(2002) 07 PAT CK 0139

In the Patna High Court

Case No : C.W.J.C. No. 12080 of 2001

Sitaram Yadav APPELLANT

Vs

The Bihar State Tourism Development Corpn. and Others RESPONDENT

Date of Decision : 10-07-2002

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : (2002) 3 PLJR 594

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : Navin Sinha, for the Appellant;

Final Decision : Allowed

Judgement

Aftab Alam, J.—The Petitioner who worked as a Booking Clerk in the Bihar State Tourism Development Corporation (hereinafter refeffed to as ''the Corporation'') seeks to challenge the office order issued by the Managl(sic) Director on 28.8.2001 by which he (sic) disengaged from the service. His rem(sic) from service was on the charge that was responsible for the loss of Rs. 67,000/- which was stolen from an almirah kept the Corporation''s office.

2. The Petitioner was engaged by the Corporation on 23.5.1983 to work on daily wages as Booking Clerk and from that date he was working in that capacity, continuously and without interruption. On February 10, 2001 which was a Saturday the Petitioner had with him a sum of Rs. 67,000/ as collection from sale of tickets and hire charges of cars and buses etc. The financial rules/procedures of the Corporation required the entire money to be deposited in the Corporation''s bank account but in disregard of the rules/procedures the cash was kept in a locked almirah in the Corporation''s office, to be deposited in the Bank on the next Monday. On Monday the almirah was found unlocked and open and the money kept there was stolen.

3. The Petitioner reported the matter to the higher authorities and a first

information report was lodged in which another employee of the Corporation namely Pyod Pati Singh was named as the accused (The reasons for Pyod Pati Singh being named as the accused are stated in the F.I.R.). It may be noted that after investigation the police submitted charge sheet against the aforesaid P.P. Singh and in that charge sheet the Petitioner was named as lone of the prosecution witnesses. In connection with that case P.P. Singh was also taken into custody and he was finally released on bail by an order passed by this Court. It is, therefore, to be borne in mind that the allegation against the Petitioner is not that he stole the money. The Petitioner, however, was charged with acting in disregard of the financial rules/procedures of the Corporation, being neglectful in the discharge of his duty and being responsible for the loss suffered by the Corporation.

4. According to the procedure followed in the Corporation the Petitioner was required to hand over each day''s collection to the cashier whose duty was to deposit the amount in the bank. In case on any day the cashier was busy otherwise, the Petitioner Was required to report the matter to the next higher authority who would make the arrangement for the cash being deposited in the bank. It appears that this practice was not followed and the collections were allowed to accumulate over 3-4 days. According to the Petitioner, he was not at fault in this connection. He requested the cashier to deposit the day''s collection in the bank but the cashier being otherwise busy the money was not deposited.

5. In these circumstances, the Petitioner was given a notice (Annexure-6) on 17.2.2002 to show cause why appropriate action should not be taken against him. The Petitioner gave his reply on 20.2.2001 which was not found satisfactory and the Petitioner was asked not to sign the attendance register any further. It seems that even after the verbal instructions restraining him from coming to work the Petitioner continued to come for duty. On 20.8.2001 he was given another notice to show cause under what circumstances he continued to sign the attendance register even after being stopped from working.

6. At that stage the Petitioner came to this Court in C.W.J.C. No. 962,7 of 2001 challenging the order dated 28.4.2001. That writ petition was disposed of by order dated 1.8.2001 by which this Court asked the Respondent Corporation to pass appropriate orders on his show cause. Following the order passed by this Court the Managing Director issued the office order removing the Petitioner from service. The order of removal from service was passed without affording the Petitioner an opportunity of hearing.

7. The order is in some detail and takes into consideration all aspects of the matter. But the violation of Article 311(2)(b) is writ large on this order. The manner in which the disciplinary action proceeded against the Petitioner from stage to stage is quite unknown to law. From the office order it is undeniable that, the Petitioner''s removal from service was a major punishment awarded to him for being negligent and not following the financial rules/procedures of the Corporation. But it appears that no formal charge was ever given to him and no

departmental enquiry was held into those charges in which the Petitioner could defend himself. From the order it further appears that certain reports and notes of different officers were taken into consideration which were prepared behind the back of the Petitioner. In this regard the following extracts from the office order may be seen:

From perusal of his explanation it is clear that Mr. Yadav has tried to shirk his responsibility. As per the set procedure and orders, while working as booking clerk it was his responsibility to had over the money to the cashier for depositing in the bank which he did not do. His mere assertions that he asked the cashier to do so is not enough firstly because his such assertion is not backed by any evidence, secondly because if it was so he should have informed the superior authority about this which he did not do, thirdly because it was the cashier and not him who kept on alerting him (Mr. Yadav) to hand over the money for depositing the amount in the bank as is clear from the report of the Manager (Transport), fourthly because as per his own admission he asked the cashier very late on Saturday i.e. a day before the incidence, to deposit the amount but by then it was too late and banking hour was over and lastly because when the cashier was busy as also admitted by him and the amount kept on getting accumulated over past several days, it was expectedly his duty to deposit the amount personally or inform the Manager (Transport) which he did not do. In fact, he should have been even more cautious when knowingly the next day, being a Sunday, bank would be closed and when he was supposedly aware that there was an incidence of theft of tyres from the same room in the past. Clearly he failed to discharge his duty properly and responsibly and also probably deliberately because the locks were not broken but opened and it was Mr. Yadav himself who was having the keys.

8. In the above quoted passage from the impugned order it is stated that the Petitioner''s assertion that he asked the cashier to deposit the money in the bank was not enough first because his such assertion was not backed by any evidence''. But the grievance of the Petitioner is that he was not given an opportunity to lead any evidence in support of his assertion. The order then refers to the report of the Manager (Transport); the report was prepared behind the Petitioner''s back and a copy of the report was never given to the Petitioner.

9. The impugned order of removal from service is therefore unsustainable on the ground of infringement of Article 311(2)(b) of the Constitution.

10. Apart from this it appears to me that in the facts and circumstances of the case the punishment of removal from service is rather harsh and excessive. In this regard it may be noted that in course of submissions Mr. Navin Sinha, learned Counsel appearing for the Petitioner stated that even without accepting the charge or compromising his position in any manner the Petitioner was willing to make good at least a portion of the loss suffered by the Corporation.

11. Here it may also be noted that the Petitioner was made to work on daily

wages for about 16 years. He earlier came to this Court in C.W.J.C. No. 7421 of 2000 seeking a direction for his regularisation in service. In that writ petition this Court by order, dated 11.8.2000 directed the Petitioner to be placed at the minimum of the time scale admissible to the post (of Booking Clerk) plus dearness allowance without any other allowances or annual increments. Following the direction of this Court the Managing Director issued an order on 26.9.2000 by which the Petitioner was given the time scale of Rs. 1200-1800, subject to the result of certain Letters Patent (sic) peal pending before the Jharkhand High Court. On the basis of the order dated 26.9.20 00 the Petitioner was getting a monthly salary of Rs. 4100 (carry home packet being around Rs. 3600/-). In these circumstances if the Petitioner offers to pay, in one lump sum or installments even one third of the total loss suffered by the Corporation, that to my mind should be more than adequate punishment for his alleged negligent act.

12. In the light of the discussions made above, the impugned order dated 28.8.2001 (Annexure-11) is set aside and the matter is remitted to the Managing Director of the Corporation. It is hoped and expected that while passing a fresh order the Managing Director will give due consideration to the observations made above in this order.

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

