

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.47 of 2000

=====

Mulidhar Sharma, Son of late Janardan Sharma, resident of village and P.O.-
Dhanchuhan, P.S.-Sahar, District-Bhojpur. At present residing at Mohalla-Nawada,
P.O.-Arrah, P.S.-Nawada, District-Bhojpur.

.... Petitioner/s

Versus

1. Bihar State Electricity Board through its Chairman, Bidyut Bhavan, Bailey Road,
Patna.
2. The Chairman, Bihar State Electricity Board, Bidyut Bhavan, Bailey Road,
Patna.
3. The Secretary, Bihar State Electricity Board, Bidyut Bhavan, Bailey Road, Patna.
4. The Secretary, Central Area Electricity Board, Patna.
5. The Joint Secretary, Bihar State Electricity Board, Bidyut Bhavan, Bailey Road,
Patna.
6. The Director, Departmental Proceeding, Bihar State Electricity Board, Bidyut
Bhavan, Bailey Road, Patna.
7. The Electrical Executive Engineer, Electric Supply Division, Arrah.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Awdhesh Kumar Mishra, Advocate
Mr. Ajay Kumar, Advocate
For the Respondent/s : Mr. Vinay Kirti Singh, Advocate
Mr. Vijay Kumar Verma, Advocate

=====

**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

Date: 13-07-2015

The present writ application has been filed
seeking quashing of an order dated 20.08.1999, passed by



the Joint Secretary, Bihar State Electricity Board, (now South Bihar Power Distribution Company Limited, the Successor Company) (*hereinafter referred to as the “erstwhile Board”*), whereby, the punishment of dismissal from service upon the petitioner has been imposed. The petitioner’s appeal, before the erstwhile Board filed against the order of dismissal dated 20.08.1999, came to be dismissed, communicated to him through letter dated 27.10.1999, is also under challenge in the present writ application.

2. The petitioner, at the relevant point of time, was working as Accounts Assistant, Electric Supply Division, Arrah (Rural), under the erstwhile Board. On the ground of certain misconduct, he was put under suspension by an order dated 27.03.1995. A disciplinary proceeding was initiated against him with the issuance of chargesheet, containing altogether six charges. One of the charges related to his conduct to the effect that he locked up the Electrical Executive Engineer, under whom he was posted, inside his Chambers for hours together and threatened him of dire consequences, if he dared not to fall in line with him. The other charges related to failure in maintenance of cash register, accounts book and diversion of fund. It was

also alleged that he remained absent from duty unauthorizedly, for few days.

3. The petitioner filed his reply/written statement of defence, for the reasons not known, after nearly a year on 09.04.1996. At the outset, he took a plea in his written statement of defence that initiation of departmental proceeding was in violation of the standing orders, issued by the erstwhile Board. He denied the charges levelled against him and made allegations against the concerned Executive Engineer, Sri J.N.T. Jeevan, of harassing him for ulterior purpose, because he carried prejudices against him.

4. Before I proceed further in the present judgment, I must indicate that learned counsel, appearing on behalf of the petitioner, in course of submission, has vehemently submitted that the action of initiation of departmental proceeding itself was a result of *mala fide*, inasmuch as, the said J.N.T. Jeevan was bent upon to shift the petitioner from the position of Cashier which he was holding and, therefore, he made false allegations against the petitioner. In substance, learned counsel for the petitioner has alleged *mala fide* against the said J.N.T. Jeevan, the Executive Engineer. This Court indicates at the very outset



that it will not go into the allegation of *mala fide* in the present writ application, as the said J.N.T. Jeevan has not been impleaded as a party-respondent and, therefore, there would be no question of going into the allegation of *mala fide* against him. Further, no *mala fide* has been alleged against the Enquiry Officer or the Disciplinary Authority.

5. This is not in dispute that in course of departmental enquiry, evidences were adduced and witnesses were examined including said J.N.T. Jeevan before the Enquiry Officer. The petitioner was given full opportunity to cross-examine the witnesses, which he, in fact, availed. He was also given opportunity to adduce evidence in his defence, which he also availed. He produced defence witnesses, who were examined and cross-examined.

