

(2012) 08 PAT CK 0018

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 8104 of 2004

Aftab Ahmad

APPELLANT

Vs

Administrator, Bihar State Road Transport Corporation Office
and Others

RESPONDENT

Date of Decision : 28-08-2012

Acts Referred:

Citation : (2013) LabIC 975

Hon'ble Judges : S.N. Hussain, J

Bench : Single Bench

Advocate : Khurshid Alam, for the Appellant; P.K. Verma and Nand Kishore Singh, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Hussain, J.—This writ petition has been filed by the petitioner challenging office order No. 720/2002 contained in memo No. 3022 dated 23.08.2002 (Annexure-4) by which the Divisional Manager, Bihar State Road Transport Corporation, Patna (hereinafter referred to as "the Corporation" for the sake of brevity) dismissed the petitioner from service and also challenging order issued vide memo No. 73 dated 15.04.2004 (Annexure-5) by which Administrator of the Corporation dismissed the appeal of the petitioner and also for any other ancillary reliefs available to the petitioner. Learned counsel for the petitioner claimed that the petitioner was a driver in the Corporation and was posted at Biharsharif Depot. It is also stated that while in service at Biharsharif, he became ill and went on leave and when he became fit to assume his duty he joined his service on 01.05.1999, but he again fell seriously ill and was treated by a reputed doctor and in support thereof he had produced a certificate of doctor dated 16.06.1999 and other reports (Annexure-1 series).

2. Learned counsel for the petitioner submitted that while the petitioner was suffering from ailment, a departmental proceeding was initiated against him and charge memo No. 5224 dated 19.12.2001 (Annexure-2) was served upon him on

the allegation that he was in unauthorised absence from service since long. In response to it, the petitioner tiled a representation for time on 01.01.2002 (Annexure-3), but in spite of that the enquiry officer proceeded ex parte and submitted his report dated 22.07.2002 (Annexure-C) against the petitioner and on the basis of the said enquiry report the impugned order of termination of service dated 23.08.2002 (Annexure-4) was passed by the Divisional Manager of the Corporation without giving any reasonable opportunity to place his case or to file a second show cause to the petitioner.

3. Learned counsel for the petitioner averred that neither any show-cause notice was sent to the petitioner by the authority concerned after enquiry nor any opportunity was given to him to place his case and only on the basis of the report of enquiry officer, the disciplinary authority, namely the Divisional Manager of the Corporation passed the impugned order of his termination. He also asserted that against the said order, the petitioner filed an appeal before the appellate authority, namely the Administrator of the Corporation, but the appeal also was dismissed without appreciating the points specifically raised by the petitioner.

4. The grounds for challenging the impugned orders raised by learned counsel for the petitioner are as follows:--

(i) No presenting officer was appointed and hence scrupulous care was not taken in the case by the enquiry officer which has been deprecated by this Court in case of Panchanan Kumar Vs. The Bihar State Electricity Board and Others, .

(ii) Enquiry was held by the Enquiry Officer ex parte and there was no evidence that the petitioner was working elsewhere nor there was any definite finding in that regard in the report.

(iii) After receiving the enquiry report, the disciplinary authority did not issue any show-cause notice to the petitioner nor the enquiry report was sent to him which makes the entire proceeding illegal, arbitrary and perverse, In this regard, he relied upon two decisions of the Apex Court, namely in case of Union of India and others Vs. Mohd. Ramzan Khan, , and in case of Debotosh Pal Choudhary Vs. Punjab National Bank and Others, .

(iv) The disciplinary authority passed the impugned order of termination of petitioner's service without application of mind and blindly following the enquiry report without supplying the enquiry report to the petitioner as the said report was not served even before the appellate order and it was for the first time produced by annexing a copy thereof to the supplementary counter-affidavit filed in this writ case. Hence, he submitted that the entire departmental proceeding is vitiated in view of a decision of the Apex Court in case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.,

(v) The appellate authority dismissed the petitioner's appeal on the alleged statement of one Ram Prasad Singh, Time Keeper, who was neither examined by

any authority, nor his report was on record and no other document/evidence was produced to show that petitioner was working at any other place. Such documents/statements cannot be legally relied upon for punishing the petitioner. In this regard, he relied upon a decision of a bench of this Court in case of Jagdish Sah Vs. The State of Bihar and Others .

(vi) After the first absence, the petitioner was allowed to join but after the second absence the proceeding was initiated although the petitioner had produced medical certificate which was admitted in the enquiry report, but the said certificates were refused to be accepted merely on the ground that it was not from a big doctor.

(vii) The impugned orders are non-speaking orders, neither mentioning the pleadings of the parties, nor their evidence and even the finding of guilt was not conclusively recorded which vitiated the said orders and the proceedings against the petitioner. In this connection, he relied upon a decision of a bench of this Court in case of Chhote Lal Singh Vs. The Bihar State Electricity Board and Others, .

