

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10870 of 1998

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Brij Kumar Prasad son of late Pradhan Shambhu Sharan, resident of Mohalla Tiwai, Police Station Chainpur, District-Bhabhua (Kaimur), dismissed from the post of Accounts Assistant, Electric Supply Sub Division, Sheikhpura, District Munger.

.... Petitioner/s

Versus

1. The Bihar State Electricity Board through its Chairman, Vidyut Bhawan, Patna, having its office at Bailey Road, Patna.-1
2. The Secretary, Bihar State Electricity Board, having his office at Vidyut Bhawan, Bailey Road, Patna.-1.
3. The Additional Secretary, Bihar State Electricity Board, having its office at Vidyut Bhawan, Bailey Road, Patna.1.
4. Shri Swapan Mukherji, Joint Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Bailey Road, Patna.1
5. Electrical Superintending Engineer, Munger, Electrical Circle, Munger.
6. Electrical Superintending Engineer, Electrical Circle, Bhagalpur.
7. Electrical Executive Engineer, Electric Supply Division, Sheikhpura, District-Shiekhpora.
8. Assistant Electrical Engineer, Electric Supply Sub-division, Sheikhpura, District-Shiekhpora.
9. Shri Hare Krishna, Inquiring Officer, at present posted as Superintending Engineer, Headquarters, Vidyut Bhawan, Bailey Road, Patna
10. Shri Lallan Prasad Roy, the then Assistant Engineer, Electrical, Shiekhpora, now retired, resident of Chapra Town behind Bazar Samiti P.S. Chara District Chapra.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shyameshwar Dayal
Mr. Mukeshwar Dayal
Mr. Vikash Mohan

For the Respondent/s : Mr. Binay Kirti Singh
Mr. Vijay Kumar Verma

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH

ORAL JUDGMENT

Date: 12-03-2015

1. The petitioner in the present application under Article 226 of the Constitution of India seeks issuance of a writ in the nature of writ of certiorari quashing the order passed by the Secretary, erstwhile,



Bihar State Electricity Board, Patna (hereinafter referred to as the 'Board') issued through Letter No. L/s 720/96 1886 dated 04.08.1996 (Annexure-1) whereby, has been dismissed from the service of the Board. He was working as Accounts Assistant in the Board. The impugned order dated 04.08.1998 has been passed by the Disciplinary Authority, in compliance of the judgment and order of this Court dated 06.04.1998 passed in C.W.J.C. No. 3324/1996. This Court had passed the following order:-

“10. From the aforesaid fact, chargesheet, enquiry report and office note, the following fact emerges:

- i. None of the authorities, including enquiry officer, disciplinary authority and appellate authority decide the issue raised by the petitioner, namely, whether the petitioner opened the service book and merely assisted the competent authority or the service book was opened by the competent authority, Shri Lalan Prasad Rai, the then Assistant Engineer.
 - ii. The disciplinary authority did not choose to pass any harsh punishment like dismissal from service and recovery of amount of nine years excess payment which was made to Shri Ghose. The punishing authority proposed to pass a lesser punishment but the Member (Administration) who was neither disciplinary authority, nor appellate authority passed harsh order of punishment of dismissal from service.
 - iii. The appellate authority, Chairman did not choose to apply his mind, nor passed any reasoned order in the appeal petition but merely agreed with a cryptic note of the Secretary.
11. For the reasons stated above, I set aside the impugned order of punishment dated 09.09.1995, as well as, the appellate order dated 10.04.1996 and remit the matter to the Secretary of the Board to decide the issue no. 1 aforesaid and then pass appropriate order in

this respect, immediately, within a period of three months from the date of receipt/production of a copy of this judgment. Till such decision is taken and order is passed by the Secretary of the Board (Disciplinary Authority), the petitioner will not receive any salary from the Board, nor he would be allowed to re-join the office. After decision of the Secretary, the petitioner will act, in accordance with law.”

2. Briefly stated, the facts of the case are that a fresh (duplicate) service book was required to be opened with respect to one N.G. Ghosh, Switch Board Operator Grade-I. A communication was made to this effect by the Electrical Executive Engineer, Jamui to the Assistant Electrical Engineer, Electricity Supply Sub-division, Shiekhpora vide letter dated 21.07.1976 (Annexure-5) asking him for opening a fresh service book in respect of said N.G. Ghosh. The petitioner was the Accounts Assistant in the office of Electricity Supply Sub-division, Shiekhpora. The petitioner is said to have been asked by the Executive Engineer to open fresh service book of said N.G. Ghosh. The petitioner made necessary entries in the service book. The date of birth of said N.G. Ghosh was entered as 11.07.1936 in the service book on the basis of a medical certificate dated 11.07.1981. The service book was duly authenticated by the Assistant Electrical Engineer, Electricity Supply Sub-division, Shiekhpora. It is the case of the Board that the date of birth of the said N.G. Ghosh was recorded in the seniority list as 10.09.1919. On the basis of the entry



