

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 16785 of 2009

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Dasrath Prasad Singh, aged about – 63 years Assistant Store Keeper (Retired)
S/O Late Vaidya Prasad Singh, R/O Photo Bhawan, Tiranga Chowk, Gangjala,
At+P.O+P.S.+Distt- Saharsa.

.... Petitioner

Versus

1. The Bihar State Electricity Board through its Chairman Vidyut Bhawan, Bailey Road, Patna
2. The Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna
3. The Director of Personnel, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna
4. The Joint Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna
5. The Electrical Superintending Engineer (Stores) Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Ramnandan Kumar Sinha, Adv.
Mr. Nilesh Kumar Nirala, Adv.

For the Respondent/s : Mrs. Namrata Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL JUDGMENT
Date: 01-05-2017

Heard Sri R. K. Sinha, learned counsel for the petitioner and Smt. Namrata Mishra, learned counsel appearing on behalf of all the respondents/Bihar State Electricity Board (hereinafter referred to as 'Board').

2. The petitioner, who superannuated with effect from 31-03-2005, has approached this Court under Article 226 of the Constitution of India, with a prayer to quash an order contained in Memo No. 749 dated 28-08-2008 passed by respondent no. 4/Joint



Secretary of the Board. By the said order, the petitioner has been informed regarding reduction of 1% pension, as punishment, in respect of departmental proceeding, which was initiated against the petitioner by Office Order no. 2207 dated 01-05-2001.

3. It is case of the petitioner that he, alongwith others, was proceeded departmentally by order dated 01-05-2005, on an allegation of irregularities found during physical verification of the *godown*. Thereafter, charges were served and regular departmental proceeding was initiated, in which, petitioner participated and finally, after examining the materials available on record, the enquiry officer submitted its report on 30-04-2003 i.e. **Annexure - 5** to the writ petition. The enquiry officer was satisfied that no charge was proved against the petitioner & others and thereafter, petitioner was exonerated by the enquiry officer. Even without taking any decision on the basis of enquiry report, the petitioner was allowed to superannuate with effect from 31-03-2005. After more than about three years from the date of retirement of the petitioner, the petitioner was served with second show cause notice, vide Office Order No. 2554 dated 25-07-2008. Ofcourse, in the second show cause notice, the disciplinary authority tried to justify regarding the point for differing with the enquiry report, but in the second show cause notice, as per learned counsel for the petitioner, the disciplinary authority had not given any detail as to on what point the disciplinary authority had



differed with the enquiry report. Thereafter, the petitioner filed reply to the second show cause notice by taking specific stand that during the period in question, the petitioner was not incharge of the *godown*.

4. However, vide **Annexure – 7** to the writ petition, it has been argued by learned counsel for the petitioner that though petitioner has given detail reply to show that he, at the relevant time, was not incharge of the godown, the disciplinary authority by order contained in **Annexure – 1** has passed punishment order reducing pension of the petitioner to the extent of 1 %. According to learned counsel for the petitioner, the order impugned is required to be set aside on two counts. Firstly, it has been argued that though the enquiry officer, after exonerating the petitioner, had submitted its report dated 30-04-2003, the disciplinary authority did not take any step on the report of the enquiry officer and petitioner was allowed to superannuate in the year 2005 and even thereafter, for about three years, no step was taken by the disciplinary authority. Thereafter, the petitioner had approached this Court by filing a writ petition, vide C.W.J.C. No. 1635 of 2006, which was heard alongwith other writ petitions and disposed of on 10-09-2009. He submits that only due to the reason that petitioner had approached this Court for retiral dues, in vindictive manner, the disciplinary authority has issued **Annexure – 1** to the writ petition. Secondly, it has further been argued that though the disciplinary authority in its second show cause notice had tried to



justify the reason for differing with the enquiry report, in the second show cause notice, nothing has been indicated as to on which point of the enquiry report, the disciplinary authority had differed. Only few line has been mentioned in the second show cause notice to justify his opinion regarding his difference with the enquiry report.

5. Smt. Namrata Mishra, learned counsel for the respondent/Board, supporting the impugned order, submits that there is no procedural lapse in passing the impugned order. She has argued that while exercising power of judicial review, this Court is only required to examine as to whether in decision taking process, any illegality has been committed or not? She submits that *prima facie*, there is no illegality in decision taking process and as such, this Court may refrain from interfering with the impugned order.

6. Besides hearing learned counsel for the parties, I have also perused the materials available on record. Fact remains that the petitioner alongwith others was proceeded departmentally, which was initiated in the year 2001. The enquiry was thoroughly conducted and after about two years in the year 2003, the conducting officer gave clean-chit to the petitioner and exonerated the petitioner. He submitted the enquiry report in the year 2003. Once the disciplinary authority was proposing to differ with the enquiry report, there was no occasion to sit tight over the matter. The enquiry report was submitted in the year 2003 and second show cause notice was issued in the year



2008.

7. Ofcourse, in this case, a counter affidavit has been filed, but nothing has been explained regarding the delay, which has occurred in taking the decision. However, fact remains that in the year 2006 itself, the petitioner had approached this Court for retiral dues by filing a writ petition, which was disposed of on 10-09-2009. Petitioner's writ petition i.e. C.W.J.C. No. 1635 of 2006, which was heard alongwith number of writ petitions, was disposed of vide **Annexure - 9** to the writ petition. It appears that only after filing of the writ petition by the petitioner, the disciplinary authority, in a vindictive manner, had taken action against the petitioner and this was the reason that though the petitioner was exonerated in the year 2003 by the enquiry officer, in the year 2008, second show cause notice was issued, which is **Annexure - 6** to the writ petition. The second show cause notice was issued on 25-07-2008.

8. On perusal of the second show cause notice, the Court is satisfied that the disciplinary authority has not indicated as to on which point of the report of the enquiry officer, the disciplinary authority was proposing to differ. In a departmental proceeding, once the disciplinary authority proposes to issue second show cause notice, differing with the enquiry report, it is mandatory on his part to specifically mention as to on which part of the enquiry report he is differing. In the present second show cause notice, nothing has been



indicated. It appears that only formality was done to justify about second show cause notice. Moreover, in the counter affidavit, nothing has been indicated about the reason for taking such decision after about five years from the date of submission of enquiry report.

9. In view of facts and circumstances, the Court is of the opinion that order impugned is not sustainable in the eye of law. Accordingly, the order impugned i.e. order contained in Memo No. 749 dated 28-08-2008 passed by respondent no. 4 i.e. Joint Secretary, Bihar State Electricity Board, Patna is, hereby, set aside.

10. The writ petition stands allowed with all consequential benefits.

(Rakesh Kumar, J.)

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CAV DATE	N/A
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