

(2010) 09 PAT CK 0182**Patna High Court****Case No:** CWJC No. 670 of 2005

Ajay Kumar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision: Sept. 20, 2010**Citation:** (2011) 2 PLJR 572**Hon'ble Judges:** Ajay Kr. Tripathi, J**Bench:** Single Bench**Final Decision:** Allowed**Judgement**

@JUDGMENTTAG-ORDER

Ajay Kr. Tripathi, J.

Heard learned Counsel for the parties.

2. A punishment order has been passed by the State Transport Commissioner, Bihar. The punishment is withholding of three increments with cumulative effect. This order is Annexure-1 and under challenge in the present writ application.

3. Learned Counsel representing the Petitioner submits that this order of punishment goes to root of the matter because the Transport Commissioner has no requisite authority to impose such punishment for disobedience of the order of transfer, placing the Petitioner's service at the headquarter in the circumstances that the State Transport Commissioner had issued a notification No. 7562 dated 11.7.1988 allowing absorption of the Petitioner as a clerk from the date of his deputation with the Magadh Regional Transport Authority at Gaya. This notification is Annexure-3 which clearly states that though the deputation of the Petitioner was in the capacity of a bill clerk but he was permitted to be absorbed as an assistant from the date of such deputation.

4. It is the case of the Petitioner that Annexure-3 never came to be modified or withdrawn. If it is so then the Petitioner was within the direct control of the Regional

Transport Authority and he was no longer in the service of State Transport Commissioner or the headquarters. But obviously the Respondent authority did not take into consideration their own notification of absorption of the Petitioner on the post of a clerk and may due to oversight or misunderstanding, the State Transport Commissioner issued the order of transfer, asking him to join at the headquarter. Since the Petitioner did not join and his representation on this issue to the authority was rejected summarily, the enquiry was held and the order of punishment came to be passed.

5. Learned Counsel for the Petitioner submits that even from the enquiry report it is evident that the Petitioner was not really found guilty of the charge though there was some opinion of the enquiry officer that the Petitioner ought to have obeyed the order of the superior.

6. It is also his contention that he was issued a show cause on the proposed punishment of withholding one increment with cumulative effect whereas the final order of punishment turned out to be withholding of three increments with cumulative effect without any reason as to why the punishment was being augmented.

7. The Court is of the opinion that. the Petitioner is a victim of giant sized ego of the superior rather than based on actual state of affairs. If only the State Transport Commissioner had bothered to look into the representation of the Petitioner and earlier notification of his own contained in Annexure-3 then it would have been evident that there was no occasion for him to pass any order of transfer, when admittedly his service was absorbed as a clerk with the Regional Transport Authority and he became an employee under the control of Regional Transport Authority. He was no longer in control of the headquarter any more, from the date of absorption.

8. The stand of the State is in support of the punishment but there is no indication to show that Annexure-3 at any point of time was modified or withdrawn. Under what capacity the State Transport Commissioner could pass an order transferring the Petitioner after his absorption is not explained.

9. In totality the Petitioner has made out a case for interference. Annexure-1 stands quashed.

10. This writ application is allowed.