

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1924 of 1998

Manohar Kumar Verma son of Mr. Girish Nandan Prasad, resident of Mohalla Salimpur Ahra, Road no. 1, was employed as Assistant Executive Engineer, under Bihar State Electricity Board, Patna.

.... **Petitioner**

Versus

1. Bihar State Electricity Board
2. The Chairman Bihar State Electricity Board, Bailey Road, Patna.
3. The Secretary, Bihar State Electricity Board, Bidyut Bhawan, Bailey Road, Patna.
4. The Director Departmental Proceeding, Bihar State Electricity Board, Vidyut Bhawan Bailey Road, Patna.
5. The Joint Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna.
6. The Electrical Executive Engineer, Transmission Division, Begusarai.

.... **Respondents**

Appearance :

For the Petitioner/s : Mr. Bindhyachal Singh, Adv.
Mr. Satyendra Narayan Singh, Adv.
For the BSE Board : Mr. Vinay Kirti Singh, Adv.
Mr. Akhileshwar Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 15-07-2015

The present writ application under Article 226 of the Constitution of India has been filed seeking quashing of the Resolution No. 602 dated 12.05.1997 issued by the erstwhile Bihar State Electricity Board, (now North Bihar Power Distribution Company Limited,

Successor Company of the Board), hereinafter referred to as the erstwhile Board) whereby punishment of dismissal from service of the Board has been imposed upon him.

2. The petitioner at the relevant point of time, was posted as Assistant Executive Engineer, Transmission Sub-division No. 1, Begusarai. Theft of transformers valves and oil from two 20 MVA Transformers at Grid Sub-station, Begusarai on 14/15.8.1988 took place. On the charge, inter alia, that the petitioner failed to promptly lodge the First Information Report with the local Police and inform the Superior Officers, as regards the said occurrence, a departmental proceeding was initiated against him with the issuance of chargesheet, through resolution of the erstwhile Board dated 01.12.1988. The Director, departmental proceeding of the erstwhile Board was appointed as the Enquiry Officer to conduct the proceedings.

3. Altogether five charges were levelled against the petitioner, which according to the Disciplinary

Authority constituted misconduct, warranting disciplinary action. The charges as mentioned in the chargesheet dated 01.12.1988 were as follows:

“(1) Malafide intention in not lodging F.I.R. with local police hand to hand; when the distance of P.S. Barauni was hardly a furlong from the Sub-Station.

(2) Abnormal delay in informing Superior Officers.

(3) Three day delay in blocking flanging of the Opening of the valves.

(4) Failure to interrogate and seize the documents from the Home Guards Stationed hardly 5 (five) yards away from the transformer.

(5) Delay in reply to letter no. 178 dated 22.8.88 of Elecl. Executive Engineer, Transmission Division, Begusarai.”

4. The erstwhile Board furnished alongwith the chargesheet, the list of witnesses on whose evidence



it proposed to rely and the memo of evidence, in support of the charge, to the petitioner. In course of enquiry, the witnesses were examined. The petitioner was given opportunity to cross-examine the witnesses, which he availed.

5. The Enquiry Officer submitted his report on 31.05.1995, recording his findings that no charge against the petitioner could be proved in course of departmental enquiry, on the basis of evidence adduced on behalf of the erstwhile Board. The said enquiry report was considered by the Disciplinary Authority.

6. The Disciplinary Authority accepted the findings of the Enquiry Officer so far as they related to Charges no. 3 to 5. However, as regards Charges no. 1 and 2, the Disciplinary Authority differed with the findings of the Enquiry Officer as according to him, this being an admitted fact that the petitioner failed to lodge the First Information Report promptly, Charge No. 1 stood substantially proved. As regards Charge No. 2, the disciplinary authority, differing with the findings of the



Enquiry Officer, held that the charge of delay in informing the Superior Officer also stood fully proved, which amounted to dereliction of duty on his part. After having recorded his finding that Charges No. 1 and 2 stood proved, disagreeing with the report of the Enquiry Officer, the Disciplinary Authority issued a second show-cause notice to the Petitioner asking for his explanation on proposed punishment of dismissal from the service of the Board. The petitioner replied to the said notice dated 27.11.1995 on 15.12.1995. The petitioner's reply to the show cause notice was found not satisfactory by the Disciplinary Authority and, accordingly, vide Resolution No. 602 dated 12.05.1997, punishment of dismissal came to be imposed upon him.

