

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19282 of 2010

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Sitaram Paswan S/o Late Munshi Paswan, R/o Village- Sokhara, P.S.- Barauni
Alamganj, Distt.- Begusarai.

.... Petitioner/s

Versus

1. The Principal Secretary-cum-Chairman of Bihar Industrial Area Development Authority Industries Department, New Secretariat Building, Second Floor, Bailey Road, Patna
2. The Bihar Industrial Area Development Authority through its Managing Director, Udyog Bhawan, East Gandhi Maidan, Patna-800004
3. The Managing Director, Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna-800004
4. The Secretary, Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna-800004
5. The Executive Director, Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna-800004.

... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prashant Sinha, Adv.
Mr. Ranjan Kumar Singh, Adv.
Mr. Kumar Givindra
Gaurav, Adv.

For the Respondent/s : Mr. Lalit Kishore, Sr. Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 30-01-2015

Heard learned counsel for the petitioner and learned
counsel for the BIADA.

In the present case, the petitioner is challenging the
order dated 12th February 2008 by which the petitioner has been
dismissed from service on four charges which has been mentioned in
the letter which is Annexure-1 to the writ application.

It appears from the record that three charge sheets

were issued to the petitioner vide letter dated 23rd July 2007, 14th November 2007 and 21st December 2007.

In charge No. 1 it has been alleged that the petitioner remained absent on 20/04/2007 and 21/07/2007 thereby specific direction for presence was disobeyed. In pursuance thereof, Office Order vide Memo No. 721 dated 21st April 2004 was issued giving him direction to file his explanation within three days but he did not respond, for that, again Memo No. 780 dated 25th April 2007 was issued in which it has been mentioned that why he should not be dismissed for the major misconduct.

In second charge which relates to absence from duty from 8th December 2005 to 10th December 2005, the petitioner marked his presence but was found absent, for that, letter No. 89 dated 21st December 2005 and letter No. 150 dated 30th January 2006 were issued whereby explanation was called from the petitioner for his indiscipline and negligence.

Third charge which relates to absence from duty from 29th July 2006 to 3rd August 2006, for that, a show cause notice was issued vide letter No. 1831 dated 17th October 2006.

Charge No. 4 which relates to absence from duty on 17th January 2007, for that, pay of one day was stopped.

In charge sheet dated 14th November 2007 following

charges have been mentioned:-

Charge No. 1 is that the petitioner was deputed to bring a nominated officer of Personnel Department as a Member of the Interview Board but he failed to discharge his duty, charge No. 2 with respect to letter dated 14th November 2007 in which the similar type of allegation has been made against the petitioner that he had not brought the Member of the Board which caused hindrance in conducting the Interview. Third charge is that the petitioner had not reported to the Messors Jaidka Motors Company Limited for repair of BR-1R/-1461 and all the acts constitute the major misconduct requires disciplinary action against him. Third charge sheet dated 21st December 2007 is with respect to purchase of battery for Car No. BR-1R-1461 making allegation that the petitioner had not kept the battery in a proper manner during the warranty period, led to its discharge, for that, the price of battery was directed to be recovered from his salary.

All three charge sheets became the subject of the departmental proceeding.

The petitioner did not file reply to the first charge sheet but filed reply with respect to second and third charge sheet. With respect to charge sheet No. 3, he stated, he had not purchased battery but was purchased by other person, when the car started giving



trouble then he informed to the authority about the condition of new battery and so much so, the car remained with him for only five months. The petitioner also gave reply to the 2nd charge sheet explained that he was with the car at office and also explained he had worked at the instruction of P.A.

From the record it appears that the Enquiry Officer had not fixed any date for holding an enquiry nor gave any opportunity to explain his stand but merely talked about filing the explanation him. After receipt of explanation, Enquiry Officer did not conduct regular departmental enquiry but considered the explanation in a mechanical manner but did not give reasons for cause of his non-satisfaction about his explanation, so much so that when a persons is visited with the highest punishment in pursuance of departmental enquiry, it is always duty of the Enquiry Officer to hold a full fledged enquiry but the records show that the Enquiry Officer has only dealt with his explanation in a very casual and mechanical manner, not to satisfaction to this Court and so much so that it was duty of the Enquiry Officer not only to conduct the enquiry but it should also appear that departmental enquiry has been conducted fairly and properly.

The counsel for the BIADA has submitted that there is no explanation with regard to Charge Nos. 1, 2, 3 and 4 of charge



sheet No. 1 and, as such, it should be presumed that he had nothing to say about charge Nos. 1 to 4 but the punishment of dismissal itself appears to be very harsh, shocking and disproportionate, as no prudent person would approve the manner, the petitioner has been dealt with in the departmental proceeding and, that too, the Appellate Authority has also considered and applied his mind and facts and circumstances of the case did not consider his explanation in right perspective by the Disciplinary Authority as well as the Appellate Authority. The charge sheet No.-1 itself shows that Disciplinary Authority had already made up his mind to pass major punishment.

The counsel for the BIADA has relied on judgment reported in (2008) 11 SCC 502 but does not apply to the facts and circumstances of the case. In this case, departmental enquiry was not conducted legally and properly so much so punishment is shockingly disproportionate to the gravity of charge.

In this view of the matter, order of punishment dated 12th April 2008 and order of Appellate Authority dated 23rd December 2009 passed by the Chairman, BIADA are hereby quashed.

The petitioner is entitled to 75% back wages, should be paid all the retiral benefit if already not paid without unnecessary delay preferably within a period of six months from the date of receipt/production of the copy of this order.

Accordingly, this petition is allowed.

(Shivaji Pandey, J)

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