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Vijay Prasad Singh Vs Jharkhand State Electricity Board and Others

Writ Petition (S) . No. 1846 of 2004

Court: Jharkhand High Court

Date of Decision: July 11, 2013

Citation: (2013) 3 AJR 579 : (2013) 3 JLJR 577

Hon'ble Judges: Aparesh Kumar Singh, J

Bench: Single Bench

Advocate: Binod Kumar Dubey and Mr. Nishat Kumar Roy, for the Appellant; A.K. Pandey for the J.S.E.B and Mr. Manoj Tandon for the B.S.E.B., for the Respondent

Final Decision: Allowed

Judgement

Aparesh Kumar Singh, J.
Heard counsel for the parties. By the Office order no. 1277 dated 2.3.2000 contained at Annexure-9 to the writ

petition, petitioner, an operator under the Patratu Thermal Power Station (PTPS) of the erstwhile Bihar State Electricity Board in which place now

Jharkhand State Electricity Board has stepped in, has been imposed punishment of stoppage of two annual increment with cumulative effect;

debarring him from promotion to the higher post for three years from the date his junior is given promotion. It was further directed by the impugned

order that he shall not be paid full salary for the aforesaid period apart from subsistence allowance; in the A.C.R. for the year 1994-95 a entry of

censure was directed to be entered. The aforesaid office order dated 2.3.2000 is under challenge. Further the order passed by the Chairman,

B.S.E.B. vide memo dated 429 dated 19.4.2001 (Annexure-11) issued under the signature of Joint Secretary, B.S.E.B. affirming the aforesaid

order of punishment is also under challenge in the present writ application.

2. The petitioner was working as an operator (Boiler) at the relevant point of time i.e. on 23.2.1995 in night shift Group-A at P.T.P.S. under the

respondent, Board in which an incident occurred in Boiler Drum Unit No. 9 which caused loss of generation and consequent financial loses to the

tune of rupees One Crore to the Board because of closing down of the unit for several months. The petitioner along with others were proceeded

departmentally and the inquiry report was submitted vide Annexure-5 dated 1.1.1997 by the Inquiry Officer cum Electrical Superintending

Engineer of the respondent-Board.

3. By the inquiry report, the inquiry officer exonerated the present petitioner who was one of the operator operating the boiler in group-A category

by holding that he was engaged in following oral instructions of the controlling officer during the period of change of shift duty. Hence, he was not

found directly responsible for any negligence of duty or leaving work site without permission. It is interesting to note herein that two groups of

employees were charge-sheeted and inquired in the same departmental proceeding by the same inquiry officer. The petitioner, herein was operator

in group-A category of workmen who handed over the charge to the group-B category of the employees also consisting of four persons, i.e. three

operators and one assistant controller. The inquiry officer in his report in respect of four workmen of group-B category also expressed in the same

inquiry report that they had performed their duties satisfactorily and none of the main allegations levelled against them could be established.

4. At this stage it is important to mention that two such employees Birendra Prasad and Leela Raman Jha of Group-B category had earlier

approached this Court in C.W.J.C. No. 4092 of 2000(P) being aggrieved by the order of punishment of the same date i.e. 2.3.2000 and of the

same nature. They had been inflicted with stoppage of two annual increments with cumulative effect and other punishment such as debarment from

promotion to the higher post for one year when it falls due, permanent withholding of pay and allowances for the period during which they were

under suspension except subsistence allowance and punishment of censure to be entered into their annual character role for the year 1994-95. In

the said case the grounds for challenge was that the disciplinary authority while issuing the second show cause did not show any reason for differing

with the inquiry officer, who had exonerated the petitioners. Further, ground was also taken that the order of punishment did not show any

application of mind so far as the reply to the second show cause is concerned. The impugned order in the said case was quashed by this Court

after taking into account that the disciplinary authority has failed to record any reason while differing from the inquiry report at the time of furnishing

of the second show cause to enable the delinquent to defend himself from the different reasons and opinions arrived at by the disciplinary authority

before a punishment can be imposed upon them. The impugned order also did not show enough application of mind while dealing with the

contention of the petitioners.