7. The order of dismissal is being assailed in the present writ petition on the following grounds:-

(i) The Charge No. 1 and Charge No. 2, which according to the Disciplinary Authority stood proved, per se, do not constitute misconduct in the absence of any ill-motive, alleged against the petitioner. In support of the



above, learned counsel for the petitioner has relied upon Supreme Court decisions in case of **Zunjarrao Bhikaji Nagarkar Vs. Union of India and others reported in (1999)7 SCC 409, Inspector Prem Chand Vs. Govt. of NCT of Delhi and others reported in (2007)4 SCC 566, KSRTC Vs. T. Shree Rama Reddy reported in 2008 (17) SCC 684 and Union of India and others Vs. J. Ahmed 1979(2) SCC 286.**

(ii) Even if it is presumed that the aforesaid two charges constitute misconduct, there was absolutely no material produced or evidence adduced in course of departmental enquiry to establish the charge against the petitioner.

(iii) If the Disciplinary Authority intended to disagree with the findings of the Enquiry Officer on the basis of the material/evidence available on record of the departmental enquiry and he was of the opinion that the charges against the petitioner stood proved on the basis of such material, he ought to have issued to the petitioner “tentative notes of disagreement” proposed for



differing with the report of the Enquiry Officer, on the basis of which, it could be said that the charges stood proved. In the present case, the disciplinary authority differed with the findings of the Enquiry Officer, recorded his own finding that Charges No. 1 and 2 stood proved against the petitioner, and issued to the petitioner a second show cause notice seeking his comments as to why he should not be dismissed from service. According to the petitioner, the procedure adopted by the Disciplinary Authority, was in breach of the law laid down by the Supreme Court in case of ***Punjab National Bank and others Vs. Kunj Behari Misra reported in 1998(7) SCC 84***, as he had a right to be heard before disciplinary authority recorded its finding differing the findings of the Enquiry Officer, in facts of the case.

8. Reliance has also been placed in this regard on Supreme Court decision in case of ***Yoginath D. Bagde Vs. State of Maharashtra and another reported in (1999) 7 SCC 739***, on behalf of the Petitioner.

9. This writ application was filed in the Year



1998. A counter affidavit has been filed on behalf of the respondents on 07.07.2015, though notice upon them was served in the Year 1998 itself. It is the case of the respondents that due to negligence on the part of the petitioner, theft of transformer valves and oil of two transformers of 20 MVA at Grid Sub-station, Begusarai took place because of which, the erstwhile Board had to suffer a loss to the tune of Rs. 2.5 lacs. According to the respondents, as stated in the counter affidavit, the Disciplinary Authority, on the basis of material available on the record of the Departmental Enquiry, did not accept the enquiry report, recorded difference of opinion and issued a show cause notice to the petitioner to submit his reply as to why he should not be dismissed from service. It has further been stated in the counter affidavit that the petitioner replied to the said second show cause notice dated 27.11.1995, through his letter dated 15.12.1985, which was duly considered and it was finally decided by the erstwhile Board in its 44th meeting held on 10.03.1997, to dismiss the petitioner from

service of the Board.

