

IN THE HIGH COURT OF JUDICATURE AT PATNA

CWJC No.7442 of 2013

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Jaggu Prasad Singh S/o Late Akalu Singh, resident of village - Mobarakpur, Tola-Dumaria, P.S.- Islampur, District- Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar through the Bihar State Electricity Board, Patna
2. The Chairman, Bihar State Electricity Board, Patna
3. The Deputy General Manager, Bihar State Electricity Board, Patna
4. The Director (Security), BSEB, Vidyapit Bhawan Bailey Road, Patna
5. The D.I.G. Vigilance and Security, BSEB, Patna
4. The General Manager-cum-Chief Engineer, Bhagalpur Electric Supply Area, Bhagalpur, District- Bhagalpur.
5. The Executive Engineer. Electric Central Electric Store, Munger, District- Munger.
6. The General Manager - cum - Chief Engineer Bhagalpur Electric Supply Area, Bhagalpur, District- Bhagalpur
7. The Executive Engineer, Electric, Central Electric Store, Munger, District- Munger
8. The Secretary, Energy Department, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mritunjay Kumar, Adv.

For the Respondent/s : Mr. Vinay Kirti Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 27-01-2015

Heard learned counsel for the petitioner and learned counsel for South Bihar Power Distribution Company.

In the present case, the petitioner is challenging the order dated 8th October 2012 (Annexure-23) by which the petitioner has been compulsory retired from the service in exercise of power under Section 14 (IX) of Bihar Government Servants (Classification Control & Appeal) Rules, 2005 and also challenging the order dated 1st

January 2013 (Annexure-25) by which the information has been served upon the petitioner that his appeal has been rejected.

Filtering unnecessary facts, the petitioner was employed in erstwhile Bihar State Electricity Board now it is South Bihar Power Distribution Company, for convenience, it will be mentioned as 'Board'.

The petitioner vide order dated 2nd August 2011 was transferred to the office of the Executive Engineer, Electric Central Store, Munger as Guard but he remained absent unauthorisedly since 29th August 2011 from his duty, for that, a departmental proceeding was initiated against him vide order dated 9th November 2011 and notice was sent to his permanent address vide order dated 25th August 2012, when he did not respond, an ex parte enquiry proceeding was conducted against him. The 2nd show cause notice was also sent to his permanent address vide Office Order No. 85 dated 22nd June 2012. When he had not appeared again, notice was published in the newspaper.

On the basis of publication of the notice, the petitioner appeared on 21st August 2012, accordingly there he was served 2nd show cause whereupon the petitioner submitted his explanation and also requested to give him a chance to participate in the departmental proceeding whereupon vide letter No. 726 dated 10th September 2012

the petitioner was called by the Disciplinary Authority in his chamber on 14th September 2012. The petitioner remained physically present on the aforesaid date. As the petitioner could not give proper reply to the satisfaction of the Disciplinary Authority which led to passing of the impugned order.

It appears from the record that notices, which were sent to the petitioner, returned unserved and when the notice was published in the newspaper, the petitioner appeared on 21st August 2012 and requested to give him an opportunity to participate in the departmental proceeding.

Natural justice is inbuilt requirement for conducting the departmental enquiry. If the departmental enquiry is conducted without giving a fair opportunity then the order of punishment cannot be sustained.

The employer has a right to initiate a proceeding to take action against his employee at the same time it is required to give opportunity of effective hearing to the employee concerned.

In the present case only one notice was sent that returned unserved. When the petitioner could know about enquiry, he made prayer for allowing him to participate in the departmental enquiry. It has been submitted that two witnesses have been examined in the case but the order sheet does not disclose that those were called

upon and the petitioner was allowed to cross-examine them and also the order of appeal which was communicated to the petitioner does not disclose the plea of petitioner was taken into consideration and, as such, the order dated 8th October 2012 and letter dated 1st January 2013 (Annexure-25) are quashed and the matter is remanded back with the liberty to the Respondents to continue the departmental enquiry and conclude the same within a period of three months from the date of receipt/production of a copy of this order.

Payment will be made subject to outcome of the departmental enquiry and the petitioner is directed to co-operate in the departmental enquiry. If the petitioner fails to participate in the aforesaid enquiry then Respondent will be at liberty to pass order in accordance with law.

As the grievance has been raised by the petitioner that he has not been served the charge sheet, let the proper authority ensure service of charge sheet including entire material brought during the enquiry.

Accordingly, this petition is allowed.

(Shivaji Pandey, J)

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