
(2011) 12 PAT CK 0122

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 6038 of 1997

Shatrughana Prasad
Singh

APPELLANT

Vs

The State of Bihar and
Others

RESPONDENT

Date of Decision: Dec. 1, 2011

Citation: (2013) 1 PLJR 698

Hon'ble Judges: Kishore Kumar Mandal, J

Bench: Single Bench

Judgement

Kishore Kumar Mandal, J.

Heard learned counsel for the petitioner, learned counsel for the Respondent-Housing Board (for short "the Board") as well as the State.

2. Petitioner questions the sustainability of the order dated 4.6.1997 (Annexure-22) passed by the Managing Director of the Board(Respondent no. 3) whereby on a conclusion of a departmental proceeding he has been afflicted with punishment of recovery of loss sustained by the Board on account of theft of the vehicle(jeep) belonging to the Board. By the said order, he has also been afflicted punishment of withholding two increments. There is no dispute that owing to the second part of the order contained in Annexure-22, the punishment would be major.

3. Petitioner held the post of Peon in the Board. He was, however, permitted to drive the vehicle of the Board. On 10.02.1981, the petitioner, parked the vehicle (jeep) on the station road in the township of the Patna and proceeded to buy certain dress materials. On his return, he found, to his dismay, the vehicle missing. Accordingly, he lodged an FIR. For this act of omission and commission, he was proceeded against departmentally for which article of charge (Annexure-16) was framed on 3.4.1996. The petitioner was required to file reply thereto. Accordingly the petitioner filed his reply (Annexure-17). On conclusion of the departmental proceeding, the Enquiry Officer appointed to conduct the

enquiry, submitted enquiry report (Annexure-A to the Additional counter affidavit filed on behalf of respondent nos. 3 to 7) wherein the charges were held proved. On a consideration of materials on record including the report, the Managing Director of the Respondent-Board by an order dated 4.6.1997 (Annexure-22) imposed him the aforesaid punishments.

4. Learned counsel in support of the application made diverse submissions to assail the aforesaid order. It is contended that going by the punishment afflicted on him under Annexure-22, it would appear that it is a major punishment as two increments of the petitioner besides recovery of loss sustained by the Respondent-Board has also been imposed. Learned counsel contended that there was inordinate delay in initiating the departmental proceeding against him. The copy of the enquiry report was not made available to him affording him an opportunity to submit his cause on those findings. It has also been contended that Enquiry Officer did not examine any witness to come to the said conclusion. It has also been contended that the FIR lodged by him was investigated where after the Investigating Authority submitted final report wherein the case was found true but without clue.

5. Learned counsel for the respondents has not been able to show from the counter affidavit filed in the present case that the copy of the enquiry report was served on the petitioner before taking a decision. He however, contended that recovery of loss sustained by the Corporation on account of negligence is a minor punishment and could have been imposed on him after affording adequate opportunity to submit his cause against those charges. Relying on Annexures-16 and 17, it is contended that the charges were framed and served on the petitioner to which he replied by Annexure-17 and, as such, he was given adequate opportunity on said count. Learned counsel, however concedes that pleadings on record are silent so far as the service of the enquiry report to the petitioner affording him an opportunity before taking decision under Annexure-22 is/are concerned.

6. Taking an overall view of the matter and having considered the submissions of the parties at length, it appears, that based on pleadings on record, the authorities were not justified in imposing major punishment of withholding of two increments on him under order contained in Annexure-22. This view has been taken since materials on record are inadequate to show that Enquiry Officer made inquiry in detail in which the parties were allowed to adduce evidence and exhibit their documents. For imposing major punishment, these are basic requirements which are necessarily required to be undergone. However, materials are adequate to show that an opportunity was afforded to the delinquent petitioner to submit his cause on the charge/allegation that owing to culpable negligence on his part the Board suffered loss of the vehicle.

7. Regard being had to the above, this Court is satisfied that the order contained in Annexure-22, in so far as it relates to imposition of punishment of withholding of two increments is concerned, is fit to be interfered with and quashed. I order accordingly.

Respondents are directed to take needful steps to pay the petitioner his lawful dues after adjusting the amount of loss quantified under order contained in Annexure-22.

8. The application is disposed of in the aforesaid terms.

9. There shall be no order as to costs.