
(2008) 05 PAT CK 0001
In the Patna High Court
Case No : LPA No. 519 of 2000

Ram Balak Singh		APPELLANT
	Vs	
The Chairman, B.S.R.T. Corpn. and Others		RESPONDENT

Date of Decision : 15-05-2008

Acts Referred:

Citation : (2008) 3 PLJR 667

Hon'ble Judges : Shiva Kirti Singh, J;J.N. Singh, J

Bench : Division Bench

Advocate : Dinesh Kumar Singh, Anurag Saurav and Prabhat Ranjan, for the Appellant; P.K. Verma and Nand Kumar Singh for B.S.R.T.C., for the Respondent

Final Decision : Dismissed

Judgement

Shiva Kirti Singh & Jayanandan Singh, JJ.—Heard learned counsel for the appellant and learned counsel for the Bihar State Road Transport Corporation (hereinafter referred to as the Corporation). The appellant-writ petitioner preferred writ petition bearing C.W.J.C. No. 6173 of 1998 against order of the disciplinary authority dated 1.4.1996 whereby he was dismissed from service after holding a disciplinary enquiry. The Writ Court noticed that earlier also the writ-petitioner had been dismissed on the same charges but the earlier order of dismissal dated 6.9.1994 was set aside by order dated 7.12.1995 passed in C.W.J.C. No. 1382 of 1995 on the limited ground that the disciplinary enquiry had been conducted ex parte while the petitioner had not been paid subsistence allowance although he was placed under suspension. Writ Court further noticed that in view of passing of earlier order of the court, the petitioner resumed his service on 17.1.1996 and in view of liberty given by the Court the Corporation again proceeded with the disciplinary proceeding leading to impugned order of dismissal dated 1.4.1996. The said order was also confirmed by the appellate authority vide order dated 22.10.1999.

2. The charge against the appellant-writ petitioner is that on 5.2.1993 he was the driver of Deluxe Service Bus No. BR-1A 5093. While he was going from Patna

to Ranchi the bus was checked by Ranchi Division Flying Squad. In the checking it had been found that three passengers had proper tickets and the remaining three passengers were without tickets. The further charge is that when the checking squad proceeded to issue tickets to the un-booked passengers, the petitioner who was the driver of the bus obstructed the members of the checking squad. He insulted and threatened the members, refused to give them the PV book and pushed them down from the bus.

3. It has been submitted before us that the disciplinary proceeding was resumed against the petitioner and order of dismissal was again passed against him but he was not paid dues of subsistence allowance for the period when he was under suspension or even current salary after he was allowed to join from 17.1.1996 and hence the order of dismissal under challenge must also be quashed on the ground the earlier dismissal order was quashed.

4. We are in agreement with the learned single Judge that this submission has no merit. An employee under suspension without subsistence allowance is in a position to urge that due to such nonpayment he was disabled from attending the proceeding and therefore suffered prejudice when the proceeding was held ex parte. But when an employee has been reinstated and is attending duty, there is no such disability and no prejudice can be inferred when actually the employee has attended the disciplinary proceeding and cross-examined the witnesses examined on behalf of the department. The law is settled that only when prejudice is proved by an employee caused to him due to non-payment of subsistence allowance during suspension which led to his non-appearance in a proceeding held ex parte, the order of dismissal may be held to be invalid.

5. It was next submitted that petitioner has been prejudiced on account of non-supply of documents demanded by him which were essential for his defence. In this regard, our attention was drawn to a letter of the petitioner addressed to the Managing Director of the Corporation dated 16.2.1996 (Annexure-10) and to a report by the enquiry officer dated 21.2.1996 (Annexure-12). Annexure-10 shows that the subject of that letter is clearly in respect of joining report submitted by the petitioner on 17.1.1996. In that context he made a grievance that even after submitting his joining on 17.1.1996 he had not been given any paper or order. So far as the enquiry report contained in Annexure-12 is concerned, that has been noticed by the learned single Judge who has observed that this report was not accepted by the disciplinary authority because sufficient opportunity was not given to the writ-petitioner to cross-examine the witnesses. Hence the report contained in Annexure-12 was not acted upon. Thereafter, the writ petitioner was given opportunity and he availed that opportunity to cross-examine the witnesses. Thereafter, another report was submitted by the enquiry officer dated 15.3.1996, which is contained in Annexure-14. In the report dated 15.3.1996 which has been accepted by the disciplinary authority, there is no mention that the petitioner wanted to lead any evidence, oral or documentary, or that he had made any prayer for documents. However, in Annexure-12 there is a

reference at one place that so far as the allegation of snatching of PV book by the petitioner from the member of the flying squad is concerned, the members of the checking squad had lodged an FIR also in Chandi Police Station and later they communicated in writing that on 7.12.1993 the snatched PV book was returned by the driver. That report further mentions that even after notice given to the driver twice, he submitted no explanation and remained absent on 15.2.1996 the date fixed in the enquiry, and on 26.2.1996 he filed an application asking for some documents which disclosed that he had adopted a dilatory tactics.

6. The appellant-petitioner has not annexed the said application which he filed before the enquiry officer on 26.2.1996 so that we could examine what documents he had asked for and whether they were relevant documents or not. Because of petitioner's failure to bring that application on record we are unable to find fault in the conclusion of the enquiry officer that the said application had been filed only by way of dilatory tactics.

7. In respect of the aforesaid grievance regarding non-supply of some documents, we have also applied our mind to the nature of charges levelled against the petitioner by the members of the checking squad and we find that those allegations are of such nature that the PV book which was only document which the learned counsel cited as a document required by the writ petitioner, could not have been of any use. According to evidence, appellant snatched that book and kept with him for the sometime. In such a situation, if the document was produced from his custody or even if it was returned subsequently and produced from the custody of the department, it could not have been of much significance because even a temporary custody of such book may give sufficient opportunity to cause partial or complete mutilation, interpolation etc. Further, in the light of very nature of the allegations/charges we are of the view that documentary evidence could not have been of much consequence. In the present case the disciplinary authority has come to a finding on the basis of materials available on record that the enquiry officer has rightly found the employee guilty of the charges. Such finding cannot be interfered with unless it is pleaded and proved that the finding is based upon no material and is therefore perverse. That is not the situation in the present case.

8. Lastly it was submitted before the learned single judge as well as before us that the order of punishment is excessive and the petitioner-appellant did not deserve to be dismissed from service.

9. The charge against the petitioner-appellant reveals that as per allegation some un-booked passengers were also in the bus and the petitioner prevented the checking squad from issuing tickets to such passengers. This has direct relation to revenue of the Corporation and in such circumstances the punishment of dismissal inflicted by the competent authority cannot be interfered with by this Court. In respect of punishment, law is well settled that only when the conscience of the Court is shocked considering the nature of the charge and the

gravity of the punishment, the Court may interfere in the matter of punishment. It is difficult to interfere in this case with the punishment awarded to the petitioner if one keep in mind the gravity of the charge.

10. Thus on consideration of all the facts, circumstances and the submissions, we find no good reason to take a different view and we are unable to interfere with the order and judgment of the writ court. In the result, this appeal is dismissed but without cost.