

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3632 of 1999

=====

Surya Deo Sharma, Son of Late Janaki Prasad Sharma, resident of Village and Post-Fatehpur Fulwaria, P.S.-Sarai, District-Vaishali.

..... **Petitioner**

Versus

Bihar State Electricity Board through its Chairman, Bailley Road, P.S.-Kotwali, Town and District-Patna.

..... **Respondent**

=====

Appearance :

For the Petitioner : Mr. S.S. Rekhi, Advocate

For the Respondent : Mr. Vinay Kirti Singh, Advocate (Addl. Standing Counsel)

Mr. Vijay Kumar Verma, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 22-04-2015

Heard the parties.

2. Aggrieved by the resolution issued by erstwhile Bihar State Electricity Board, Patna (now South Bihar Power Distribution Company Limited, the successor body) (hereinafter referred to as to the 'Board') dated 01.03.1999, whereby, the punishment of compulsory retirement has been imposed upon the petitioner, he has preferred the present writ application under Article 226 of the Constitution of India seeking quashing of the said resolution.



3. At the relevant point of time, the petitioner was posted as Junior Electrical Engineer, Electric Supply Section, Lakhisarai (Rural-I). A disciplinary proceeding was initiated against him with the issuance of chargesheet through a resolution dated 13.12.1996 containing two charges.

4. Firstly, it was alleged that during his posting as Junior Engineer, Electric Supply Section, Lakhisarai (Rural-I), M/s Balajee Ingots India Private Limited, Lakhisarai, a consumer, had submitted an application on 29.08.1995 for enhancing his sanctioned load from 2061 KVA to 3501 KVA. No action was, however, taken on his application. It transpired in course of investigation that no electric connection with enhanced load was provided to the said consumer, i.e., M/s Balajee Ingots India Private Limited. It was secondly alleged against him that in contravention of the binding Rules, the electric meter was fixed at a distance of 600 feet from the premises of the said M/s Balajee Ingots India Private Limited and taking advantage of this, by an act of tapping, the said consumer committed theft of electricity bypassing the electric meter, which was detected by the raiding party on 20.01.1996. It was also alleged that new

electric connection was provided to one M/s Shiv Shankar Processing Industry on 22.12.1995 and for that purpose, he got installed 25 KVA transformer for the supply of electricity in the premises of the consumer, in breach of the Rules.

5. The petitioner filed his written statement of defence denying the charges levelled against him. As regards, the first charge, he took a plea that though he was posted as Junior Electrical Engineer, Electric Supply Division, Lakhisarai (Rural-I) between 18.05.1994 to 01.08.1996, the said application filed by the consumer, M/s Balajee Ingots India Private Limited, was never sent to the Section where he was posted. He had no knowledge about the application nor he was entrusted with the work of investigation or report regarding the load enhancement application. As regards, the Charge No. 2, relating to installation of transformer in the premises of M/s Shiv Shankar Processing Industry, he took a plea in his written statement of defence that on 24.10.1994, when he had visited the site of the said consumer, he had found that one 25 KVA transformer was already installed on Lakhisarai-Jamui Feeder, which was passing just a few meters away from the said premises. He took a plea that he



reported to the office that there was no need of 25 KVA transformer for giving connection to the said M/s Shiv Shankar Processing Industry. Referring to the Feasibility Report, which he had submitted on 02.11.1994, he took a plea that he did not requisition or install any transformer in the premises of said Industry. He also took a plea that the consumer, in fact, had encroached upon the government land subsequently by the side of Lakhisarai-Jamui Pakka road, where the transformer was installed and, thus, the transformer fell within their premises. As regards the allegation of giving connection at a distance of 600 feet to M/s Balajee Ingots India Private Limited, he denied such allegation and took a plea that length of the line from the transformer to the connection point was, in fact, 50 feet till 31.12.1995, when he had visited the factory for taking meter reading for the month of December, 1995 and there was no tapping.

