
(1999) 12 PAT CK 0040
In the Patna High Court
Case No : C.W.J.C. No. 523 of 1999

Sri. Radha Krishna Prasad

APPELLANT

Vs

Bihar State Electricity Board and Others

RESPONDENT

Date of Decision : 14-12-1999

Acts Referred:

Citation : (2000) 2 PLJR 29

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Aftab Alam, J.—The Petitioner is an employee of the Bihar State Electricity Board. While posted as Accounts Clerk in the Bihar Electric Supply Subdivision he was allotted a residential quarter at Bihta. On 4.3.1973 he was transferred from Bihta to Rajgir. Even after the transfer he retained his quarter at Bihta and continued in its occupation till 14.7.1992. On 16.7.1992 a disciplinary proceeding was initiated against him on the charge of gross indiscipline for keeping the Board's quarter at Bihta in his unauthorized occupation for about 19 years.

2. One of the defenses taken by the Petitioner in the disciplinary proceeding was that his occupation of the quarter at Bihta could not be said to be unauthorized as house rent was regularly deducted from his monthly salary and the occupation not being unauthorized it could not be described as an act of indiscipline and it could not, therefore constitute any misconduct.

3. During the pendency of the departmental proceeding he earlier came to this Court in C.W.J.C. No. 2517 of 1994 challenging the very initiation of the disciplinary proceeding. That writ petition was disposed of by order, dated 7.7.1995. At that stage this Court refused to interfere in the departmental proceeding but gave directions to the Respondent authorities to conclude the departmental proceeding within the time specified in that order.

4. Pursuant to the direction of this Court the departmental proceeding was

concluded and an order was issued awarding the Petitioner two punishments namely recovery of penal rent of the quarter for the period of its unauthorized occupation by the Petitioner and withholding of two annual increments with cumulative effect.

5. The Petitioner challenged the earlier order of punishment by filing C.W.J.C. No. 8564 of 1995 before this Court. That writ petition was allowed by order dated 20.1.1998 and the order of punishment passed against the Petitioner was set aside. At that stage this Court interfered in favor of the Petitioner on the ground that the order of punishment was passed without first giving a copy of the enquiry report to the Petitioner and giving him an opportunity to show cause against the proposed punishments. The relevant portion of the order, dated 2.1.1998 passed by this Court in C.W.J.C. No. 8564/95 is as follows:

In my view, non-service of enquiry report has prejudiced the cause of the Petitioner. Accordingly, the order, as Petitioner (sic). If he desires to file any representation, he will file the same within three weeks from today and the concerned authority will pass a final order in accordance with law.

6. Pursuant to the afore quoted direction of this Court, the Petitioner filed his representation dated 9.2.1998, on a consideration of which an office order was issued by the Joint Secretary to the Board under his memo No. 303 dated 15.7.1998. By this order the Petitioner has been given the punishment of recovery of penal rent of the quarter at Bihta for the period of its unauthorized occupation by the Petitioner from 4.3.1973 to 14.7.1992 and withholding of one annual increment (instead of two annual increments as per the earlier order) with cumulative effect.

7. The Petitioner is once again before this Court now trying to challenge the order of punishment dated 15.7.1998 (Annexure-14).

8. Learned Counsel for the Petitioner first tried to assail the very initiation of the disciplinary proceeding. In my, view after two rounds of litigation before this Court it is no longer open to him to go behind and assail the initiation of the disciplinary proceeding against him. In this regard it may be noted that the earlier writ petition being C.W.J.C. No. 2517/94 was filed by him challenging the charge sheet dated 17.7.1992 and the order of initiation of the departmental proceeding which were enclosed as Annexure 1 and 2 respectively to the writ petition. By order, dated 7.7.1995, while disposing of that writ petition, this Court made the following observations:

Having heard the counsel for the Petitioner and the counsel appearing on behalf of Board, I am not inclined to interfere with the departmental proceeding, as the Petitioner took part in the same by filing show cause reply on 12th October, 1994 (Annexure-4). On quarry made the counsel for the Petitioner submitted that in the departmental proceeding before the Enquiry Officer, the Petitioner has raised all these points. It is for the said reason, it is not desirable to set aside the departmental proceeding by this Court, the Petitioner having already taken part

in the same.

9. In view of the earlier order passed by this Court the matter now stands concluded and it is no longer open to the Petitioner to challenge the initiation of the departmental proceeding against him.

10. Learned Counsel then tried to assail the order of punishment on some highly fanciful grounds. According to him, the deduction of house rent from his monthly salary all through the period of 19 years while he retained the quarter at Bihta, though being posted elsewhere, amounted to the Board giving him the license for such occupation and, therefore, his position was that of a licensee. His occupation of the quarter cannot, therefore, be described as unauthorized. In fact the learned Counsel tried to put the blame on the Board itself. It was submitted that for the long period of 19 years he was never asked to vacate the quarter nor was any action taken against him, nor was his Last Pay Certificate withheld at Bihta on the ground that he had not vacated the quarter there. Further according to the learned Counsel retention of the quarter at a place elsewhere than the place of posting cannot be said to be misconduct under the Standing Orders of the Board.

11. In my view all these submissions are fit to be rejected out of hand but as these were urged with certain vehemence, I may as well deal with them.

12. It may be noted here that it is an admitted position that the Petitioner continued to be in occupation of the quarter at Bihta from 1.4.1973 to 14.7.1992 while he was posted elsewhere. Without denying his continued occupation of the quarter, the blame is sought to be put on the Board by stating that during this whole period the Board on the one hand did not ask him to vacate the quarter and on the other hand went on deducting house rent from his monthly salary. In this regard some of the findings recorded in the enquiry report are relevant. In the enquiry report it was found as noted above, that the proceedee in his cross-examination confirmed the fact of having retained the quarter at Bihta. Further summing up the materials brought before him the Enquiry Officer recorded the following findings:

(1) Proceedee was relieved from Bihta Dvn. on 3.3.1973.

(2) Rent of the quarter used to be deducted from his salary till vacation of the quarters on 14.7.1992.

(3) In letter No. 3542 dated 21.10.1983 of A.C.E. Elect. Supply Sub-dvn. Bihta, the proceedee was asked to vacate the quarter and was also intimated that failing to vacate the quarter will amount to suitable disciplinary action.

(4) The proceedee neither vacated the quarter nor any action was initiated against him.

(5) After expiry of six years the proceedee was again instructed to vacate the quarter but the quarter was not vacated.

(6) Thereafter in April, 1992, the proceedee was asked to vacate the quarter but the proceedee could vacate the quarter only on 14.7.1992.

13. In view of the findings recorded in the enquiry report nothing remains of the objections being raised on behalf of the Petitioner.

14. Moreover, it is an elementary principal of any service regulations that unless provided to the contrary an employee can retain a quarter only at his place of posting and not elsewhere. Further any deduction of salary, may be due to mistake or collusion of the staff at the lower level will not make the occupation of the quarter authorized. The occupation of the quarter can be said to be authorized only on the basis of an express order passed by the competent authority in that regard which, in this case, is conspicuous by its absence. The Petitioner's delinquency is thus established on his own admission of being in occupation of the quarter for all these years in the absence of a valid order of allotment of that quarter for the period in question by a competent authority. Nothing more is required to establish his delinquency.

15. It may, however, be observed that while making recovery of the penal rent the Board will discount the house rent already deducted from the Petitioner's salary.

16. For all these reasons, I find no substance or merit in this writ petition. It is accordingly dismissed.