5. On the other hand, learned counsel for the respondent-Corporation and its authorities stated that admittedly charge-sheet was given to the petitioner before initiating the enquiry which fact has been admitted by the petitioner in paragraph 5 of the writ petition. Thereafter enquiry officer and the disciplinary authority sent notices (Annexure-A series and B series to the counter-affidavit) which was admitted by the petitioner in paragraphs 9 to 12 of his memorandum of appeal (Annexure-E to the C.A.) filed before the authority but in spite of that petitioner did not appear before the enquiry officer.

6. Learned counsel for the respondents submitted that the enquiry officer called for a report from the Time Keeper who reported on 20.06.2002 that petitioner was not present in Bihar Sharif and the said report was fully considered in the enquiry report which had been rightly relied upon by the appellate authority. Learned counsel for the respondents also submitted that petitioner was a driver in the Corporation and hence he was guided by the Standing Orders of the Corporation regarding the procedure in such matters and no provision of appointment of presenting officer in any enquiry is made in any Standing Order of the Corporation.

7. Learned counsel for the respondents claimed that petitioner was on unauthorized leave from 22.04.1997 to 31.01.1999 whereafter he joined on 01.05.1999 and in the next month, i.e. 16.06.1999 he again absented from his service and remained absent till his dismissal on 23.08.2002, although the petition of the petitioner for extension of leave was rejected by the Divisional Manager on 21-1-2000 directing him to immediately join, whereafter registered letters dated 3.02.2000, 09.03.2000, 27.04.2000, 03.05.2000, 12.05.2000 were sent to the petitioner by the Depot Superintendent and Divisional Manager of the Corporation at Bihar Sharif, but he neither joined nor replied and hence Divisional

Manager issued letter dated 25.09.2001 by registered post to the petitioner directing him to join immediately failing which departmental proceeding would be initiated and when even after that letter he did not join departmental proceeding was initiated and charge-sheet was sent to the petitioner by registered post on 19.12.2001.

8. Learned counsel for the respondents averred that enquiry officer sent several notices dated 16.01.2002, 01.03.2002, 18-3-2002, 09.04.2002, 02.05.2002, 01.06.2002 and 05.06.2002 and hence the Time Keeper was called in the enquiry proceeding in which he appeared and reported on 20.06.2002 that petitioner was not present in Biharsharif rather he was out of India. He also sent a letter to that effect to the Divisional Manager on 21.06.2002 stating that neither petitioner was ill nor he resided in Biharsharif. Hence, finally the enquiry officer submitted his report on 22.07.2002 (Annexure-C).

9. Learned counsel for the respondents asserted that prior to the instant occurrence, the petitioner had been charge-sheeted and punished 15 times from 09.10.1972 to 28.08.1990 for financial irregularities, misconduct, unauthorized absence and non-co-operation which is clear from the history sheet (Annexure-F) of the petitioner and in any view of the matter the petitioner himself admitted his unauthorized absence for such a long period without the permission of the authorities concerned and hence in the aforesaid circumstances, the enquiry was not in violation of the principles of natural justice as has been held by the Apex Court in case of Channabasappa Basappa Happali Vs. The State of Mysore, .

10. Learned counsel for the respondents argued that the records testify that the disciplinary authority had sent enquiry report to the petitioner along with notice but in spite of that he did not appear and hence he did not take the plea of non-supply of enquiry report before the appellate authority or even in his memorandum of appeal. Hence, the said allegation of the petitioner is absolutely frivolous and no de facto prejudice has been caused to the petitioner, hence even non-supply of enquiry report will not ipso facto vitiate the proceeding as has been held by the Apex Court in case of Union of India (UOI) and Others Vs. Alok Kumar, .

11. Learned counsel for the respondents finally argued that the proceeding before the enquiry officer, before the disciplinary authority and before the appellate authority was in accordance with law and as per the procedure provided in the Standing Orders of the Corporation and the impugned orders are legal, just and proper and requires no interference by this Court.

12. Considering the averments made by learned counsel for the parties and the materials on record, fully detailed above, it is not in dispute that the petitioner was a driver in the Corporation posted at Biharsharif and remained in unauthorised leave from 22.04.1997, but taking a lenient view he was permitted to join on 01.05.1999 by the authorities concerned, but in spite of that the petitioner did not change his habits and again absented from 16.06.1999 and did

not appear before the authorities concerned for several years although his petition for leave was rejected by the Divisional Manager on 21.01.2000 directing him to immediately join, but even then he failed to join in spite of repeated letters which were sent by the authorities by post to the petitioner to which no reply was also given by the petitioner and hence Divisional Manager was constrained to send another letter dated 25.09.2001 to the petitioner by registered post directing him to join immediately failing which departmental proceeding would be initiated and when even after that letter petitioner did not join, the departmental proceeding was initiated and charge-sheet was sent to him by registered post on 10.12.2001.