6. The Enquiry Officer, on the basis of the evidence adduced before him and material available on record, concluded that the charges framed against the petitioner stood proved, vide his enquiry report dated 07.04.1999, which has been brought on record by way of Annexure - A to the counter affidavit. This is not the plea of the petitioner that he was not supplied with the report of



the Enquiry Officer. He was given opportunity to deal with the findings of the Enquiry Officer by making him available the report of the Enquiry Officer. A second show-cause notice was issued to him on 19.05.1999. The Disciplinary Authority after going through the records of the disciplinary proceeding, the petitioner's comments upon the findings of the Enquiry Officer, agreed with the findings recorded by the Enquiry Officer, in his report dated 07.04.1999. The Disciplinary Authority, thus, agreeing with the report of the Enquiry Officer, imposed upon the petitioner, punishment of dismissal from service of the erstwhile Board vide order dated 20.08.1999. The petitioner preferred an appeal against the said order of dismissal from service before the erstwhile Board. The Board considered the petitioner's appeal and rejected it, which was communicated to the petitioner vide letter dated 27.10.1999. The order of dismissal and the letter communicating rejection of the petitioner's appeal have been brought on record by way of Annexure - 11 and 13 to this application, respectively, which are under challenge in the present proceeding.

7. For the occurrence which had taken place,



relating to locking up of the then Executive Engineer by the petitioner, a First Information Report was instituted against the petitioner. In course of trial, no prosecution witness appeared except one Krishna Ballav Sahay, who merely proved the signature on a formal First Information Report and in the said circumstance, the petitioner was acquitted by a judgment and order dated 14.09.1998, passed by Sri Lakshmi Kant Sharma, learned Sub-Divisional Judicial Magistrate, Arrah, Bhojpur in G.R. No. 282 of 1995/T.R. No. 665 of 1998.

8. Assailing the two orders, learned counsel for the petitioner has submitted that the Enquiry Officer failed to take into account the oral evidence of the defence witnesses produced by the petitioner in course of departmental enquiry. He has further submitted that there were other witnesses, who deposed before the Enquiry Officer that the petitioner's general conduct had been satisfactory while he was posted at Arrah. These facts ought to have been taken into account by the Enquiry Officer as well as by the Disciplinary Authority before reaching to the finding of the petitioner's guilt, contends learned petitioner's counsel. He has, accordingly,

submitted that the Enquiry Officer as well as the Disciplinary Authority having not considered the relevant materials, finding of guilt arrived at by them, are perverse.

9. Learned counsel for the petitioner has secondly submitted, relying upon the Standing Order No. 30 of the erstwhile Board that it was incumbent upon the Board to have given the petitioner, an opportunity of show-cause before initiating a departmental enquiry. This having not been done, initiation of departmental proceeding itself was bad. He has thirdly submitted that the orders of the Disciplinary Authority as well as Appellate Authority are cryptic and do not show any application of mind, which is expected of an authority, exercising quasi-judicial function and, therefore, such orders deserve to be quashed.

10. Learned counsel appearing on behalf of the respondents, on the other hand, has submitted that the petitioner has failed to demonstrate before this Court, any procedural lapse in the departmental proceeding. He has submitted that there has been no violation of principles of natural justice, inasmuch as, the specific charges were framed against the petitioner to which he was given due opportunity to reply. The petitioner was given adequate



opportunity to participate in the departmental enquiry. The witnesses were examined in his presence. He was given opportunity to adduce evidence in his defence, which was availed by him. He submits that it cannot be said that there was absolutely nothing before the Enquiry Officer to come to the finding that the charges against the petitioner stood proved. He has submitted that there being some material in support of the charge, if the Enquiry Officer and Disciplinary Authority came to finding of petitioner's guilt, such findings cannot be questioned in a proceeding under Article 226 of the Constitution of India, on the ground of insufficiency or adequacy of material/evidence. He has further submitted that the order of dismissal dated 20.08.1999, cannot be said to be cryptic. He has contended that no detailed reason was required to be assigned by the Disciplinary Authority, since he was agreeing with the findings of the Enquiry Officer. He has further contended, referring to the order passed by the Appellate Authority, that the letter dated 27.10.1999, discloses application of mind by the Appellate Authority and it cannot be said that application of mind is not apparent from the order itself.

11. In reply, learned counsel for the petitioner



has relied upon a Supreme Court decision in case of “*M/s Steel Authority of India Ltd. v. Sales Tax Officer, Rourkela-I Circle & Ors.*” (*AIR 2009 SC (Supp.) 561*), in support of his submission that since the order of the Appellate Authority does not show application of mind, it deserves to be quashed.

12. A counter affidavit has been filed on behalf of the respondents on 02.03.2000.

13. There is no pleading in the writ application that there has been any violation of principles of natural justice nor violation of any statutory requirement in course a departmental enquiry has been alleged except the said Standing Order No. 30 of the Board. No procedural lapse, in course of the departmental enquiry, has been pointed out by the learned counsel for the petitioner.

14. The plea taken on behalf of the petitioner that before initiation of departmental enquiry, the petitioner ought to have been informed in writing of the alleged act or acts of misconduct, is totally misconceived, Standing Order No. 30 does not contemplate any such requirement.

