

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1664 of 2000

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Bimla Singh, resident of village- Bhore, P.S. Bhore, District – Gopalganj, at present residing at C/74, New Patrakar Nagar, Kalimandir Road, Patna, P.S. Patrakar Nagar, Patna, District – Patna

.... Petitioner/s

Versus

1. Bihar State Electricity Board, through its Chairman, Vidyut Bhawan, Bailey Road, Patna.
2. Chairman, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna
3. Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna.
4. Joint Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 859 of 2000

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Bimla Singh, resident of village- Bhore, P.S. Bhore, District – Gopalganj, at present residing at C/74, New Patrakar Nagar, Kalimandir Road, Patna, P.S. Patrakar Nagar, Patna, District – Patna

.... Petitioner/s

Versus

1. Bihar State Electricity Board, through its Chairman, Vidyut Bhawan, Bailey Road, Patna.
2. Chairman, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna
3. Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna.
4. Joint Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajeev Ranjan Prasad(AOR No. 00575) Mr. Rakesh Kumar (AOR No. 01018) Mr. Raghwendra Kumar Singh(AOR No. 00439)
For the Respondent/s	:	Mr. Vinay Kirti Singh, Advocate, Mr. Vijay Kumar Verma, Advocate.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 13-07-2015

The petitioner, in both these writ applications

is widow of one Janak Prasad Singh, who was Electrical

Executive Engineer under the erstwhile Bihar State



Electricity Board, Patna (Now, North Bihar Power Distribution Company Ltd., Patna, its successor company).

2. These applications under Article 226 of the Constitution of India were filed by said Janak Prasad Singh, seeking quashing of two separate orders, passed by the Disciplinary Authority, imposing upon him different punishments, including punishment of dismissal from service, which is the subject matter of challenge in C.W.J.C. No. 1664 of 2000. Though, different punishments were imposed upon said Janak Prasad Singh, in two different proceedings, the legal issues involved in both the cases are same and have therefore, been heard together, with the consent of the parties and are being disposed of by the present common judgment.

3. The said Janak Prasad Singh died during the pendency of these applications, on 19.12.2011, whereafter the name of his widow, namely, Bimla Singh came to be substituted in his place, to pursue the application as cause of action survived. However, for the purpose of present judgment, original writ-

petitioner, Janak Prasad Singh has been referred to as “the petitioner”.

4. In C.W.J.C. No. 1664 of 2000, a resolution dated 19.08.1998 of the erstwhile Bihar State Electricity Board (hereinafter referred to as the Board) imposing punishment of discharge from service of the Board on the petitioner is under challenge. The order passed by the Chairman of the Board dated 13.01.2000, rejecting petitioners’ appeal, communicated to him through letter dated 21.01.2000, is also under challenge.

5. The Departmental Proceeding was initiated against the petitioner with the issuance of charge sheet dated 24.02.1993. Certain charges were subsequently added vide Memo No. 2103 dated 28.10.1993. These charges have been brought on record by way of Annexure-3 series to the writ application. There were altogether five charges framed against him. The petitioner was given an opportunity to file his written statement of defence, which he availed. An Enquiry Officer was appointed, who conducted the departmental enquiry. The petitioner participated in the departmental



enquiry. The prosecution as well as the delinquent adduced their evidence. The Enquiry Officer found charge Nos. 1, 2, 4, and 5, not proved. As regards Charge No. 3, Enquiry Officer recorded following findings :-

“From the evidence adduced, it appears that the proceedee has succeeded in justifying the expenditure made in respect of the work done on 17.09.1991 but has failed to controvert and disprove that as per Cash Book the payment totaling to Rs. 6200 was made in September, 91 and that this amount of cash remained intact in the Cash Chest of the Asstt. Elect. Engineer up to August, 91 whereas the vouchers show that the payments were made in September, 1983 and December 1989 but since the voucher, in question seem to be fake prima facie, these vouchers should be referred to some hand writing expert to know the correct position.”