13. In the said circumstances, the initiation of the departmental proceeding after framing charge against the petitioner, a copy of which was sent to him by registered post, was quite legal and proper. The materials on record also reveal that during enquiry also repeated letters/notices were sent to the petitioner, but he never appeared, but in spite of that enquiry officer took extreme caution and called the Time Keeper to make his statement in the enquiry proceeding, where after the Time Keeper appeared and reported on 20.06.2002 and also sent a letter to the Divisional Manager on 21.06.2002 clearly stating that neither the petitioner was ill nor he was present in Biharsharif. In absence of the petitioner in spite of repeated notices there was sufficient evidence against him according to which the enquiry officer submitted his report on 22.07.2002.

14. The petitioner himself had not denied his unauthorised absence from 16.06.1999 till the date of his dismissal i.e. 23.08.2002 during when period he had not appeared even before the enquiry officer although charge-sheet and repeated notices were sent to him by registered post. This fact supported the statement of the Time Keeper that the petitioner was not ill nor he was present in Biharsharif because had he been present in Biharsharif even ailing, he could have sent any letter or representative before the authority concerned.

15. In the aforesaid facts and circumstances, the petitioner's plea that no presenting officer was appointed by the Corporation in the enquiry cannot be legally entertained especially when no Rule or Standing Order of the Corporation has been provided to show that without appointment of a presenting officer the enquiry cannot proceed. This plea of the petitioner also fails and even the decision of a Bench of this Court in case of Panchanan Kumar (supra) cannot be helpful to him in this case which involves a completely different set of facts.

16. So far the question of service of enquiry report to the petitioner by the disciplinary authority before passing its order is concerned, there is oath against oath as the respondents claimed that it had been sent to the petitioner along with notice, whereas the petitioner had claimed that no enquiry report or notice was ever sent to him. However from a bare perusal of the memorandum of appeal filed by the petitioner and annexed to the counter-affidavit of the respondents as Annexure-E, it is quite apparent that the petitioner had not taken plea of non-supply of enquiry report by the disciplinary authority and he

admitted that he had received notices dated 05.04.2002 and 24.04.2002 from the authorities, hence he was quite aware of the enquiry being held in the departmental proceeding against him and his claim of non-supply of enquiry report miserably fails. However, if the enquiry report was truly not supplied to him he would have taken such a plea before the appellate authority. Hence, the decisions of the Apex Court in case of Union of India and others Vs. Mohd. Ramzan Khan, , in case of Debotosh Pal Choudhary Vs. Punjab National Bank and Others, and in case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., are not applicable in the facts and circumstances of the case.

17. So far the question raised by the petitioner against the order of the disciplinary authority that it was passed without application of mind blindly following the enquiry report is concerned, admittedly the petitioner had received at least some of the notices and hence he was fully aware of the charges against him as well as the departmental proceeding and the enquiry, but in spite of that he did not appear either in the enquiry or in the departmental proceeding nor he ever produced any material against the charges levelled against him, where as the enquiry report submitted in the matter was quite exhaustive giving details of the facts according to the records as well as the evidence produced before him.

18. On the other hand, the medical certificates sent by the petitioner in the enquiry, which are annexed to the writ petition as Annexure-1 series, were clearly not acceptable as most of them are pathological reports which were of April and May, 2001 only, which did not show any such serious ailment on the basis of which the petitioner can justifiably absent himself from service for so many long years. Even the certificate of a private doctor of Biharsharif dated 16.06.1999 showed that petitioner was suffering from OBST Jaundice from 16.06.1999 and had been advised complete bed rest for four months only. Such certificates and reports did not at all support the claim of the petitioner which had been clearly found in the enquiry report.

19. In the said circumstances, the disciplinary authority had no material at all to disbelieve the enquiry report, especially when the petitioner did not appear before the disciplinary authority even after the enquiry report and notices were sent to him. Hence, the disciplinary authority was quite justified in passing the impugned order dated 23.08.2002 (Annexure-4). In such a situation, the decisions of a Bench of this Court in case of Jagdish Sah (supra) and in case of Chotte Lal Singh (supra) relied upon by learned counsel for the petitioner are not applicable in the instant case.

20. So far the appellate order dated 15-4-2004 (Annexure-5) is concerned, the appellate authority after perusal of the records rightly came to the conclusion that the petitioner absented himself for such a long period by making wrong picas and excuses, although notices were sent to him by the enquiry officer and the disciplinary authority. He was also justified in relying upon the statement of Time Keeper before the enquiry officer who had appeared in the enquiry and had clearly stated that neither the petitioner was ill nor he was present in Biharsharif.

This statement is amply proved by the acts of the petitioner and the materials on records and hence the order of termination of petitioner's services was legal and justified. Considering the entire matter as aforesaid this Court does not find any illegality or even any irregularity in the impugned orders of the authorities concerned and accordingly this writ petition is dismissed.