The concerned respondent is hereby directed to regulate the suspension period and further retiral benefits shall be calculated and disbursed in favour of the legal heirs/nominee of the deceased employee within a period of eight weeks from the date of receipt of this order, failing which legal heirs are entitled to litigation cost and it is quantified at Rs. 25,000/-. Cost shall be paid, if there is a belated settlement of the aforementioned monetary benefits.

(P. B. Bajanthri, J)

(Ramesh Chand Malviya, J)

Manish/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.12.2023
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