
(1999) 12 PAT CK 0025
In the Patna High Court
Case No : C.W.J.C. No. 2469 of 1999

Bimal Kumar Verma @ B.K. Verma

APPELLANT

Vs

Bihar State Electricity Board and Others

RESPONDENT

Date of Decision : 07-12-1999

Acts Referred:

Citation : (1999) 3 PLJR 43

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : Ratan Prasad Sinha, for the Appellant; Mihir Kumar Jha, M.K. Shah for Board, for the Respondent

Final Decision : Allowed

Judgement

Aftab Alam, J.—The petitioner was, posted Electrical Executive Engineer at Electricity Division, Jehanabad on 13-5.1994. On 6.7.1994 a large sum of money was withdrawn from the State Bank of India, Jehanabad for payment of salary to the employees of the Board posted in the six sub-divisions under Jehanabad Division. A part of the money was sent to Makhdumpur Subdivision and the balance amount was kept in the office of the Electrical Executive Engineer at Jehanabad. On the same day an armed dacoity was committed in the office of the Electrical Executive Engineer and the money was looted away. The Board thus suffered a loss of Rs. 6,17,416/-. In connection with the occurrence a disciplinary proceeding was initiated against the petitioner on charges of dereliction of duty, indiscipline, insubordination, corruption etc. The petitioner denied any responsibility for the loss suffered by the Board as the result of the dacoity. His main defence was that there was no laches or lapses on his part and he was simply following the procedure in connection with the withdrawal and distribution of money for payment of salary to the Board's employees which was coming in practice for a long time. He had joined at Jehanabad on May 13, 1994 and in the short period he had no time to review or change the past practice regarding the withdrawal and distribution of money for payment of salary to the

Board's employees.

2. A departmental enquiry was held into the charges at the conclusion of which the Enquiry Officer submitted his report holding that no charge was established against the petitioner. The enquiry report lay with the disciplinary authority and two years after its submission a second show cause notice was issued to the petitioner on 18.8.1998. In the second show cause notice it was not expressly stated that the disciplinary authority deferred from the findings of the enquiry report. It was, however, observed that there were materials on the record to show that on 6.7.1994 the petitioner made the withdrawal of Rs. 17.50 lacs for payment of salary to the employees posted in the Makhdumpur, Ghosi, Kurtha, Arwal, Karpi and Jehanabad sub divisions. It was further observed that this was not proper and the withdrawal of such a large sum of money at one time for payment of salary in all the Subdivisions and keeping it in the office was an act suggestive of irresponsibility; that the Electrical Executive Engineer ought to have made separate withdrawals on different days for payment of salary in the different Subdivisions and he should have made proper and safe arrangements for sending the money to the different Subdivisions; further that his action in making withdrawal of the entire amount of Rs. 17.50 lacs and in keeping the money in the office without any proper security arrangements and taking the plea of no availability of armed guards indicated irresponsible behavior on the part of the petitioner. The failure of the petitioner to explain why the entire amount was withdrawn on the same day though its disbursement was not possible in one day definitely established that he was wanting in administrative capabilities and leadership and was responsible for the huge loss suffered by the Board due to his negligence. He was, therefore, asked to show cause why he should not be given the punishments proposed in that notice.

3. The petitioner gave a detailed reply to the second show cause notice, a copy whereof is at Annexure-5. However, his reply to the second show cause notice was not accepted and he was awarded certain punishments by resolution no. 375 dated 17.2.1999 (Annexure-1). The punishment given to the petitioner are as follows :

(i) Withholding of one annual increment with cumulative effect.

(ii) Realisation of a sum of Rs.37,048/- (being 6% of the amount of Rs. 6,17,476/- the loss suffered by the Board) in 18 monthly instalments of Rs. 2000/- each. In case of his superannuation the realization of the balance amount from his retiral dues.

(iii) An entry of strong censure to be entered in his character roll for the year 1994-95.

4. The petitioner has come to this court seeking to challenge the punishments awarded to him by the impugned notification, dated 17.2.1999.

5. The action of the respondent authorities in passing the order of punishment is

assailed mainly on the ground that the decision to punish the petitioner was taken without any consideration of the enquiry report as well as the petitioner's reply to the second show cause notice. And on hearing counsel for the parties and on going through the writ petition and the counter affidavit Med on behalf of the Board, I find substance in the petitioner's grievance.

6. It is indeed true that the Board suffered an unfortunate and heavy loss as a result of the dacoity committed in the office of the Electrical Executive Engineer, Jehanabad. But it would be equally unreasonable and unjust to single out the petitioner for venting the frustration and anger resulting from the loss and punishing him when no punishment may be awarded if the whole matter is viewed objectively and dispassionately.

7. It is noted above, that the dacoity took place only a month and a half after the petitioner joined at Jehanabad. It was his defence that in the short time he did not have any opportunity to review or change the arrangements concerning withdrawal and distribution of money for payment of salary in the six subdivisions under his Division and he was simply following the procedure coming in practice from long before. The enquiry report had agreed with the defence take petitioner. In the second show cause notice it was observed that the withdrawal of the entire money at one time and keeping it in the office without any proper security arrangements was improper and suggested lack of responsibility a case of getting wiser after the event and the writer of the second show cause notice might have done exactly the same as the petitioner, if placed in his position before the event took place.

8. In respect of the observations made in the second show cause notice the petitioner gave detailed explanations in his reply (see paragraphs 7 to 9) and it is plain and evident that the petitioner's explanations to the observers the second show cause notice have not been taken into consideration before awarding him the punishments. I m, therefore, unable to sustain the order of punishment and the notification dated 17.2.1999 as contained in Annexure-1 is accordingly set aside. The matter is remitted to the Board to reconsider the petitioner's reply to the second show cause notice in the light of the observations made in this judgment. In case the Board finds sufficient materials on record to suggest that in making the withdrawal of money for payment of of salary in the month of June, 1994 any deviations were decision made from the past practice and those deviations were at the instance of or attributable to the petitioner, there some justification in giving punishment to the petitioner for the loss suffered by the Board. But in case it is found that the petitioner was simply following a long established procedure and practice regarding the withdrawal and distribution of money for payment of salary to the Board's employees, there may not be any justification for having him singled out for punishment for the accidental loss suffered by the Board.

9. It is expected that the Board will take a final decision in this matter and pass appropriate orders in accordance with law within two months from the date of

receipt/production of a copy of this order.

10. In the result, this writ petition is allowed subject to the aforesaid observations and directions.