

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.14231 of 2007**

**With**

**I.A. No.8195 of 2013**

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Kumari Savitri Chouhan, wife of Late Lok Nath Chouhan (the original petitioner),  
presently residing at Kalyani Cooperative Colony, near Satya Gas Godown,  
Anisabad, Patna-800002.

.... .... Petitioner/s

Versus

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

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s

: Mr. Rajiv Nayan Singh  
Mr. Shola Sandhwar

For the Respondent-NBPD Co.Ltd

: Mr. Vinay Kirti Singh, Addl. SC,  
Mr. Vijay Kumar Verma

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**CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN**

**ORAL JUDGMENT**

**Date: 20-07-2016**

**Re: I. A. No.-8195 of 2013:**

The petitioner Loknath Chauhan has deceased during the pendency of the writ petition and his wife seeks a substitution to pursue the matter.

Having heard learned counsel for the parties, the prayer is allowed. Let the name of the petitioner be substituted by his wife, the details of whom is mentioned in the Interlocutory Application.

This Interlocutory Application No.8195 of 2013 is allowed.

**Re: CWJC No.14231 of 2007**

Heard Mr. Rajiv Nayan Singh, learned counsel appearing for the petitioner and Mr. Vijay Kumar Verma, learned counsel

appearing for the North Bihar Power Distribution Company which has succeeded the erstwhile Bihar State Electricity Board and its authorities.

The original petitioner has since deceased and has been substituted by his wife vide order passed today in I.A. No.8195 of 2013.

The petitioner is aggrieved by the order dated 12.1.2007 passed by the Joint Secretary of the erstwhile Bihar State Electricity Board, whereby the original petitioner was imposed a penalty of stoppage of two annual increments with cumulative effect and restricting his pay and allowances to the subsistence allowance drawn by him during his period of suspension i.e. from 31.12.2000 to 18.7.2001 which order of penalty impugned at Annexure-10 has been affirmed by the Appellate Authority who vide order bearing Memo No.2020 dated 7.8.2007 impugned at Annexure-1 has modified the penalty to award the punishment of stoppage of one increment with cumulative effect while upholding the order of the disciplinary authority in so far as he has restricted the pay and allowances for the period 31.12.2000 to 18.7.2001 to the subsistence allowance drawn by the deceased petitioner.

The facts lie in a very narrow compass. The original petitioner who held the post of a Meter Reader was charged with the following allegations:

- a) Wrong meter reading; and
- b) Failure to report regarding absence of terminal seal cover attached to the meter of a consumer Lalit Kumar Nirala, thus extending unlawful gains to him.

Vide letter bearing Memo No.2117 dated 31.10.2003 a charge memo was served upon the original petitioner enclosing an inspection report dated 12.5.2000 and the names of the two personnels who stood witness to the enquiry. On the allegation aforementioned the original petitioner was suspended on 30.12.2000 which order of suspension was revoked on 18.7.2001. The petitioner denied the allegations while filing his reply present at Annexure-4. The Enquiry Officer submitted his enquiry report present at Annexure-8 and while holding that charge memo was vague and exonerating the petitioner on the allegation of wrong meter reading, the enquiry officer has upheld the allegation regarding failure of the original petitioner to report in respect of the absence of seal cover on the meter of Lalit Kumar Nirala. The petitioner on submission of the enquiry report was served with a show cause against the proposed penalty vide office order dated 29.6.2006 present at Annexure-9 which proposed the stoppage of two annual increments with cumulative effect as well as for restricting of pay and allowances to the subsistence allowance drawn by the petitioner during the suspension period and although



the penalty of stoppage and increment with cumulative effect constituted a major penalty but it is stated by Mr. Singh, learned counsel appearing for the petitioner that the procedure so mandated for imposing a major penalty was not followed rather it is mere filing of the show cause that the order of penalty impugned at Annexure-10 was passed by the Joint Secretary and whereby the original petitioner visited with the following penalty:

- (a) Stoppage of two annual increments with cumulative effect; and
- (b) The restriction of pay and allowances for the period 30.12.2000 to 18.7.2001 i.e. the period the subsistence allowance drawn by the original petitioner during the said period.

The original petitioner preferred a statutory appeal against the order of penalty impugned at Annexure-10 and which has been disposed of by the Appellate Authority in modification of the order of penalty and whereby the penalty of stoppage of two annual increments has been modified to read as 'stoppage of one annual increment with cumulative effect' but the restriction of his pay and allowances to the subsistence allowances during the suspension period has been maintained.

Mr. Rajiv Nayan Singh, learned counsel appearing for the petitioner has questioned the order of penalty on the following

grounds:

- (a) The Joint Secretary has discharged twin role of the disciplinary authority as well as the appellate authority;
- (b) Although the Joint Secretary has discharged both the roles but no reasons have been assigned for modification of the penalty on appeal, on the same set of charges.
- (c) The charge-sheet is vague.
- (d) The charges are based on no evidence; and
- (e) The order of penalty is without reasons.

