
(2007) 04 PAT CK 0027
In the Patna High Court
Case No : CWJC No. 7070 of 2005

Sri Basant Kumar Singh

APPELLANT

Vs

The Chief General Manager and Others

RESPONDENT

Date of Decision : 30-04-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) PLJR 102

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Advocate : Binod Kumar Singh, S.D. Sanjay, for the Appellant;

Final Decision : Allowed

Judgement

Ajay Kr. Tripathi, J.—Heard counsel for the parties. By virtue of the order dated 14.7.2004 contained in Annexure-2, order of punishment was passed against the petitioner. The punishment is of compulsory retirement from Bank service. This order of punishment has been affirmed by the appellate authority and this order is dated 20th May 2005 and is Annexure-1 to the writ application. Both Annexure-1 and 2 are, therefore, impugned orders in the present writ application.

2. Petitioner was a JMGS-I and was posted as Passing Officer at the J.C. Road Branch at Patna. He was served a chargesheet dated 24.9.2000. The basic charge against the petitioner was that he had obtained wrongful payment of Rs. 40, 403=84 P. being salary and allowance for the period 1.1.2000 to 15.3.2000 from J.C. Road Branch by submitting an ambiguous and misleading undertaking that he has not received these payments earlier. Petitioner in this writ application has stated that prior to his posting at Patna he had worked in the Pipra Branch and Nayagaon Branch falling within the Zonal Office of Muzaffarpur. Petitioner was served with a show-cause wherein he filed his explanation on 30.3.2000, the same was, however, not accepted and a departmental enquiry was held against the petitioner. An enquiry report was submitted on 14.6.2003 and based on the enquiry report after more than one year the order of compulsory retirement was

passed against him. Petitioner contends that the order of punishment has been passed out of motive and ill-will. He states that the order of punishment is motivated because his appointing authority one Mr. K. Sitaraman had earlier enquired into similar charges and found them not to be proved but subsequently on the same said charges the said Mr. Sitaraman became the appellate authority and he decided to impose the punishment of compulsory retirement. In paragraph 16 petitioner has given the details of the dates and the number of days he had worked under these various Branches. The same are reproduced hereinbelow and have relevance to the decision of the present case:--

S.N.

From Date to Date

No. of Days

Present at Branch/ZO

at

Proof of Presence

Remarks

1.

1.1.2000

to

23.2.2000

54

Pipra Branch

Letter No. 23/217 dated 8.2,2001, (DEX-1)BM-21/02 dated 15.3.2002 (DEX-2) GM(D&PB) Letter No. DPD/178 dated 15.9.2003 Photocopy of Roster marked as (PEX-15).

Present

2.

23.2.2000

00

Relieved from Pipra Branch for ZO., Muzaffarpur for eventual posting

Present

3.

24.2.2000

01

Sunday

Sunday

4.

25.2.2000

to

26.2.2000

02

Zonal Office Muzaffarpur

Letter No. AGM-R-III/4686/83 dated 26.2.2000

Present

5.

27.2.2000

to

5.3.2000

08

Transit Leave

Application submitted

Transit Leave

6.

6.3.2000

to

13.3.2000

08

Medical Leave

-do-

Medical Leave

7.

14.3.2000

to

14.3.2000

01

Nayagaon Branch

Letter No. BM/85 dated 14.3.2000

Present

8.

15.3.2000

to

15.3.2000

01

Zonal

Office,

Patna

Letter No. DGM/P/PER/AKS/ 222 dt. 15.3.2000

Present

3. Petitioner has tried to demonstrate before this Court that the so-called allegation of unauthorised leave for which petitioner had allegedly obtained payment of salary etc. stands disproved. According to the enquiry officer himself the allegation of unauthorised absence for the period 1.1.2000 to 12.2.2000 i.e. for 43 days was not proved. The only period, therefore, which was left was 27.2.2000 to 13.3.2000 i.e. about 16 days. Petitioner states that he was transferred from Pipra Branch on 23.2.2000 and he gave his joining in the Zonal Office at Muzaffarpur. 24.2.2000 was a Sunday and he was present in the Zonal Office from 25.2.2000 to 26.2.2000. On 26.2.2000 petitioner was posted at Nayagaon Branch. On posting at Nayagaon Branch petitioner remained in transit leave from 27.2.2000 to 5.3.2000 i.e. for 8 days. According to the petitioner in terms of the relevant Rules relating to supervising staff he was entitled to 8 days of transit leave. Petitioner states that he remained on medical leave from 6.3.2000 to 13.3.2000 i.e. another 8 days and he thereafter joined on 14.3.2000. After his joining on 14.3.2000 at Nayagaon Branch at the close of business he was transferred to J.C. Road i.e. Patna Zonal Office where he joined on 15.3.2000. According to the petitioner, therefore, he was on duty from 1.1.2000 to 15.3.2000 but the authorities in question intentionally ignored this fact despite official evidences being available on record. Petitioner has brought these official documents as Annexure-7, 7/1 and 7/2 in support of his averments.