10. Mr. Bindhyachal Singh, learned Counsel appearing on behalf of the petitioner hammering the points, as noted above, in order to assail the impugned order of dismissal, has contended referring to the statement of witness adduced in support of the charge in course of departmental enquiry that there was no delay on the part of the petitioner in lodging the First Information Report. He submits, referring to Annexure-2 to the writ application that the witness, Ram Naresh Prasad Singh, who was Electrical Executive Engineer of the Area, at the relevant point of time, has mentioned that on 15.08.1988 itself, the petitioner had written to the Officer-in-Charge of the Police Station as regards the occurrence of theft though, it was sent through registered post. He is said to have stated in course of departmental enquiry that a copy of the said letter dated 15.08.1988 written by the petitioner to the Officer-in-Charge of the Police Station on 15.08.1988 was forwarded to him (the Electrical Executive Engineer) which was received by him



on 18.08.1988. Referring to the said statement of the witness, examined on behalf of the prosecution, Mr. Singh has contended that this statement suggests that the petitioner had promptly informed not only the Officer-in-Charge of the Police Station but also his Superiors as regards the occurrence of theft. He has submitted that the said Executive Engineer was the only witness, examined for the prosecution in course of departmental enquiry and there is absolutely nothing in the statement of the said witness to prove either Charge No. 1 or 2. He has, accordingly, submitted that the Enquiry Officer rightly had come to a finding that the charge against the petitioner could not be proved, as there was no evidence available to support the said allegation of even negligence on the part of the petitioner. He has further contended that the findings recorded by the disciplinary authority that charge against the petitioner stood substantially proved on the basis of materials on record of the departmental enquiry is perverse and, therefore, requires interference. He has contended that pursuant to the



second show cause notice dated 27.11.1995, the petitioner had submitted detailed reply dated 15.12.1995 to convince the Disciplinary Authority that findings recorded by the Enquiry Officer were correct and deserved to be accepted and there was no material to prove the Charge No. 1 and Charge No. 2 levelled against the petitioner. The said reply dated 15.12.1995 to the second show cause notice, has been brought on record by way of Annexure-7 to the writ application. The Disciplinary Authority, without considering the detailed explanation submitted by the petitioner, by a non-speaking, unreasoned order dated 12.05.1997 imposed upon the petitioner the punishment of dismissal from service of the Board. Mr. Singh would contend that the said punishment of dismissal from service, which according to him, is not only shockingly disproportionate to the alleged misconduct, if any, has been passed in violation of principles of natural justice. He has also submitted that no motive has been assigned against the petitioner for delay, if any, in lodging the First

Information Report or informing his Superiors and, therefore, no misconduct is made out, warranting disciplinary action against him.

11. Mr. Vinay Kirti Singh, learned counsel appearing on behalf of the respondents, on the other hand, would submit that there has been no violation of principles of natural justice in holding departmental enquiry against the petitioner. After the Enquiry Officer submitted his report, holding that the charges against the petitioner, were not proved, the Disciplinary Authority recording disagreement with the findings of the Enquiry Officer, issued notice to the petitioner and gave him sufficient opportunity to deal with the notes of disagreement recorded by the Disciplinary Authority. He would, accordingly, contend that the petitioner was, thus, given due opportunity to deal with the notes of disagreement. The Disciplinary Authority after considering the petitioner's reply to the said notes of disagreement and the second show cause notice, rightly imposed upon the petitioner, punishment of dismissal

from service of the Board, which cannot be said to be disproportionate to the alleged misconduct.

12. I have perused the chargesheet, as noted above. The Enquiry Officer found none of the charges to have been proved in course of the departmental enquiry. The Disciplinary Authority, however, while considering the report of the Enquiry Officer disagreed with his findings with respect to Charges no. 1 and 2. For the purpose of present judgment, therefore, I shall be dealing with the Charges no. 1 and 2 only, levelled against the petitioner. This is not in dispute that the occurrence had taken place on 14/15.08.1988 of theft of transformer valves of two transformers at Grid Sub-station, Begusarai. This is also not in dispute that the petitioner had sent registered letters to the Officer-in-Charge of the local Police Station on 15.08.1988 itself with a copy to the concerned Executive Engineer, Transmission Division, Begusarai. From the evidence of the concerned Executive Engineer, which has been brought on record by way of Annexure-2 to the writ application, correctness



