

(2002) 09 JH CK 0046**Jharkhand High Court****Case No:** CWJC No. 1211 of 1996 (R)

Nageshwar Raut

APPELLANT

Vs

Bihar State Road Transport
Corporation and Others

RESPONDENT

Date of Decision: Sept. 25, 2002**Acts Referred:**

- Industrial Disputes Act, 1947 - Section 33(2)

Hon'ble Judges: M.Y. Eqbal, J**Bench:** Single Bench**Advocate:** M.M. Pal and Pompy Sanyal, for the Appellant; P.P.N. Roy, for the Respondent**Final Decision:** Dismissed**Judgement**

M.Y. Eqbal, J.

Petitioner was in the service of the respondent-Bihar State Road Transport Corporation and in 1989 he was posted as Conductor at Gumla. While he was functioning as Conductor in vehicle No. BPU-8493, BHH-8354 and BPA-1535, the same were checked by inspecting squad and he was found carrying passengers without ticket.

2. On the basis of checking report and the inquiry report, a charge-sheet was served upon the petitioner and he was put under suspension. A departmental proceeding was initiated against him and after adequate opportunity of hearing an inquiry report was submitted by the Inquiry Officer whereby the charges were proved against the petitioner and consequently order of dismissal was passed against him. Petitioner challenged the said order of dismissal passed by the disciplinary authority by filing departmental appeal before the appellate authority which was dismissed. The respondent-Corporation then filed an application u/s 33(2)(b) of the Industrial Disputes Act before the Presiding Officer, Industrial Tribunal, Patna for approval of its action in dismissing the petitioner from service. The Tribunal by passing a

reasoned order dated 23.7.1994 allowed the application and accorded approval of the action of the Corporation for dismissing the petitioner from service.

3. Mrs. M.M. Pal learned counsel for the petitioner assailed the impugned orders as being illegal and wholly without jurisdiction. Learned counsel submitted that the orders passed by the appellate authority in the departmental appeal are without any basis and there is totally non-application of mind by the appellate authority. Learned counsel submitted that the tribunal passed the order of approval in routine manner without considering the admitted facts that while misc. case was pending before him, the appeal was entertained by the appellate authority. Learned counsel lastly submitted that the order of dismissal of the petitioner from service is totally disproportionate to the charges levelled against him and on this ground alone the order of punishment is liable to be quashed. In this connection learned counsel relied upon the decision of the Division Bench of the Patna High Court passed on 4.4.1995 passed in LPA No. 157/91R.

4. As noticed above, the charges against the petitioner inter alia was that on different dates while he was functioning as conductor in different buses, the inspecting team inspected the vehicle and without ticket passengers were detected. Petitioner was called for explanation to the charges and thereafter he was placed under suspension and departmental proceeding was drawn up against him. In the departmental inquiry the charges against the petitioner was proved and accordingly order of dismissal was passed. The Industrial Tribunal, Patna in Misc. Case No. 106 of 1991 filed by the Corporation u/s 33(2)(b) of the Industrial Disputes Act has considered the entire evidence of the case and found that petitioner was given full opportunity in the departmental proceeding and the Enquiring Officer found the charges proved against the petitioner. The Tribunal accordingly accorded approval by passing reasoned order dated 23.7.1994. I do not find any reason to differ with the finding recorded in a departmental proceeding, which warrant interference by this Court.

5. In similar facts and circumstances, a bench of this Court in CWJC No. 1848/ 2000, Masood Alam v. Administrator, B.S.R.T.C. and Ors., in the judgment dated 3.4.2002 held as under :

"This order can take judicial notice of the fact that the State Transport Authorities in different States have been providing best services to the people and also earning huge profits while the Bihar State Road Transport has totally collapsed and a stage has come when the buses have been sold for payment of salary to the employees. There are various reasons for deterioration of the business of the Bihar State Road Transport Corporation. One of those reasons are allowing the passengers to travel in the buses without tickets and taking money from them by the conductors in connivance with other staff of the buses. This Court will also take notice of the act that there are large number of departmental proceedings going on against several conductors who have been found during inspection, carrying passengers without

issuing them tickets.

As noticed above, the Enquiry Officer examined witnesses including passengers who have deposed against the petitioner. The petitioner was also examined by the Enquiry Officer and the charges were found correct. The appellate authority also re-examined all the materials and affirmed the findings recorded by the Enquiry Officer. I am, therefore, of the opinion that even if there is some lacuna in the departmental proceeding, that cannot be a ground to quash the entire departmental proceeding and the order of punishment and exonerated such employee from the charges levelled against him. For all these reasons, I am not inclined to interfere with the order of punishment. This writ application is dismissed."

6. Mrs. Pal put heavy reliance on the decision of the Division Bench passed in LPA No. 157/91 for proposition that the order of punishment by way of dismissal as against the similar charges is disproportionate to the charges levelled against the employee. The facts of the case was that when the petitioner was posted as conductor at Gumla, he was subjected to departmental proceeding on the basis of some charges and order of dismissal was passed by the disciplinary authority. However, the appellate authority directed the petitioner to be re-engaged on the same terms and conditions. After the petitioner was re-engaged in service a fresh disciplinary proceeding was initiated against him for the same charges for which earlier disciplinary proceeding was initiated and he was dismissed from service. On the facts of the case, the Division Bench held that dismissal was disproportionate to the misconduct alleged by the Corporation.

7. Here in the instant case, as noticed above, on several occasions petitioner was found carrying the passengers without issuing valid tickets and the charges have been proved against him. The Industrial Tribunal u/s 33(2)(b) of the I.D. Act also accorded approval of the dismissal. In such situation this Court has not entertained the quantum of punishment when the charges have been proved.

8. In the case of Union of India and Ors. v. Narain Singh, AIR 2002 SC 2172, the Supreme Court observed that the Court should not interfere with the quantum of the punishment when misconduct has been proved.

9. Having regard to the entire facts and circumstances of the case, I am of the opinion that the impugned order of dismissal of the petitioner from the service needs no interference by this Court. This writ application is dismissed.