15. It has been vehemently argued by learned counsel for the petitioner that one of the witnesses, who



was working in the same office, has deposed in course of enquiry that he was not aware of any occurrence to have taken place, which evidence ought to have been considered by the Enquiry Officer. He having failed to do so, the finding arrived at by him, holding the petitioner's guilty of the charge is perverse.

16. I have perused the enquiry report, which is Annexure - A to the counter affidavit filed on behalf of the respondents. From the said enquiry report, I find that the Enquiry Officer considered the evidence adduced in course of departmental proceeding in detail as well as the evidence adduced by the petitioner in his defence. He held all the charges to be proved, which were levelled against the petitioner under different heads. He has mentioned the materials on record of the departmental enquiry for arriving at such conclusion. In my opinion, the findings arrived at by the Enquiry Officer cannot be said to be perverse. I find from the enquiry report that in course of enquiry, said J.N.T. Jeevan was examined as a witness. He was cross-examined by the petitioner. Some of the witnesses, produced by the petitioner in his defence, were said to have stated before the Enquiry Officer that there was no



complain against the petitioner's general conduct. The said witnesses are, namely, Anil Kumar Sinha (the then Superintending Engineer), Rama Shankar Singh (Executive Engineer) and Deomuni Singh (Superintending Engineer). They were posted at Arrah during different periods other than for the period with respect to which the charges were framed against the petitioner. Merely on the basis that some of the Officers deposed in course of departmental enquiry, as defence witnesses that petitioner used to maintain the records properly when he was working against them, he could not be absolved of the charge of misconduct levelled against him in present departmental enquiry. From the report of the Enquiry officer, it is evident that the findings are based on evidence adduced in course of departmental enquiry which have referred to in the report and cannot be said to irrelevant. I, therefore, reject the submission made on behalf of the petitioner that findings of the Enquiry Officer are perverse.

17. The legal position is well settled that the grounds of judicial review in the matter of disciplinary action are limited. This Court in exercise of power under Article 226 of the Constitution of India, is required to



interfere with the disciplinary action taken by the State within the meaning of Article 12 of the Constitution of India, if such action is found to be in breach of principles of natural justice or any statutory provision governing the departmental enquiry or on the ground that the authorities passed the order taking disciplinary action against an employee on extraneous consideration. If the findings are based on facts, which are extraneous to the evidence adduced in course of enquiry can also be ground for interference while exercising power of judicial review under Article 226 of the Constitution of India. This Court can also interfere while exercising such powers, if the findings arrived at by the Disciplinary Authority is found to be *ex-facie* arbitrary or capricious, so that no reasonable person can reach to such conclusion on the basis of the legal evidence available before him. Beyond this, this Court in exercise of power of judicial review under Article 226 of the Constitution of India, does not normally interfere with the decision of the disciplinary authority, on the ground of adequacy or reliability of evidence, which is out of the tale of judicial review.

18. The Superior Courts have reiterated this



legal position in various decisions; reference may be made in this regard to the decisions in case of *“B.C. Chaturvedi Versus Union of India and Others”* reported in *“(1995) 6 Supreme Court Cases 749”* and *“State of Uttar Pradesh and Another Versus Man Mohan Nath Sinha and Another”* reported in *“(2009) 8 Supreme Court Cases 310”*.

19. As regards, submission that the orders of the Disciplinary Authority as well as the Appellate Authority are non-speaking, I do not agree with such submission. I have perused the letter dated 27.10.1999, communicated to the petitioner, containing decision of the Board rejecting his appeal. I find from the said letter that the Appellate Authority took the decision after due application of mind, which is evident from the second page of the order. The order of the Disciplinary Authority dated 20.08.1999, cannot be said to be non-speaking. It is settled legal position that the order of the Disciplinary Authority, while agreeing with the findings of the Enquiry Officer, is not required to be detailed one and the only requirement is that such order must disclose application of mind by the Disciplinary Authority.

20. I have perused the decision passed by Sri



Lakshmi Kant Sharma, learned Sub-Divisional Judicial Magistrate, Arrah, whereby, the petitioner came to be held not guilty of the criminal charge. From the said judgment, I find that in the absence of any evidence before the learned Sub-Divisional Judicial Magistrate, Arrah, the petitioner came to be acquitted. There can be more than one reason why no prosecution witness could appear to depose before the criminal Court. The said decision of the criminal Court, in my opinion, in the facts and circumstances of the case, is not sufficient to influence the decision by the Disciplinary Authority or the Appellate Authority, which are under challenge in the present proceeding.

21. In view of the above, I do not find any merit in this case. This application is, accordingly, dismissed.

22. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

Praveen-II/-

U			
---	--	--	--