of which has not been disputed by the respondents in their counter affidavit, this is not in dispute that he had received the said communication on 18.08.1988. It is alleged against the petitioner through Charge No. 1 that he ought to have instituted the First Information Report “hand to hand” when the distance of the Police Station, Begusarai was hardly a furlong from the Sub-station. From paragraph 33 of the statement of the said Executive Engineer before the Enquiry Officer, it appears that he accepted the fact that the petitioner had informed him that the Officer-in-Charge of the Police Station had refused to receive the First Information Report. It also appears from his statement that the Superintendent of Police, Begusarai was persuaded on 23.08.1988 for getting the First Information Report registered and, only thereafter, upon the direction of the Superintendent of Police, the First Information Report could be registered. In my opinion, no ill-motive is discernible from the act of the petitioner of sending the First Information Report as regards the occurrence dated 14/15.08.1988, to the



Police Station, through registered post. It is true that he could have himself gone to the Police Station to get the First Information Report registered. This act of the Petitioner, at the maximum, can be said to be an error of judgment. At the same time, the petitioner's conduct has to be adjudged on the basis of attending circumstances, where only with the intervention of the Superintendent of Police and upon persuasion by the Superior Officers of the Board a First Information Report could be got registered.

13. In my opinion, thus, Charge No. 1, per se, does not constitute misconduct, in the absence of any material to show ill-motive of the petitioner.

14. So far as the second charge that there has been abnormal delay on the part of the petitioner in informing the Superior Officers is concerned, it appears to be too vague. There is no specific allegation against the petitioner as to how much delay was there on his part in informing his Superior Officer. Secondly, as has been noticed above, with reference to the statement of the



witness Ram Naresh Prasad Singh, Electrical Executive Engineer, that he had received a copy of the letter dated 15.08.1988 on 18.08.1988 itself and he had knowledge about the said occurrence dated 14/15.08.1988. I find substance in submission made on behalf of the petitioner that Charges No. 1 and 2, in the background of admitted set of facts, cannot be said to be constituting misconduct, warranting disciplinary action of this nature. The Supreme Court in case of ***Union of India and others Vs. J. Ahmed*** (supra) held that a lapse in performance of duty or error of judgment in evaluating particular situation may be negligence in discharge of duty but would not constitute misconduct, unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. In the present case, there is no allegation against the petitioner that he was negligent in performance of his duty, which resulted into theft of valves/oil. It is not alleged that he was responsible for the loss caused to the



Board, because of such theft. There was no charge levelled against the petitioner to this effect. The only allegation against him is that he did not lodge the First Information Report with the local Police “hand to hand”. This is not in dispute that the petitioner had sent registered letter dated 15.08.1988 to the local Police for institution of the First Information Report. In such circumstance, at the maximum, it can be said that the petitioner instead of sending registered letter ought to have visited the Police Station himself for lodging the First Information Report. This can be error of judgment on his part but not misconduct, particularly when even the disciplinary authority knew that First Information Report, could be registered only after the senior officials personally requested the Superintendent of Police to ensure that the First Information Report was registered.

15. What constitutes misconduct has been laid down by the Apex Court for taking disciplinary action against an employee in case of **Inspector Prem Chand Vs. Govt. of NCT of Delhi and others** (supra).



Referring to two earlier decisions of Supreme Court in case of **Union of India and others Vs. J. Ahmed** (supra) and **State of Punjab and others Vs. Ram Singh Ex-Constable reported in (1992) 4 SCC 54**, the Supreme Court has held that an error of judgment or a negligence simpliciter would not be a misconduct. The misconduct has been held to be such acts which the office holder did not have the right to perform or acts performed improperly or failure to act in face of affirmative duty to act. Misconduct has been held to mean an act arising from ill motive. In view of several pronouncements of Supreme Court, in my opinion, the conduct of the petitioner in not handing over the First Information Report to the local police “hand to hand” cannot be said to be an act with ill motive. Such act may be an innocent mistake or error of judgment. This view is supported by another decision of Supreme Court in case of **Ravi Yashwant Bhoir Vs. District Collector, Raigad and others reported in 2012(4) SCC 407**.