The argument of Mr. Singh has been contested by Mr. Verma, learned counsel appearing for the Bihar State Electricity Board and its authorities to submit that the act of the petitioner has caused revenue loss and thus the penalty imposed is proportionate to the charge.

I have heard learned counsel for the parties and I have perused the records.

The writ petition is fit to be allowed for many a reason. The allegation against the petitioner is of giving a wrong meter reading and failure to report regarding a broken seal cover. The charge memo present at Annexure-2 entirely rests upon an inspection report dated 12.5.2000 with no details. There is complete absence of details as to what incorrect meter reading has the original petitioner given. There is also complete absence of



allegation that the breakage of the seal cover on the meter of consumer Lalit Kumar Nirala led to any erratic functioning of the meter or resulted in pecuniary gain to the consumer while causing pecuniary loss to the Board. In fact except sweeping allegation, there is nothing on record to show as to how the consumer has benefited. The entire allegation is lacking in foundation and which is further confirmed from the fact that no proceeding under section-126 of the Electricity Act, 2003 (hereinafter referred to as 'the Act'), was drawn against the consumer. If the original petitioner was charged with extending unjust gain to the consumer then the issue clearly fell within the purview of section-126 of 'the Act' but obviously since the allegation was not founded on any material evidence, the consumer was never proceeded against.

The enquiry report is well discussed and is on record at Annexure-8 and the Enquiry Officer has rejected the charge of wrong meter reading by stating that there is no evidence to support the charge. In fact the finding of the Enquiry Officer that the charges are not specific, is itself sufficient to quash the entire proceedings for the petitioner cannot be proceeded on a vague charge-sheet. The only allegation which goes against the original petitioner is that he failed to report regarding the broken seal cover. May be, the respondents are correct regarding the failure of the original petitioner to report the breakage, although he has contested

this allegation and has stated that he did report the matter to the authorities concerned. In the contesting circumstances, it is the finding of the Enquiry Officer that there is nothing on record to support the claim of the petitioner on his report regarding the broken sealed cover.

Be that as it may, the fact remains that in absence of any conclusive finding that the broken seal cover on the meter, in any manner did provide unjust gains to the consumer, the lapse on the part of the delinquent, can at best be termed as an irregularity. Law is well settled that every irregularity cannot be termed as misconduct until such time that it accompanies the circumstances which confirms the culpability on the part of the delinquent. Although it is charged that the broken seal cover was not reported by the petitioner to extend unjust gains to the consumer but as I have said that there is no finding on the benefit accrued to the consumer by this failure. Clearly the charge is a conjecture based on no evidence.

My opinion aforementioned is sufficient to conclude that the proceeding is marred with illegalities; the charge-sheet is vague and the allegation is based on no evidence. Even if the allegation against the original petitioner regarding non-reporting is assumed to be correct, in absence of any evidence to prove that the consumer had been benefited from such lapse, I would at best term

the lapse as an irregularity not coming within the confines of the term 'misconduct'.

The illegality in the proceedings does not stop here rather the order imposing penalty at Annexure-10 is not reasoned and does not reflect any application of mind as to why the Joint Secretary discharging the duty of disciplinary authority was persuaded to impose penalty even when the allegation complained of did not constitute misconduct. The order has visited the original petitioner with a major penalty and the disciplinary authority's opinion is perfunctory and non-descriptive. The enthusiasm of the Joint Secretary is such that even though he has already discharged the duty of the disciplinary authority while imposing penalty but he goes ahead to also usurp the power of the appellate authority to modify his own order on same set of facts and the reasons are absent.

In short the proceeding is a clear reflection of an abuse of jurisdiction by the authorities and the original petitioner has been unnecessarily subjected to a completely unwarranted proceedings which has taken its toll for the original petitioner has deceased in the meanwhile. But for the fact that the order(s) arise from a disciplinary proceedings, I am tempted to impose heavy cost on the respondent-authorities because the proceeding is based on a vague charge-sheet and in absence of material evidence. A clear case of

unnecessary harassment to the deceased employee.

For the reasons aforementioned the entire proceedings including the charge memo impugned at Annexure-2, the order of the disciplinary authority impugned at Annexure-10 and the order of the Appellate Authority impugned at Annexure-1 cannot be upheld and are accordingly set aside.

That the erstwhile Bihar State Electricity Board is now succeeded and replaced by the North Bihar Power Distribution Company, the authority concerned would ensure that the consequences of the present order follows and the substituted petitioner is provided with consequential benefits.

Since the harassment has continued for almost 9 years hence the payment of the lawful dues be made to the petitioner herein within a period of 3 months from the date of receipt/ production of a copy of this order.

The writ petition is allowed.

**(Jyoti Saran, J.)**

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