6. The Disciplinary Authority, upon receipt of the report of the Enquiry Officer, issued to the petitioner second show cause notice dated 11.11.1997, which has been brought on record by way of Annexure-



4 to the writ application. The Disciplinary Authority disagreed with the findings, recorded by the Enquiry Officer and on his own assessment, found the charges to have been proved on the basis of the evidence of witnesses, circumstantial evidence, joint enquiry report of General Manager-cum- Chief Engineer, Darbhanga and asked the petitioner to submit his reply to the second show cause notice as to why he should not be dismissed from Board's service. The petitioner is said to have replied to the said second show cause notice. The Disciplinary Authority by the impugned order dated 19.08.1998 awarded upon the petitioner the punishment of discharge from service, with immediate effect. The petitioner preferred an appeal before the Appellate Authority, which came to be rejected by an order dated 13.01.2000, which was communicated to the petitioner through letter dated 21.01.2000. This is the background in which the resolution of the Board dated 19.08.1998 and communication to the petitioner of rejection of his appeal, through letter dated 21.01.2000 are under challenge in C.W.J.C. No. 1664 of 2000.

7. So far as C.W.J.C. No. 859 of 2000 is concerned, the petitioner is aggrieved by resolution of the erstwhile Board dated 28.08.1997, imposing upon him punishment of :-

1. entry of censors in his service book
2. stoppage of three annual increments with cumulative effect
3. no payment over and above subsistence allowance for the period 07.10.1993 to 07.12.1995 when he had remained under suspension.

8. A charge sheet was issued to the petitioner dated 15.01.1994 making an allegation of misconduct for the period during which he was posted as Electrical Executive Engineer, Electric Supply Division, Begusarai. An Enquiry Officer was appointed, who enquired into the charges levelled against him. The first charge related to restoring electricity connection of a consumer unauthorizedly, which was earlier disconnected because of non-payment of electricity bills. The second charge related to wrong adjustment of certain amount on the pretext of compliance of an



order passed by the General Manager-cum-Chief Engineer of the Board. As regards Charge No. 1, the Enquiry Officer came to his finding that no motive could be attributed to the petitioner and at best, it could be treated to be an error of judgment, in the facts and circumstances of the matter and on the basis of the materials on record extracted from the departmental enquiry. As regards Charge No. 2, the Enquiry Officer came to the following finding:-

“In course of proceeding of the enquiry, Shri J.P. Singh has explained that by allowing adjustment of Rs. 4,06,745.10/- against total dues of Rs. 4,96,138.51/- he had obeyed the instruction of the General Manager-cum-Chief Engineer, M-A.E.B. Darbhanga. As discussed earlier, the G.M.-cum-C.E, Darbhanga (late P.K. Singh) vide his letter no. 1470 dated 29.05.89 confirmed the additional demand to be Rs. 2,53, 524.72/- and asked to keep it in abeyance till final decision or also ordered for provisionally restoration of supply to the



consumer with same conditions. By his subsequent letter no. 1149 dated 19.10.89 he confirmed his earlier order of provisionally restoration of supply. On receipt of letter no. 1149 dated 19.10.1989 of the General Manager-cum-Chief Engineer, M.A.E.B., Darbhanga, the then Elect. Executive Engineer, Begusarai directed his office to revise the bill of the consumer as per actual meter reading but the bill was actually revised as per order of Shri J.P. Singh, Elect. Executive Engineer, Begusarai treating the order of General Manager-cum-Chief Engineer, Darbhanga (late P.K. Singh) as approval for revision of bill which should have been done after taking clarification from his superior officer.”

The enquiry report was submitted on 08.07.1995. The Disciplinary Authority, however, imposed upon the petitioner, punishment of withholding three annual increments with cumulative

effect and censor remark to be entered into the service record of the petitioner.

9. The common issue which is involved in both the cases is that though all the charges framed against the petitioner in both the proceedings as noted above, were not found proved by the Enquiry Officers, the Disciplinary Authority/Board without serving upon the petitioner tentative notes of disagreement from the findings, recorded by the enquiry officer and giving an opportunity to the petitioner to deal with such tentative notes of disagreement, held the petitioner guilty of all the charges. Such procedure adopted by the Disciplinary Authority of holding the charges to have been proved, though the reports of the Enquiry Officer were in favour of the petitioner, is in violation of principles of natural justice as laid down in several the decision of Supreme Court.