4. Petitioner has also stated in the writ application that in the year 2000 a

chargesheet was served and a disciplinary proceeding was initiated against him with the same charges that he was unauthorisedly absent from 1.1.2000 to 12.2.2000. This period is included in the present disciplinary proceeding also. In the earlier disciplinary proceeding it was conclusively held in order dated 15.9.2003 that absence for 43 days was not conclusively proved against the petitioner but subsequently in the second disciplinary proceeding despite evidence being available with the authorities and was produced before the enquiry officer they decided to impose punishment of removal from service for the reason that petitioner had claimed salary and allowances for the period 1.1.2000 to 15.3.2000.

5. The contention of petitioner, therefore, is that decision of the disciplinary authority and subsequently the appellate authority to compulsorily retire the petitioner from service was based on extraneous consideration and contrary to evidence on record. Petitioner submits that even though the enquiry officer did not find evidence of absence of the petitioner for major period the disciplinary authority intentionally overlooked the evidence and the official documents which were produced during the course of enquiry. There was no basis to hold that petitioner was unauthorisedly absent for the period in question. Petitioner submits that any order of punishment if it is passed by ignoring official records and evidence then the same cannot be said to be an order having been passed with due application of mind and a reasonable decision taken on behalf of the disciplinary authority.

6. Another aspect which petitioner has pointed out in his writ application is that the authorities have tried to prove the absence based on the leave records maintained at the local head office at the material time but then the leave record of employees including the petitioner maintained at the local head office at the relevant time is always updated on the basis of inputs furnished by the various Branches or the Zonal Offices. If the necessary communication was either delayed or not faithfully recorded in the leave register of the employees then the same cannot be treated as an authentic piece of evidence to show that a particular employee was on unauthorised leave. It is the case of the petitioner that since he had brought evidence on record by way of official communications issued by the relevant Branches to establish his presence and working at the relevant time then insistence of the disciplinary authority that there were no reflections of the same in the leave record maintained at the local head office is again an arbitrary piece of decision. There is always delay in updating records at the head office because of the time gap taken in communication between the respective Branches and the Zonal Offices.

7. Petitioner, therefore, in totality of the facts and the evidence submits that no prudent man in the given evidence available on record would come to a conclusion that petitioner had falsely claimed salary and other allowances for the period 1.1.2000 to 15.3.2000 by submitting a misleading undertaking. If there was a communication gap between the head office and the Branches in question

then petitioner cannot be punished for the same by imposing punishment of removal from service, more so when there is overbearing evidence to show that petitioner had very much worked at the relevant time in the Branches during the period in question.

8. Though it is not the duty of a Court to do reappraisal of evidence while exercising its powers under Article 226 of the Constitution of India but when such glaring omissions are brought to the notice of the Court which has culminated into imposition of a serious punishment against the petitioner then the Court cannot shut its eyes to such illegality. The Court has to consider while examining a matter in disciplinary proceeding whether the respondent disciplinary authority has conducted the proceeding in a fair manner or not. If any evidence is intentionally ignored or overlooked to come to a particular conclusion even though available on record then it cannot be said that a disciplinary authority has conducted a proceeding against an employee in a fair manner. If an element of arbitrariness is reflected on the face of record then the Court will be duty bound to interfere in the decision which has been taken by the disciplinary authority and correct the illegality.

9. This Court on perusal of evidence as well as the stand taken by the respondents in their counter affidavit is satisfied that petitioner had not claimed his salary and allowances at his last place of posting at J.C. Road Branch illegally. He had in fact established that he had rendered service under the various Branches at the time of his posting and some of these period was part and parcel of leave he had obtained under the category of transit leave and medical leave. This is not a case where an employee, has illegally stayed away from work and has later on claimed salary even for a period he had not worked.

10. This being the factual and legal position, this Court comes to an opinion that the order of compulsory retirement passed against petitioner contained in Annexure-2 as well as the order of the appellate authority affirming the same said punishment contained in Annexure-1 is an arbitrary decision and fit to be quashed. The impugned orders are accordingly set aside. Petitioner is ordered to be reinstated and respondents are directed to accept his joining. The writ application is accordingly allowed. There will be no order, however, as to costs.