so made with regard to the date of birth of the said N.G. Ghosh in the fresh service book, he is said to have continued in service even after his actual date of superannuation which could be detected when he had already served the Board for a period of nine years and four months beyond the actual date of superannuation. A disciplinary proceeding was initiated against the petitioner with the charge that he opened the service book of the said N.G. Ghosh in July, 1981 and recorded the date of birth as 11.07.1936, on the basis of a medical certificate, without prior approval of the competent authority, whereas on the basis of seniority list, date of birth of the petitioner was 10.09.1919 and accordingly he ought to have retired with effect from 10.09.1979. The petitioner was accordingly charged of dereliction of duty causing huge financial loss to the Board leading to excess payment of salary to said N.G. Ghosh beyond age of his superannuation.

3. The petitioner denied the charge in his show-cause reply and participated in the departmental inquiry. The Enquiry Officer in his report dated 12.08.1994, found the petitioner guilty of the charges. The petitioner was given an opportunity to deal with the report of the Enquiry Officer. The Authority thereafter, vide order dated 09.09.1995 imposed upon the petitioner, punishment of dismissal from service. The petitioner had preferred appeal against the order of



the Disciplinary Authority. It was also ordered to recover excess amount from the petitioner which was paid to the said N.G. Ghosh beyond his actual date of retirement. The petitioner had preferred appeal against the order of the Disciplinary Authority dated 09.09.1995. The Appellate Authority rejected the appeal by an order dated 10.04.1996. The petitioner, thereafter, approached this Court by filing writ petition vide C.W.J.C. No. 3324 of 1996 against the order dated 09.09.1995 passed by the Disciplinary Authority and the order dated 10.04.1996 passed by the Appellate Authority. The petitioner took specific plea before this Court that he had not opened the service book rather he had merely assisted the competent authority to open the fresh service book. He also took a plea that the Disciplinary Authority intended to pass a lesser punishment but the Member (Administration), a higher authority, in the Board prevailed upon the Disciplinary Authority leading to issuance of order of the dismissal dated 09.09.1995. I was in the background of the facts and circumstances as noted above, that this Court after perusing the original records of the disciplinary proceeding passed the judgment and order dated 06.04.1998 while allowing the writ application, relevant extract of which has been quoted in paragraph No. 1 above.

4. It is in the background of these facts that the impugned order dated 04.08.1998 has been passed by the Disciplinary Authority



again imposing punishment of dismissal from service upon the petitioner. However, in the order dated 04.08.1998 passed by the Disciplinary Authority, there is no direction for recovery of the excess amount said to have been paid to said N.G. Ghosh as salary even after the date of his actual superannuation because of a wrong entry with respect to date of birth made in the service book. To this extent, the order of punishment appears to have been modified.

5. Learned counsel for the petitioner has vehemently submitted that in course of the Departmental Enquiry, the petitioner had raised specific plea before the Enquiry Officer that entry made in Column-5 of the service book relating to the date of birth of said N.G. Ghosh was not in his handwriting and such entry was made by someone else. He has submitted that the matter being old one, this specific plea was not taken by the petitioner in his written statement of defence initially but in course of Departmental Enquiry before the Enquiry Officer, when the petitioner had the opportunity to peruse the service book, he realized that the entry made in Column-5 of the service book was not in his handwriting. He has submitted that the petitioner thus disputed this fact before the Enquiry Officer that he had made entry with respect to date of birth of said N.G. Ghosh and requested the Enquiry Officer to obtain opinion of the handwriting expert in this regard, which the Enquiry Officer failed to do. He has submitted that it was



obligatory upon the Disciplinary Authority to have sought the opinion of the handwriting expert to come to a conclusive finding whether entry in Column-5 of the service book was made by the petitioner. He has placed reliance upon Supreme Court decision in case of Union of India Vs. H.C. Goyel and has contended that the Enquiry Officer, the Disciplinary Authority as well as the Appellate Authority had statutory duty to take scrupulous care so that innocent person like the petitioner might not be punished and to ensure fair play, the authorities ought to have referred the dispute with respect to entry in Column-5 of the service book relating to date of birth to the handwriting expert. He has placed reliance upon following portion of paragraph No. 27 of the said decision of Supreme Court:-