16. In the present case, the only allegation

against the petitioner, with reference to institution of First Information Report is that he did not do it with the local Police “hand to hand”.

17. In my opinion, it does not constitute a misconduct as no definite ill-motive has been alleged against the petitioner behind delay in institution of the First Information Report.

18. I find substance in submission made on behalf of the petitioner that there was no evidence on the basis of which the Disciplinary Authority reached to a finding that the petitioner, out of some ill-motive, did not lodge the First Information Report with the local Police “hand to hand.” I am also of the opinion that there was no material on the basis of which the Disciplinary Authority, while differing with the findings of the Enquiry Officer, could reach to a conclusion the allegation of “Abnormal delay in informing Superior Officers”, stood proved. The findings recorded by the disciplinary authority in his second show cause notice dated 27.11.1995 is apparently based on no evidence and,

therefore, perverse.

19. Further, I am satisfied with the submission that the Disciplinary Authority committed a gross procedural error while issuing second show cause notice to the petitioner dated 27.11.1995, while differing with the report of the Enquiry Officer. The proper procedure for him would have been to have first recorded his tentative notes of disagreement from the findings of the Enquiry Officer and proposing his own findings. He, thereafter, ought to have sought comments of the petitioner on such tentative notes of disagreement. After considering the petitioner's explanation, if any, as to why the report of the Enquiry Officer deserved to be accepted, the Disciplinary Authority could have recorded his own findings. In the present case, the Disciplinary Authority recorded his finding as regards the petitioner's guilt, differing with the report of the Enquiry Officer, without giving him any opportunity of being heard. The procedure adopted by him was apparently in violation of principles of natural justice. The Supreme Court considering this

aspect in case of ***Punjab National Bank and others Vs. Kunj Behari Misra*** (Supra) has held in paragraph 19 as follows:-

“The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charge

of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.”

20. In subsequent decision, the Supreme Court in case of **Yoginath D. Bagde Vs. State of Maharashtra and another reported in (1999) 7 SCC 739** (supra) has held in paragraph 34 as follows:-

“Along with the show-cause notice, a copy of the findings recorded by the enquiry officer as also the reasons recorded by the Disciplinary Committee for disagreeing with those findings were communicated to the appellant but it was immaterial as he was required to show cause only against the punishment proposed by the Disciplinary Committee which had already taken a final decision that the charge against the appellant were proved. It was not indicated to him that the Disciplinary Committee had come only to a “tentative” decision and that he could show cause against that too. It was for this reason that

the reply submitted by the appellant failed to find favour with the Disciplinary Committee.”

21. I also find that while issuing final order dated 12.05.1997 imposing upon the petitioner's dismissal from service, there is complete non-application of mind over the petitioner's reply to the second show cause notice. This also vitiates the said resolution dated 12.05.1997, particularly because the report of the Enquiry Officer was in favour of the petitioner.

22. For the reasons as discussed above, the impugned Resolution No. 602 dated 12.05.1997 (Annexure-6) deserves to be quashed and is accordingly quashed.

23. In the facts and circumstances of the case, as discussed above, and in view of the fact that I have come to a conclusion that the charges, said to have been proved against the petitioner, do not constitute a misconduct, I direct that the petitioner's shall be reinstated in service forthwith. He will be entitled for all



consequential benefits consequent upon quashing of the order of dismissal. He will be also entitled to the arrears of salary, other emoluments and benefits, if, he files an affidavit before the Disciplinary Authority to the effect that he was not gainfully employed elsewhere during the said period. Such arrears of salary/emoluments, however, can be denied to him by passing a reasoned order by the competent authority, only if, the respondents have any cogent evidence to the effect that the petitioner was gainfully employed elsewhere, during the period in question.

24. This writ application is accordingly allowed.

25. There shall, however, be no order as to costs.

(Chakradhari Sharan Singh, J.)

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