

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1263 of 1999

Syed Nabi Karim Son of Late Sharafat Karim, Resident of
Village/Mohalla-Marufganj, P.S. Civil Lines, District-Gaya

.... Petitioner/s

Versus

1. Bihar State Electricity Board through its Chairman, Vidyut Bhawan,
Bailey Road, Patna
2. The Chairman, Bihar State Electricity Board, Vidyut Bhawan,
Bailey Road, Patna
3. The Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey
Road, Patna
4. The Joint Secretary, General Administration Department, Bihar
State Electricity Board, Vidyut Bhawan, Bailey Road, Patna.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. N.K. Agarwal, Sr. Advocate
With Mr. Ajay Kumar No.I,
Md. Mushtaque Alam, Advocates

For the Respondent/s : Mr. Vinay Kirti Singh, Addl. S.C. of S.B.P.
D.Com. Pvt. Limited
With Vijay Kumar Verma, AC to Addl. S.C.

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

ORAL JUDGMENT

Date: 21-04-2015

1. The petitioner was working as Typist Category-I in the erstwhile Bihar State Electricity Board (Now South Bihar Distribution Company Limited Patna, the Successor Body) (hereinafter referred to as the Board). He is aggrieved by the order issued vide memo no. 545 dated 4.5.1996 under the signature of Secretary of the erstwhile Board imposing upon the petitioner, the punishment of dismissal from service. He has also challenged the “addenda” issued on 6.5.1996

under the signature of Secretary of the erstwhile Board. The petitioner had preferred appeal against the order of dismissal which came to be dismissed by the appellate order dated 29.1.1998 which too is under challenge in the present writ application under Article 226 of the Constitution of India.

2. From the pleadings on record, it would appear that a departmental proceeding was initiated against the petitioner with the issuance of a charge-sheet on the allegation of playing fraud with the Board inasmuch as, he was said to have submitted forged medical bills against treatment of his wife to the tune of Rs. 65,494/- with an intention to defraud and cause financial loss to the Board and attempted to adjust an advance which he had earlier taken for treatment of his wife, amounting to Rs. 15,000/- which he completely misused. This is not in dispute that before initiation of departmental proceeding against him, the Board had given him an opportunity to explain his conduct as to why such proceeding be not initiated against him. The said charge-sheet was issued to the petitioner on 28.6.1995. He submitted his written statement of defence and took a plea that the forged medical bill alleged to have been submitted by him does not bear his signature. The Inquiry Officer, however, on the basis of materials collected and evidence adduced in course of departmental enquiry came to a finding that the charge against the petitioner of



having submitted forged medical bill was found to be proved. A second show cause notice was issued on 27.2.1996 seeking his comments as to why he be not dismissed from service. The petitioner availed the opportunity and submitted his reply to the second show cause notice. The disciplinary authority upon examining the records of departmental proceeding, enquiry report and reply to the second show cause notice decided to impose upon the petitioner the punishment of dismissal from service. It was also decided that the advance which the petitioner had taken to the tune of Rs. 15,000/- for medical treatment of his wife be also recovered/adjusted from the amount payable to the petitioner. The petitioner preferred appeal before the Chairman of Board on 17.12.1996 which was rejected by an order dated 28.9.1996. The petitioner had earlier approached this Court by filing CWJC No. 2713 of 1997 challenging the order of dismissal as well as the appellate order. This Court vide an order dated 28.10.1997 quashed the order of the appellate authority after having found it to be non-speaking and remitted the matter back to the appellate authority to pass an order afresh after giving the petitioner an opportunity of filing supplementary memo of appeal. In compliance of the order of this Court dated 28.10.1997, the petitioner was given opportunity of hearing by the appellate authority on 17.1.1998 and 27.1.1998. The appellate authority passed a speaking

order dated 29.01.1998 and rejected the petitioner's appeal which was communicated to him through memo no. 161 dated 29.01.1998.

3. These are the background facts leading to institution of the present writ application seeking quashing of the order of the disciplinary authority dated 4.5.1996 imposing punishment of dismissal from service upon the petitioner and the order of the appellate authority dated 29.1.1998, rejecting the petitioner's appeal.

4. Unfortunately, and for the reasons best known to the petitioner only, the charge-sheet, which is the basis of initiation of disciplinary proceeding against the petitioner, has not been annexed in the writ application.

5. However, from the facts pleaded and from the orders which are impugned in the present writ application it appears, and, which is not in dispute that the petitioner had applied for medical advance of a sum of Rs. 25,000/- for the purpose of medical treatment of his wife on the purported recommendation/advice by the Indira Gandhi Medical Institute of Cardiology where his wife was admitted for treatment. An artificial cardiac pacemakers was said to have been advised to be implanted into her body. However, a sum of Rs. 15,000/- was sanctioned for that purpose, for the said treatment of his wife on 11.11.1992. The petitioner did not submit the vouchers with respect to treatment of his wife as regards the advance of Rs. 15,000/-



which he had taken for such purpose for years together. From the second show notice issued by the Board, which is Annexure-13 to the writ application, it appears that bill for medical reimbursement to the tune of Rs. 65,494/- was submitted on 19.12.1994 in which adjustment of the said advance amount of Rs. 15,000/- was also claimed. In course of departmental enquiry, witnesses were examined who proved the fact that medical reimbursement bill worth Rs. 65,499/- was submitted on the said date wherein the advance amount taken by the petitioner earlier of Rs. 15,000/- was also sought to be adjusted. In course of examination of witnesses, however, the witnesses could not specifically say that they had seen the petitioner submitting the said bill personally. However, this is not in dispute that such bill was submitted in which, the advance amount taken by the petitioner was also sought to be adjusted. This is also not in dispute that there is no finding that it was the petitioner who had put his signature on bill claiming reimbursement.