6. The departmental proceeding, thereafter, progressed. Witnesses were examined and the petitioner was given opportunity to cross-examine the departmental witnesses. The Enquiry Officer submitted his report holding that the second part of the charge levelled against the



petitioner stood proved. The said enquiry report has been brought on the record, as part of Annexure-8 to the present writ application. It appears that the Enquiry Officer had submitted his report on 27.07.1998, wherein, he observed that when the raiding party conducted raid, in the premises of the consumer, the power transformer was found damaged and two commercial and industrial connections were also found damaged and there was no electric meter installed. The Enquiry Officer in his report did not accept the plea of the petitioner that he did not have any knowledge as to when did the consumer remove the electric meter and concluded that it was expected of the Junior Engineer to have knowledge as regards tampering with the electric meter by the consumer. The Disciplinary Authority sent the said report of the Enquiry Officer to the petitioner through Memo No. 2037 dated 16.12.1998, proposing imposition of punishment of compulsory retirement upon him, as according to the Disciplinary Authority, the first part of the charge also stood established on the basis of deposition of the witnesses and relevant documents available on the record. He agreed with the report of the Enquiry Officer as regards second part of the charge in his second show cause

notice. The relevant portion of the second show cause notice dated 16.12.1998 (Annexure-8) to the writ application is being quoted hereinbelow:-

“And, whereas, after careful examination of findings of Enquiring Officer, written statement of the proceedee, deposition of witnesses and relevant documents on record it has been found that the first part of the charge also stands established against the proceedee on the ground that he had knowledge of load of the consumer but he failed to persuade the consumer as also failed to expedite action on application of the consumer in the office of Asstt. Elecl. Engineer for enhancement of load. Thus he connived in theft of power. Second part of the charge has been found proved by the Enquiring Officer, which is agreed too.

It has, therefore, been proposed to award punishment of compulsory retirement to Sri Surya Deo Sharma, Junior Elecl. Engineer (under suspension), Bhagalpur Area Electricity Board, Bhagalpur.”

7. The petitioner submitted his second show cause reply, taking a plea that the finding of the Enquiry Officer was not only perfunctory but it was beyond the allegations as contained in the chargesheet. He asserted that in his



capacity as Junior Electrical Engineer, Lakhisarai, he had nothing to do with the H.T. consumers having load more than 220 KVA and even the meter reading of M/s Balajee Ingots India Private Limited was the job of the Assistant Electrical Engineer. He reiterated his plea, which he had taken in his written statement of defence.

8. The Disciplinary Authority, however, imposed punishment upon the petitioner of compulsory retirement from service of the Board vide resolution issued through Memo No. 501 dated 01.03.1999 (Annexure-1).

9. Learned counsel appearing on behalf of the petitioner, assailing the impugned decision of the erstwhile Board has made following submissions:-

(i) The report of the Enquiry Officer by which the only part of the charge against the petitioner is said to have been proved is perfunctory and vague and it is not even discernible from the report of the Enquiry Officer as to which charge framed against the petitioner, he was referring to;

(ii) The findings of the Enquiry Officer are beyond the scope of the charge framed against

the petitioner inasmuch as there was no charge levelled against the petitioner that one of the consumers had removed electric meter and the petitioner had lacked in his duty in keeping sufficient surveillance over such conduct of the consumer;

(iii) It was highly improper on the part of the Disciplinary Authority to have reached to a finding that first part of the charge against the petitioner also stood proved without giving tentative notes of disagreement with the report of the Enquiry Officer and supplying such notes of disagreement to the petitioner for his comments. It has been contended that issuance of second show cause notice by the Disciplinary Authority without giving an opportunity to the petitioner to deal with the first part of the charge, which was not found proved by the Enquiry Officer, amounts to violation of principles of natural justice, and lastly;

(iv) There has been non-application of mind



by the Disciplinary Authority while imposing punishment of compulsory retirement upon the petitioner, inasmuch, as he completely failed to take note of the stand taken by the petitioner in his reply to the second show cause notice. The decision of the Disciplinary Authority suffers from non-application of mind inasmuch as the said decision of the order/resolution does not reflect consideration of the petitioner's reply to the second show cause notice.