10. I have heard Mr. Rajeev Ranjan Prasad, learned counsel for the petitioner and Mr. Vinay Kirti Singh, learned counsel appearing on behalf of respondents.

11. Mr. Rajeev Ranjan Prasad, learned



counsel for the petitioner has relied upon Supreme Court decision in the case of **Punjab National Bank & Ors. Vs. Kunj Behari Mishra reported in 1998(7) 84** and in the case of **Yoginath D. Bagde Vs. State of Maharashtra & Anr. reported in 1999 (7) SCC, 739**, in support of his contention that it was obligatory upon the Disciplinary Authority to have served upon the petitioner, the tentative notes of disagreement with the findings of the enquiry officer and to have given the petitioner an opportunity to deal with such tentative notes of disagreement, if Disciplinary Authority intended to differ with the findings of the Enquiry Officers, which were in favour of the petitioner.

12. Learned counsel appearing on behalf of the Board has not disputed the fact, with reference to the counter affidavits, filed on behalf of the erstwhile Board that no notes of disagreement differing with the findings of the Enquiry Officer, which were favourable to the petitioner, were issued by the Disciplinary Authority, before he came to his own finding that the charges against the petitioner stood proved.

13. This being the admitted fact, I find



substance in submissions on behalf of the petitioner that both the orders imposing punishment upon the petitioner, as noted above are in violation of Principles of Natural Justice as laid down by the Supreme Court in the case of **Punjab National Bank & Ors. Vs. Kunj Behari Mishra reported in 1998(7) 84** and *in the case of Yoginath D. Bagde Vs. State of Maharashtra & Anr. reported in 1999 (7) SCC, 739.* For quick reference, paragraph Nos. 17 and 18 of the Supreme Court decision in the case of **Punjab National Bank & Ors. Vs. Kunj Behari Mishra reported in 1998(7) 84** are extracted here in below:-

“17. These observations are clearly in tune with the observations in Bimal Kumar Pandit’s case (AIR 1963 SC 1612) (supra) quoted earlier and would be applicable at the first stage itself. The aforesaid passages clearly bring out the necessity of the authority which is to finally record an adverse finding to give a hearing to the delinquent officer. If the inquiry officer had given an adverse finding, as per Karunakar’s case (1994 AIR SCW 1050) (supra) the first stage required an opportunity to be given to the employee to



represent to the disciplinary authority, even when an earlier opportunity had been granted to them by the enquiry officer. It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the enquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the inquiring officer holds the charges to be proved then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer, when, like in the present case, the enquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental

proceedings what is of ultimate importance is the finding of the disciplinary authority.

(emphasis supplied)

18. Under Regulation 6 the inquiry proceedings can be conducted either by an inquiry officer or by the disciplinary authority itself. When the enquiry is conducted by the inquiry officer his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the enquiry officer. Where the disciplinary authority itself holds an enquiry an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the inquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not to be granted. It will be most unfair and iniquitous that where the charged officers succeed before the inquiry officer they are deprived of representing to the disciplinary authority before that authority differs with the



inquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation the charged officer must have an opportunity to represent before the Disciplinary Authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of inquiry as explained in Karunakar's case (1994 AIR SCW 1050) (supra)".

(Emphasis mine)

14. Further in case of **Yoginath D. Bagde Vs. State of Maharashtra (supra)**, the Apex Court held in paragraph 29, 31 and 35 are as follows :-

"29. We have already extracted Rule 9(2) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 which enables the disciplinary authority to disagree with the findings of the enquiring authority on any article of charge. The only requirement is that it shall record its reasoning for such disagreement. The rule does not specifically provide that before recording its own findings, the disciplinary authority will give an opportunity of hearing to a delinquent officer. But the requirement of "hearing"



in consonance with the principles of natural justice even at that stage has to be read into Rule 9(2) and it has to be held that before the disciplinary authority finally disagrees with the findings of the enquiring authority, it would give an opportunity of hearing to the delinquent officer so that he may have the opportunity to indicate that the findings recorded by the enquiring authority do not suffer from any error and that there was no occasion to take a different view. The disciplinary authority, at the same time has to communicate to the delinquent officer the "TENTATIVE" reasons for disagreeing with the findings of the enquiring authority so that the delinquent officer may further indicate that the reasons on the basis of which the disciplinary authority proposes to disagree with the findings recorded by the enquiring authority are not germane and the finding of "not guilty" already recorded by the enquiring authority was not liable to be interfered with.