6. The main submission which the learned senior Counsel appearing on behalf of the petitioner has made in order to assail the impugned order is that there was no evidence before the Inquiry Officer or the disciplinary authority to come to a specific finding that it was the petitioner who had submitted the medical bills. He has contended that because of the petitioner's activities with the Workers'

Union, the respondents in order to remove him from the Board itself got implanted forged documents so as to make out a charge against him for the purpose of taking disciplinary action. He has submitted that submission of the forged medical bill by the petitioner is the foundation of charge of misconduct against him, which fact could not be proved on the basis of evidence adduced in course of the departmental enquiry.

7. There is no dispute over the facts that the medical bills which were placed before the authorities of the Board for reimbursement in favour of the petitioner were forged. As has been noted above, the medical advance of Rs. 15,000/- which the petitioner had taken was also sought to be adjusted. This is also not in dispute that the petitioner did not utilize the medical advance of Rs. 15,000/- for the purpose it was given to him by the Board. This is not disputed that no artificial cardiac pacemaker was implanted upon the petitioner's wife and he did not return the said amount to the Board as it had remained unutilized.

8. In reply to his second show notice, dealing with allegation that he did not utilize the medical advance amount of Rs.15,000/- and misappropriated which, the petitioner asserted that the amount of Rs. 15,000/- received by him in November, 1992 was not sufficient to meet expenses over implant of artificial cardiac



pacemaker implant. He remained busy in managing further sum of Rs. 20,000/- from different sources but he could not manage and, therefore, he was compelled to Ayurvedic treatment which gave some relief and in this way the said amount of Rs. 15,000/- was utilized in the treatment of his wife. He stated in his reply that since then he has been trying his best to refund the advance taken but due to marriage of second daughter in 1994, he could not be able to repay so far. He further pleaded that immediately few months after the marriage of his daughter, he was suspended by the Board on 28.3.1995 which further made it difficult to manage even his survival. This is how he has explained his conduct, in reply to the second show cause notice, as to why he could not account for the amount of medical advance taken by him.

9. Learned Senior counsel appearing on behalf of the petitioner has vehemently submitted that the witnesses who were examined in course of departmental enquiry could not prove that the bill medical reimbursement was submitted in petitioner's signature. They could not identify the petitioner's signature. He has further submitted that disciplinary proceeding was initiated against the petitioner on the basis of a complaint received from one Bhagwan Das. The said Bhagwan Das was not examined in the departmental enquiry and for that reason also the findings arrived at by the Inquiry

Officer and the disciplinary authority are vitiated. He has submitted that the findings are not based on objective evidence on record and are based on mere hypothesis and conjectures.

10. At the outset, I must deprecate the conduct of the petitioner in not bringing on record the charge-sheet served upon him, on the basis of which departmental proceeding came to be initiated though he has brought on record a notice dated 13.4.1995, whereby, he was asked to explain as to why a departmental proceeding be not initiated against him.

11. This is not in dispute that the petitioner did not spend the amount of Rs. 15,000/- which he had taken as medical advance for the purpose of treatment of his wife. He had taken the said amount for implanting artificial cardiac pacemaker. An explanation was given by the petitioner in his reply to the second show cause notice which has been taken note of hereinabove, detailing the circumstance in which he could not account for the said amount and he could not return the amount taken by him. Explanation so put -forth by the petitioner cannot be accepted by any prudent person and has rightly not been accepted by the disciplinary authority. The entire case of the petitioner is based on the plea that he had not submitted the forged medical bills. However, the fact remains that medical bill worth Rs. 65,494/- also referred the medical advance which the petitioner had

taken of Rs. 15,000/- which had admittedly not utilized by him for the purpose of which he taken advance nor deposited it with the Board. This forms a strong belief that the petitioner attempted to misappropriate the amount which the petitioner had taken as medical advance. In such circumstance, if the disciplinary authority on the basis of evidence adduced in course of departmental enquiry came to a finding that petitioner was guilty of misconduct, such finding would not require interference by this Court in a proceeding under Article 226 of the Constitution of India.

12. From the records and pleadings, I find that there were strong reasons before the authorities to come to the conclusion that the petitioner was attempting to misappropriate the Board's money in the name of medical advance for the treatment of his wife.

13. The conduct of the petitioner and the facts and circumstances of the case do not make out a case for interference with the order of the disciplinary authority as well as the order of the appellate authority. I do not find any merit in this application. This application is accordingly, dismissed.

14. However, there shall be no order as to costs.

(Chakradhari Sharan Singh, J)

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