
(2011) 04 PAT CK 0303
In the Patna High Court
Case No : LPA No.532 of 2009

The Bihar State Electricity Board	Vs	APPELLANT
Ashwini Kumar Gupta		RESPONDENT

Date of Decision : 18-04-2011

Acts Referred:

Citation : (2017) 1 PLJR 48

Hon'ble Judges : T. Meena Kumari and Akhilesh Chandra, JJ.

Bench : Division Bench

Advocate : Mr. Anand Kumar Ojha, Advocate, for the Appellant; Mr. Banwari Sharma, Mr. R.K. Sinha and Mr. Nilesh Kumar Nirala, Advocates, for the Respondent; Mr. Dhruva Mukherjee, Advocate and Mr. Neeraj Kumar, Advocate, for the Jharkhand Electricity Board

Final Decision : Dismissed

Judgement

1. Although this matter is listed under the heading "for orders on petition", but both the counsel have agreed that the matter should be heard and disposed of finally.
2. The present appeal has been filed by the Bihar State Electricity Board (hereinafter referred to as "the B.S.E.B.") against the order dated 20.08.2008 passed in C.W.J.C. No.10555 of 2004.
3. It has been submitted on behalf of the appellants that the respondent no.1, who happens to be the Junior Electrical Engineer in B.S.E.B., was asked to escort the lorry carrying 72 drums of transformer oil from the State of Bihar to the State of Maharashtra on 28th August, 1993. It is further argued that the respondent no.1 was to escort the lorry in question under the instruction of the General Manager Cum Chief Engineer to the Electrical Superintending Engineer, but the respondent no.1 has chosen to travel by train from Hatia in the State of Jharkhand to Thane in the State of Maharashtra and such journey was approved by the General Manager B.S.E.B. vide letter No.687 dated 11.05.1993 and for

the said journey T.A. of Rs.4500/- was also sanctioned. It is further argued that when the lorry in question was reached to its destination some shortage of oil was found. In view of above shortage of oil an enquiry was conducted by the Board and on consideration of findings of the Enquiry officer dated 31.12.2001 the respondent no.1 was found guilty for such shortage of oil and therefore after following the principles of natural justice, i.e. by giving a notice to the respondent no.1 enclosing a copy of the enquiry report the proposed punishment of dismissal including payment of nothing beyond subsistence allowance and non treatment of his period of suspension as on duty was passed. However, in appeal filed by the respondent no.1 the punishment was amended to the effect that 50% of loss shall be recovered from him in 20 equal monthly instalments as also three annual increment was stopped with cumulative effect and it was ordered that he will never be posted as Incharge of any store. Aggrieved by the aforesaid order of punishment a writ petition was filed by the writ petitioner, respondent no.1 herein.

4. The learned Single Judge having gone into the merits of the case and after hearing the parties has quashed the report of the enquiry officer as also the punishment imposed upon him as contained in Annexures 1 and 2 of the writ application and held that the writ petitioner, respondent no.1 herein is entitled to full salary for the period of suspension and he should be treated on duty for that period. It has further been held by the learned Single Judge that the monetary benefits on that account shall be paid to the petitioner, respondent no.1 herein within a period of three months and the dues of the petitioner on the aforesaid account for the period till Jharkhand Electricity Board was created shall be paid by the Bihar State Electricity Board and for the dues after that period, since the petitioner has been posted at Jharkhand, shall be paid by the Jharkhand Electricity Board. Aggrieved by such finding the present appeal has been filed by the B.S.E.B.

5. It has been contended by the by the learned counsel appearing on behalf of the B.S.E.B. that the learned Single Judge ought not to have quashed the enquiry report contained in Annexure-1 as also the orders passed vide Annexure-2 and also ought not to have passed order to the effect that the petitioner is entitled to full salary for the suspension period as it is a case where the enquiry has been concluded in accordance with the principles of natural justice as also the learned Single Judge ought have considered the fact that the petitioner has not followed the instruction of his superior officer by escorting the lorry in question which has caused huge loss to the Board. The learned counsel for the B.S.E.B. has also relied upon the judgment reported in AIR 1996 SC 484, especially paragraph 18 of the judgment, stating that the learned Single Judge should have remitted back the matter to the disciplinary authority for reconsideration after setting aside the orders passed by him. He has further relied upon the judgment reported in 2007 AIR SCW 379 (Paragraph 9), 2007 AIR SCW 5387 (Paragraph 6), AIR 1989 S.C. 997 (paragraphs 28 & 29) and AIR 2003 SCW 944 (Paragraph 12). Following the ratio of the judgment in

aforementioned cases it has been contended the learned Single Judge ought not to have interfered with such punishment.

6. Per contra, learned counsel for the respondent no.1 has submitted that when there was no specific instruction with regard to escorting the lorry and when the Traveling allowance was sanctioned the respondent no.1 has chosen to travel by train from Hatia to Thane and it was within the knowledge of the authorities concerned. It has further been contended that it is not a case where the respondent no.1 has travelled without any sanction or approval of the authorities. It has further been contended that even though instructions have been issued to the respondent no.1 to escort the lorry loaded with transformer oil but no vehicle was provided and that is why the respondent no.1 has chosen to travel by train for which T.A. was also sanctioned by the authority. Under the above circumstances, learned counsel for the respondent no.1 submits that the no charge can be framed upon him as there is no material available to link with the shortage of oil with that of traveling of the respondent no.1 by train.

7. We had also the occasion to go through the judgment of the learned Single Judge. We are of the opinion that this is not a case where instruction has been issued to the respondent to go from Hatia to Thane as a security guard of the three trucks carrying the transformer oil. Accordingly, the respondent no.1 has complied the order by traveling his journey by train for which T.A/ D.A advance was also sanctioned. There is no material available to show that respondent no.1 has travelled by train without any approval of the higher authority or without sanction of T.A/ D.A. advance. It was within the knowledge of the authority that the writ petitioner, respondent herein has travelled by train and there is no material available on the record to show that such travel by train from Hatia to Thane was objected by any of the superior authority.

8. In the background of the above facts, it cannot be said that the writ petitioner, respondent no.1 herein was responsible for violating any instruction issued by the authorities. Further there is no material available before us to show that respondent no.1 was responsible for shortage of oil delivered by the transporter. The cases relied upon by the learned counsel for the appellants are not applicable in particular circumstances of this case.

9. In that view of the matter, we are not in agreement with the contentions raised by the counsel appearing on behalf of the Board that the matter should be remitted back to the competent authority for reconsideration of the matter following ratio of the decisions relied upon by learned counsel appearing on behalf of the Board, as prima-facie we are of the opinion that in the present case enquiry report is quashed by the learned Single Judge and also that there is no material available which shows that respondent no.1 was liable for shortage of transformer oil.

10. Under the above circumstances, we are of the opinion that the findings given by the learned Single Judge cannot be interfered with and accordingly, we

confirm the order of the learned Judge.

11. In view of above, we find no merit in this appeal and the same is hereby dismissed.