10. Learned counsel appearing on behalf of the respondent-South Bihar Power Distribution Company Limited (Successor of Bihar State Electricity Board), on the other hand, has submitted that there has been no procedural lapse in holding the departmental enquiry up to the stage of submission of the enquiry report. He has contended that the Disciplinary Authority could, on the basis of materials available on the record, come to his own findings as regards the other charge with respect to which no finding was recorded by the Enquiry Officer and the act of the Disciplinary Authority in recording his own findings, as regards, first part of the charge cannot be faulted with. He



has further submitted that the petitioner was given ample opportunity by inviting his comments on the findings arrived at by the Disciplinary Authority, which opportunity, the petitioner had availed. The Disciplinary Authority after considering the petitioner's reply to the second show notice, evidence available on the record of the disciplinary proceeding, came to a particular finding holding the charges against the petitioner to have been proved. He contends that such findings arrived at by the Disciplinary Authority is not required to be interfered with in a proceeding under Article 226 of the Constitution of India as such findings have been arrived at after due application of mind which is evident from the impugned resolution itself.

11. I find force in the submission made on behalf of the petitioner that the report of the Enquiry Officer holding the second part of the charge of the petitioner to have been proved is completely perfunctory. There is absolutely no discussion in the enquiry report of the evidence/materials on the basis of which he arrived at the finding. Learned counsel for the petitioner appears to be right in his submission that the Enquiry Officer has gone beyond the charge levelled against the petitioner. As has been noted



above, the charge related to illegal tapping of electricity by bypassing the meter because of the distance of the electric meter and the premises. A third story has been developed in the report of the Enquiry Officer that the petitioner was not vigilant as the consumer had removed the meter. The plea that the Disciplinary Authority completely failed to consider the petitioner's stand taken in his written statement of defence, written notes of argument submitted by him, in the departmental proceeding as well as his reply to the second show cause notice to me appears to be correct as no consideration is reflected from the impugned decision of the Board.

12. In view of the discussion as above, I find that this is a fit case where the Court should interfere with the impugned resolution dated 01.03.1999, issued under the signature of Joint Secretary of erstwhile Bihar State Electricity Board, Patna, imposing punishment of compulsory retirement from service upon the petitioner. The same is, accordingly, quashed. In my opinion, the report of the Enquiry Officer being perfunctory and vague as also dealing with certain facts which did not form part of the charge, also needs to set aside and is, accordingly, set aside.



13. The matter is remitted back to the Disciplinary Authority, who will be required to come to his own finding on the basis of the evidence and documents/materials available on the record of the departmental enquiry. He will be obliged to deal with the petitioner's written statement of defence and written notes of arguments submitted in course of the enquiry. The findings to be arrived at by the Disciplinary Authority in the light of the judgment of this Court, must be speaking and must show application of mind on all points raised by the petitioner in his written statement of defence as well as written notes of argument submitted by him before the Enquiry Officer.

14. If the findings of the Disciplinary Authority are adverse, the petitioner shall be given a reasonable opportunity to comment upon such findings and the Disciplinary Authority, upon consideration of such comments only will come to his final finding for the purpose of passing any order in this regard.

15. The entire exercise, in terms of the present judgment of this Court, must be concluded within a period of six months from the date of receipt/production of a copy of this judgment, failing which, the respondent-South Bihar

Power Distribution Company Limited will be required to pay to the petitioner, who, as submitted, has already attained the age of superannuation, the entire salary and allowances within one month thereafter, for the period during which he remained out of service, because of the operation of the order of imposition of punishment of compulsory retirement. In case, the payments are not made to the petitioner within the stipulated period, the amount will earn an interest @ 8% per annum thereafter.

16. The application is, accordingly, allowed with a cost, which is assessed as Rs. 2,000/- (Rupees Two Thousand).

(Chakradhari Sharan Singh, J)

Praveen-II/-

U			
---	--	--	--