31. In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the enquiry officer into the charges



levelled against him but also at the stage at which those findings are considered by the disciplinary authority and the latter, namely, the disciplinary authority forms a tentative opinion that it does not agree with the findings recorded by the enquiry officer. If the findings recorded by the enquiry officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the disciplinary authority has proposed to disagree with the findings of the enquiry officer. This is in consonance with the requirement of article 311 (2) of the constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final



decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the disciplinary authority does not bring about the closer of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the disciplinary authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the “right to be heard” would be available to the delinquent upto the final stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment or service rule including rules made under article 309 of the Constitution.

35. Since the Disciplinary Committee did not give any opportunity of hearing to the appellant before taking a final decision in the matter relating to the findings on the two charges framed against him, the principles of natural justice, as laid down by a three-Judge Bench of this Court in *Punjab National Bank v. Kunj Bihari Mishra* referred to above were violated”.



15. It is thus a settled law that if the finding recorded by enquiry officer are in favour of an employee, proceeded against departmentally, and it has been held that charges are not proved, the disciplinary authority is essentially required to give the delinquent an opportunity of hearing before reversing those findings. As the Apex Court has held, formation of opinion by the Disciplinary Authority disagreeing with the report of the Enquiry Officer has to be tentative and not final and at this stage the employee is required to be given an opportunity of hearing by furnishing him the reasons on the basis of which the Disciplinary Authority proposes to disagree with the finding of the Enquiry Officer, favourable to the delinquent. The right of hearing, at this stage, in case the Disciplinary Authority proposes to disagree with the findings of enquiry officer, favourable to the employee, has been held by the Supreme Court to be constitutional right, which cannot be taken away even by legislative enactment. This opportunity of hearing at this stage is required to be given to the delinquent so that he may have the opportunity to assert before



the disciplinary authority that the finding recorded by the Enquiry Officer do not suffer from any error and there was no occasion to take a different view and that the reasons on the basis of which the Disciplinary Authority proposes to disagree with the findings of the Enquiry Officer are not germane. A decision taken in breach of this procedure will certainly be in violation of principles of natural justice and fair play and therefore, violative of Article 14 of the Constitution of India, rendering the action illegal and, thus, not sustainable.

16. In view of the admitted facts, as noted above, and settled legal proposition laid down by the Supreme Court and the discussions aforesaid, the impugned resolution dated 19.08.1998 as well as the appellate order communicated to the petitioner through letter dated 21.01.2000 impugned in C.W.J.C. No. 1664 of 2000 cannot be sustained and are accordingly quashed. On the basis of the same reasoning and logic, the resolution dated 28.08.1997 impugned in C.W.J.C. No. 859 of 2000 of the erstwhile Board can also not be sustained and is accordingly, quashed. The order



dated 31.07.1999 rejecting the petitioner's appeal against the said resolution dated 28.08.1997 is also quashed.

17. Normally, in such circumstance this Court would have remanded the matter back to the Disciplinary Authority for taking decision afresh in accordance with law. However, it has been stated at the Bar that the original petitioner would have attained the age of superannuation and retired with effect from 31.08.1998 and the order of discharge was passed on 19.08.1998, I do not find any purpose would be served if the matter is remanded back now, particularly when the original petitioner died on 19.12.2011.

18. Accordingly, consequence of the quashing of the order of discharge dated 19.08.1999 as well as the Resolution dated 28.08.1997 shall follow. The respondents are directed to proceed accordingly for the purpose of determination of death-cum-post retiral benefits as if no such order dated 19.08.1998 and 28.08.1997 were ever passed.

19. The writ applications are allowed.

20. No order as to costs.

(Chakradhari Sharan Singh, J)

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