5. Learned counsel for the petitioner submits that the judgment in the case of Birendra Prasad and another Vrs. The Bihar State Electricity Board

& others in C.W.J.C. No. 4092 of 2000(P) dated 21.3.2013 reported in Birendra Prasad and Another Vs. The Bihar State Electricity Board and

Others, are equally applicable to the present case as all the facts are same and similar to the instant case as well. In the instant case, according to

him, this petitioner was in the category A group of workmen while those two petitioners were in category of group B workmen comprising four

workmen each. The category-A group was supposed to hand over the charge to the category-B group workmen and during that period some

incident had occurred in respect of which this petitioner was not held directly responsible in the inquiry report as he was only following the orders

of the controlling authority. In substance the petitioner was exonerated of the charges. According to him the second show cause issued against him

in the instant matter (Annexure-7) also failed to disclose any reason for differing with the findings of the inquiry officer in order to enable the

petitioner to defend himself by offering his proper show cause. Thereafter, the impugned punishment order has been passed, which is similar and of

the same date i.e. 2.3.2000, which again also shows non application of mind to the reply filed by the petitioner vide Annexure-8.

6. Learned counsel for the respondent-Board, however has opposed the prayer of the petitioner and submitted that the misconduct, which were

inquired against the petitioner were of serious nature which led to the loss of not only generation but also consequent financial loss to the extent of

Rs. One Crore to the Board. The disciplinary authority has differed with the findings of the inquiry officer while issuing the second show cause and

held that this petitioner is also responsible for not performing his assigned duties and was grossly negligent in handing over the charge to the next

shift of the workers. Therefore, no infirmity should be attached to the impugned order by which the punishment has been imposed and upheld by

the appellate authority.

7. I have heard counsel for the parties and gone through the relevant materials on record including the impugned order. In the instant case the

inquiry officer while submitting the inquiry report in respect of departmental proceeding jointly pursued against four sets of workers each in

category A and B came to a distinct finding that the present petitioner, who was an operator (Boiler) in Group A category amongst 3 others was

engaged in following instruction of the Controlling authority in resuming coal flow during the period of change of duty. The inquiry officer did not

find the petitioner responsible for the incident nor did he find that petitioner left the work site without permission. In the wake of such clear finding

by the inquiry officer the second show cause notice was issued against the present petitioner Ã¯Â¿Â½ employee making him responsible for gross

negligence and alleging that he had left the site without handing over the charge properly to the next shift of worker, which however is not backed

by any material adduced during the enquiry to establish his guilt. It seems to be lacking in the proper ingredients of a second show cause notice in a

case where the disciplinary authority has to give reasons for differing from the report of the inquiry officer exonerating the delinquent.

8. In the instant case, therefore also it appears that the decision making process in imposing the punishment against the petitioner has suffered and

stands vitiated for failing to follow the ingredients of a proper second show cause notice as also not taking into account the reply of the second

show cause filed by the petitioner. The perusal of the impugned order of punishment passed by the disciplinary authority also shows that it has

simply reiterated the statements made in the second show cause without discussing the defence of the petitioner put forward in reply to the second

show cause (Annexure-8). It, therefore, shows that the impugned original order suffers from non application of mind. In similar circumstances, in

respect of two other employees of category Ã¯Â¿Â½ B group , who were jointly proceeded departmentally and in respect of whom the inquiry officer

had exonerated them, the impugned order of punishment were quashed by this Court as the requirement of second show cause was not met nor

the impugned order showed the proper application of mind. The judgment rendered by this Court in the case of other two employees have been

referred to supra and also applies to the case of the present petitioner.

9. In these circumstances, therefore, the impugned order of punishment contained at Annexure-9 dated 2.3.2000 as also the appellate order vide

memo no. 429 dated 19.4.2004 cannot be sustained in law for the aforesaid reason and are accordingly, quashed. It is informed that petitioner has

retired, therefore, it will be a futile exercise to proceed against the petitioner. Accordingly, the impugned orders are set aside and the writ

application is allowed in the aforesaid terms.