

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2031 of 1994

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Gauri Shankar Rai, Son of Shri Radha Krishna Rai, resident of Mohalla West Patel Nagar, Police Station Shashtri Naqger, in the town and District of Panta

.... Petitioner/s

Versus

1. The Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna
2. 2. Sri Brahmdeo Prasad, the Chairman, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna
3. Shri S. B. Ram, Engineer-in-Chief (G.T.O) & Enquiring Officer, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna
4. The Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : None

For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 10-02-2015

1. No one appears on behalf of the petitioner nor there is any representation on behalf of the Respondents-Board.

2. Since the matter is pending for last more than twenty one years, I consider it appropriate to dispose of the writ application on the basis of material on record.

3. The petitioner in the present writ application seeks following reliefs:-

“To quash and cancel the charge as contained in Annexure-7, the alleged Enquiry report, as contained in Annexure-10 and the Resolution no. Alleg. 504/93/1137/EB dated 24th November, 1993, issued under the signature of the Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna (respondent no.4), as contained



in Annexure-13, whereby and whereunder the Respondent Nos. 1 and 2 have ordered to deduct 10 per cent from the pension and 10 per cent from Death-cum-Retirement gratuity of the petitioner, as the petitioner superannuated on 31.12.1992, and also issue a writ of mandamus commanding the respondents to pay full pension, gratuity and other post retiral benefit of the petitioner with market rate of interest/penal interest from 1st January, 1993, till date of payment and/or issue such other appropriate writ, order or direction as this Hon'ble Court may deem fit in the facts of this case."

4. As per the petitioner's case, he was initially appointed as an Assistant Electrical Engineer in the erstwhile of Bihar State Electricity Board (hereinafter referred to as the Board). He was subsequently promoted to the rank of Electrical Executive Engineer and thereafter to the rank of Electrical Superintending Engineer and was posted as the Electrical Superintending Engineer, Bhagalpur (Transmission). While working as such, certain allegation was made against him for which he was asked to submit explanation, in the matter of allotment of earth work in Jamui, Shekhpura and Sabour Grid Sub-Stations. It is his case that he was exonerated of the charges levelled against him by the General Manager (G.T.O.) of the Board. The report of the General Manager (G.T.O.) of the Board was examined by Member (Technical) of the Board who after examining found that the allegations could not be substantiated except for suspicion of procedural lapses. It is his further case that vide Office



order dated 30th May, 1989 issued under the signature of the Secretary of Board, the Department of General Administration of the Board, a promotion Committee was constituted to review or decide upon the recommendation of the Screening Committee. The Promotion Committee as well as the Screening Committee were constituted superseding all previous Screening committees as well as Promotion Committee. The matter with respect to promotion of Superintending Engineer in the rank of Chief Engineer was placed in the agenda prepared by the Joint Secretary of the Board in which petitioner's name figured at Serial no.4. It was indicated in the said agenda that petitioner's confidential report for the year 1984-89 was "very good". It was also mentioned in the said agenda that the Vigilance Department has recommended imposition of punishment of "Censure" against the petitioner for certain acts of omission and commission during his posting at Bhagalpur. It was also mentioned that the charges levelled against him under letter No. 598 dated 26.2.1988 were substantiated in the enquiry relating to the said period, when he was posted at Bhagalpur, and punishment of "Censure" was recommended against him. The promotion Committee found the petitioner fit for promotion to the post of Chief Engineer (G.T.O.) along with other five persons. Accordingly, the Board in its meeting held on 28th June, 1989 approved the proposal of the Promotion

Committee to promote the petitioner to the rank of Chief Engineer. Accordingly vide letter dated 4th July, 1989, issued under the signature of the Secretary of Board, the petitioner was promoted to the rank of Chief Engineer and was posted as General Manager-cum-Chief Engineer, Thermal Power Station, Kanti, Muzaffarpur from where he retired with effect from 31.12.1992.

6. The petitioner has grievance that with respect to the same transaction and cause of action which had taken place in the years 1981-82-83 during his posting at Bhagalpur, another proceeding was initiated vide memo no. 319 dated 24.2.1992. It is also his claim that subsequently vide letter dated 19.12.1992, issued under the signature of Joint Secretary of the Board, documents relating to the charges were sent to the petitioner, few days before his retirement. The petitioner, however, submitted his reply to the Secretary of the Board on 28.1.1993 stating that the charges related to the period between 1981 and 1983 when he was posted as Electrical Superintending Engineer, Transmission Circle, Bhagalpur. The charges were enquired into by the General Manager-cum-Chief Engineer (Transmission) who had submitted his enquiry to the Member (Transmission) on 7.3.1983. The Member Transmission placed the same before the Chairman and finally punishment of “Censure” was recommended against the petitioner.



7. It has been pleaded in the writ application that the action of the respondents initiating a departmental enquiry for the said set of charges pertaining to the years 1981-82, in the year 1992, when the petitioner was going to retire is malafide. It has been pleaded in the writ application that on the same set of charges second departmental enquiry has not been initiated leading to imposition of punishment of forfeiting of 10% of pension. It is also the petitioner's plea that after taking into account the punishment of "censure" already imposed upon petitioner, the Promotion Committee found the petitioner fit for promotion to the rank of Chief Engineer and as a matter of fact he was promoted to the rank of Chief Engineer. In the background of the fact, it is the petitioner's plea that the order imposing punishment of reduction of 10% pension of the petitioner in exercise of power under Rule 43(b) of the Bihar Pension Rules is malafide, illegal and order to this effect be set aside.

8. A counter affidavit has been filed on behalf of the Respondent Bihar State Electricity Board. The averment made in paragraphs 14, 15 and 16 of the writ application have not been denied in the counter affidavit. In those paragraphs the petitioner has taken a plea that for the same set of charges, he was proceeded against and punishment of censure was imposed upon him. In the counter affidavit, it is stated that after petitioner's superannuation, a notice



dated 8,10.1993 (Annexure-11) was issued in terms of Rule 43(b) of the Bihar Pension Rules and after having considered the reply submitted by the petitioner, the impugned resolution dated 24.11.1993 was passed. It has also been stated that the proceeding was initiated prior to the petitioner's retirement with effect from 31.12.1992, which proceeding stood converted into a proceeding under Rule 43(b) of the Bihar Pension Rules after his superannuation. There is no denial by the Respondent Bihar State Electricity Board, while dealing with statement made in paragraphs 14, 15 and 16 of the writ application that the departmental proceeding which was initiated with issuance of charge-sheet dated 24.2.1992 were based on same allegation for which earlier, punishment of censure was imposed upon the petitioner. There is also no denial of the fact that despite such allegation against the petitioner, which was placed before the Promotion Committee, the Promotion Committee found him fit for promotion to the post of Chief Engineer.

9. I find substance in the ground taken in the writ application that the allegations as they existed, prior to consideration of his case for promotion by the Promotion Committee stood wiped out and he was found fit by the Promotion Committee and subsequently given promotion to the rank of Chief Engineer.

10. In such circumstance, I am of the opinion that the

action of respondents in imposing punishment of reduction of petitioner's pension and gratuity of 10% on the same set of charges is illegal. The impugned order is accordingly quashed. The respondents are directed to pay the petitioner full pension and gratuity.

11. This application is allowed.

(Chakradhari Sharan Singh, J)

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