“27.....But the suspicion entertained by Mr. Rajagopalan cannot, in law, be treated as evidence against the respondent even though there is no doubt that Mr. Rajagopalan is a straightforward and an honest officer. Though we fully appreciate the anxiety of the appellant to root out corruption from public service, we cannot ignore the fact that in carrying out the said purpose, mere suspicion should not be allowed to take the place of proof even in domestic enquiries. It may be that the technical rules which govern criminal trials in courts may not necessarily apply to disciplinary proceedings, but nevertheless, the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquiries held under the statutory rules. We have very carefully considered the evidence led in the present enquiry and borne in mind the plea made by the learned Attorney General, but we are unable to hold that on the record, there is any evidence which can sustain the finding of the appellant that charge No. 3 has been proved against the respondent. It is in this connection and only incidentally that it may be relevant to add that the U.P.S.C. considered the matter twice and came to the firm decision that the main charge against the respondent had

not been established.”

6. Mr. Vinay Kirti Singh, learned counsel appearing on behalf of the Board has on the other hand raised a preliminary objection over maintainability of the writ application on the ground that the petitioner approached this Court invoking extraordinary jurisdiction of judicial review under Article 226 of the Constitution of India without availing statutory alternative remedy of appeal before the next superior authority under Order-35 of the Standing Orders issued by the Board under the Industrial Employment (Standing Orders) Act, 1946. He has defended the impugned order dated 04.08.1998 passed by the Disciplinary Authority and has contended that the Disciplinary Authority after examining the records of the Departmental Enquiry came to a finding that the petitioner while working as Accounts Assistant opened service book of said N.G. Ghosh which was merely authenticated by the concerned Electrical Engineer who relied upon the entries made by the petitioner in the service book. He has contended that findings arrived at by the Disciplinary Authority to this effect may not be interfered with in a proceeding under Article 226 of the Constitution of India since the finding cannot be said to be without any material or contrary to the material available on the records of the disciplinary proceeding. He has also submitted that the Appellate Authority can go into the correctness of findings of fact arrived at by

the Disciplinary Authority and the petitioner should have availed such remedy first before invoking remedy under Article 226 of the Constitution of India.

7. I find substance in submission made on behalf of the Respondent-Board that the petitioner ought to have availed alternative remedy of appeal under the Standing Orders issued by the Board first, before approaching this Court under Article 226 of the Constitution of India.

8. Needless to say that the Appellate Authority will have wider scope to enter into the correctness of the findings and decision of the Disciplinary Authority and it is in the interest of the petitioner that he should avail such remedy first.

9. Ordinarily, I would have simply dismissed the writ application on the ground that the petitioner approached the Court without availing the alternative remedy. However, in the facts and circumstances of the case, particularly in view of the fact that the matter has remained pending before this Court for several years, I consider it appropriate to dispose of this writ application not only with a liberty to the petitioner to approach the Appellate Authority against the impugned order of the Disciplinary Authority dated 04.08.1998 but with certain observations as regards the manner in which the Appellate Authority shall proceed after the petitioner prefers appeal

before him.



10. If the petitioner prefers appeal under Order 35 of the Standing Orders of the Board before Competent Appellate Authority i.e. the Chairman, South Bihar Power Holding Company Limited, Patna, within a period of fortnight from today, the Appellate Authority shall not raise any objection of limitation, since the matter was pending before this Court for all these years. If the petitioner raises specific plea before the Appellate Authority in his memo of appeal that he did not make any entry in Column-5 of service book of said N.G. Ghosh, the Appellate Authority shall consider it and if need be refer it to the handwriting expert before coming to a conclusion whether the entry was made by the petitioner himself. It shall be incumbent upon the Appellate Authority to consider such other plea as raised by the petitioner in his memo of appeal but in particular he must deal with the role of the petitioner in opening the service book of said N.G. Ghosh viz-a-viz., the role of the authorized officer/the Assistant Engineer/any competent authority. The Court expects the Appellate Authority to decide the petitioner's appeal with utmost expedition and in no case it should take more than six months from the date of submission of memo of appeal before him, alongwith a copy of this order.

11. This writ application is disposed of accordingly.

12. I have taken note of the relief sought for by the petitioner in paragraph No. 3 of the writ application. It goes without saying that the petitioner's claim for payment of pension, gratuity, leave encashment amount shall depend upon the order passed by the Appellate Authority in compliance of the present order. The petitioner's salary and increments and other pensionary benefits shall also depend upon the out come of the appeal. However, in view of the nature of the order passed by the Disciplinary Authority, I do not find any reason why the petitioner's G.P.F. and Group Saving Scheme amount should not be released in his favour.

13. The Respondents are directed, accordingly to release the amount of G.P.F. and Group Saving Scheme amount within a period of three months from the date of receipt/production of a copy of this order before the competent authority.

(Chakradhari Sharan Singh, J.)

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