

(1994) 02 PAT CK 0006

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2730 of 1993 (R)

Nand Kishore Singh

APPELLANT

Vs

Bihar State Road Transport Corporation and Others

RESPONDENT

Date of Decision : 23-02-1994

Acts Referred:

Citation : (1994) 02 PAT CK 0006

Judgement

Gurusharan Sharma, J.—The Petitioner has filed this writ application for quashing the order dated 8.7.1993 (Annexure-9) passed by the Managing Director, Bihar State Road Transport Corporation (for short "the Corporation"), Respondent No. 2 whereby the punishment of stoppage of two increments with cumulative effect has been imposed on him.

2. According to the Petitioner, when he was posted as Depot Superintendent of the Corporation at Hazaribagh, he was put under suspension on 4.5.1993 by the order as contained in Annexure-1 to the writ application. Thereafter, the charge-sheet (Annexure-2) was issued and a departmental proceeding was started. By office Order No. 931 dated 26.5.1993 (Annexure-3), the aforesaid order of suspension was kept in abeyance till further orders since the Petitioner was to take part in the Depot Superintendent training programme. However, by the said order, the departmental proceeding was directed to continue. The Petitioner submitted his show cause. However, no witness was produced before the Enquiry Officer by the Corporation to prove, the charges levelled against the Petitioner and the copy of the enquiry report was also not communicated to the Petitioner and without affording reasonable opportunity of hearing, the impugned punishment has been imposed.

3. It has been contended by the Petitioner's counsel that the Enquiry Officer did not record any evidence in presence of the Petitioner and the impugned order imposing punishment, has been passed without complying with the principles of natural justice i.e. even the copy of the enquiry report was not given to the Petitioner.

4. A counter affidavit has been filed on behalf of the Respondent-Corporation stating, inter-alia, that inspite of several opportunities having been given to the Petitioner, he failed to appear before the Enquiry Officer to defend his case and to cross-examine the witnesses and consequently, the Enquiry Officer submitted his report before the competent authority, who passed the final orders, whereby the Petitioner was given a warning and his two increments were withheld and the Petitioner was released from suspension. From a perusal of the counter affidavit, it appears that nowhere, it has been stated that a copy of the inquiry report was given to the Petitioner. In this case, the Enquiry Officer was not the Disciplinary Authority. As such, the Petitioner had a right to receive copy of Enquiry Officer's report before the Disciplinary Authority arrived at its conclusions with regard to the charges levelled against him. This right was a part of the Petitioner'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.

5. In this connection, reference may be made on the decisions of the Supreme Court in the cases of Union of India and others Vs. Mohd. Ramzan Khan, and Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., wherein it has been held that the delinquent employee is entitled to a copy of the report of the Enquiry Officer even if the statutory Rules do not permit the furnishing of the report or are silent on the subject. Whenever, the service rules contemplate an inquiry before a punishment is awarded and when the Enquiry Officer is not the Disciplinary Authority, the delinquent employee will have the right to receive the Enquiry Officer's report notwithstanding the nature of the punishment. Since it is the right of the employee to have the report to defend himself effectively and he would not know in advance whether the report is in his favour or against him, it will not be proper to construe his failure to ask for the report, as the waiver of his right. Whether, therefore, the employee asks for the report or not, the report has to be furnished to him.

6. In the circumstances, although the impugned order is appellable but on account of aforesaid inherent defect in the impugned order, I think it proper to exercise the jurisdiction under Article 226 of the Constitution of India and quash the same. However, it will be open to the Respondent-Corporation to serve a copy of the inquiry report and thereafter, giving a reasonable opportunity to the Petitioner proceed with the departmental proceeding afresh and decide the same within six months from the date of the service of the enquiry report. If the Petitioner fails to cooperate with the proceeding, it may proceed ex parte and be decided within the aforesaid time limit.

7. In the result, the impugned order dated 8.7.1993 as contained in Annexure-9 to this writ application is quashed and this writ application is disposed of with the aforesaid observations and directions.

R.N. Sahay, J.

8. I agree.