

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2304 of 2015

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Jitendra Kumar son of Yogeshwar Chaudhary Resident of Mohalla -
Salempur, P.O. + Police Station - Sosaray, District - Nalanda.

.... Petitioner/s

Versus

1. North Bihar State Power Holding Company Ltd. through its Chairman Vidyut Bhawan, Bailey Road, Patna.
2. Chairman cum Chief Managing Director, North Bihar State Power Holding Company Limited, Vidyut Bhawan, Bailey Road, Patna.
3. Managing Director, North Bihar Power Distribution Company Limited Vidyut Bhawan, Bailey Road, Patna.
4. The Enquiring Officer then posted as Chief Engineer Project Vidyut Bhawan Bailey Road, Patna.
5. Deputy General Manager (Human Resources) North Bihar Power Distribution Company Limited Bailey Road, Patna.
6. Electrical Executive Engineer, Electric Supply Division, North Bihar Power Distribution Company Limited Supaul.
7. Electrical Superintending Engineer, Electric Supply Circle, North Bihar Power Distribution Company Limited, Saharsa.
8. Officer on Special Duty Human Resources Department North Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bakshi S.R.P. Sinha, Sr. Adv with Mr.
Anand Kishore Choudhary, Adv

For the Respondent/s : Mr. Vinay Kirti Singh, Adv

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

2 06-02-2015 Heard learned counsel for the parties.

2. Assailing the impugned order dated 01.12.2014
of punishment passed by the North Bihar Power
Distribution Company Limited (hereinafter referred to as
the Company), Mr. Bakshi S.R.P. Sinha, learned senior
counsel appearing on behalf of the petitioner has



straightway proceeded that the petitioner was neither given any opportunity to participate in the inquiry nor after the alleged inquiry was concluded even the copy of the inquiry report was given to him and therefore, the order of punishment of stopping two increments with cumulative effect being major punishment in addition to withholding of the salary for the period of suspension either in fact or in law.

3. Having regard to the aforementioned issue, this Court had directed learned counsel for the respondents to produce original records. Today, when the original records, in form of file, has been produced, the same itself would go to show that submission of Mr. Sinha has to be accepted for more than on reason.

4. First of all, from the perusal of the file of departmental proceeding, it would transpire that after the memo of charge was received by the inquiry officer on 06.08.2014, he had directed the petitioner to file his show cause reply as has been recorded in his order dated



06.08.2014 followed by two another orders dated 11.09.2013 and 23.08.2014. The record of the departmental proceeding bears two letters sent to the petitioner which has been addressed describing him to be working as Assistant Electrical Engineer, Electric Supply Sub-Division, Supaul vide letter no. 237 dated 06.08.2013 and letter no. 277 dated 23.08.2013, but it does not appear that these letters were sent by the registered post.

5. Let it be noted that by an order dated 13.02.2013, the petitioner while working as Assistant Electrical Engineer, Electric Supply Sub-Division, Supaul had already been suspended and his headquarter was fixed in Electric Supply Sub-Division, Motihari, but surprisingly the inquiry officer was even not aware of it and he in fact kept on sending notices to the petitioner at his official address at Supaul showing him to be working as Assistant Electrical Engineer, Electric Supply Sub-Division, Supaul. In such a situation, the submission of



learned counsel for the respondent-Company that the petitioner was also given third notice dated 11.09.2013, informing him that if he did not appear in the departmental proceeding, the same would be concluded in his absence will hardly improve the case of the Respondents because even this notice was sent to him on the address of Electric Supply Sub-Division, Supaul.

6. This infact is the height of carelessness on the part of Mr. D.N. Tiwari, the Enquiry Officer. Be that it may, there would be atleast no difficulty in holding that the petitioner was not given any opportunity to file his show cause reply and that even the memo of charge was also not served upon him.

7. This however is not the end of the matter. The enquiry officer had actually submitted the inquiry report holding the charges to be proved even when he had no evidence before him for proving the charge. In the inquiry report the inquiry officer has merely recorded that despite opportunity given to the Presenting Officer



and the delinquent Authority, no one had turned up. Two cited witnesses namely, Dudheshwar Prasad, Electrical Executive Engineer, Electric Supply Sub-Division, Supaul and Ajay Kumar Sah, Special Work Officer, North Bihar Power Distribution Company Limited, Patna, were also not examined before him and even the report of Ajay Kumar Sah, which was solitary documentary evidence was not placed much less proved by any witness.

8. In that view of the matter, this Court will have no difficulty in holding that even no departmental proceeding was conducted and the one line observation that since the petitioner had not appeared or had not participated, the charges will be deemed to have been proved, is an example of non application of mind of Mr. D.N. Tiwari, the Enquiry Officer who does seem to be aware of even the elementary rules of departmental proceeding. This Court infact is not able to understand as to how such irresponsible officer like Mr. D.N. Tiwari

was made inquiry officer.



9. As a matter of fact, even this perfunctory inquiry report after being received by the disciplinary authority was never sent to the petitioner for his comment/reaction as is the requirement of law laid down by the Apex Court in the case of **Managing Director, ECIL, Hyderabad and Ors vs B. Karunakar and Ors, reported in 1993(4) SCC 727**. Let it be noted that that this aspect was not considered by the disciplinary authority and the petitioner was inflicted major punishment in the form of stoppage of two increments with cumulative effect. The petitioner before imposition of major punishment was definitely required to be given copy of the inquiry report. This infact would be another fatal blow to the impugned order of punishment of the petitioner for which the authorities of the Company would have to thank their own stars, inasmuch as, it was expected that after the Bihar State Electricity Board became the Company, its officials had remained the



same who were supposed to know the basic rules of holding departmental proceeding and also inflicting the manner of major punishment.

10. This Court, in fact is constrained to hold that even the Managing Director of the Company who had passed the impugned order on 17.11.2014, for inflicting punishment of withholding two increments with cumulative effect had not carefully examined as to whether the departmental proceeding was conducted in a fair and objective manner and/or mandatory requirement of service of the inquiry report to the petitioner was followed.

11. From the original file, this Court would also find that when the matter was reconsidered only for the purposes of treating the period of suspension, Mr. Balamurgan in his note probably to the Managing Director had himself observed that Mr. D.N. Tiwari, Enquiry officer had been disposing of the departmental proceeding in a very routine manner without holding any



inquiry. In the considered opinion of this Court, mere issuance of show cause notice to D.N. Tiwari, the inquiry officer, would therefore not be sufficient as there is nothing in the file to show as to whether any action was ultimately taken against Mr. D.N. Tiwari, the inquiry officer.

12. In that view of the matter while this Court would quash the order of punishment against the petitioner and remit the matter back to the concerned competent authority of the Company for holding the departmental proceeding afresh against the petitioner, de novo, it also must indicate that henceforth, if it is found by this Court that the departmental inquiry is conducted in the manner in which it was done in the present case, this Court will be constrained to also pass order for taking punitive action against the inquiry officer and disciplinary authority for abusing the process of law and coercing the employee to indulge in unnecessary litigation.

13. With the aforementioned observation and direction, this writ application is disposed of.

(Mihir Kumar Jha, J)

