

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.557 of 2017

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Akhilesh Prasad aged about 41 years, S/o Late Shivanand Lal Das, resident of Village- Jagatpur, P.O.- Barail, P.S.- Supaul, District- Supaul- 852113.

.... Petitioner/s

Versus

1. The Bihar State Power (Holding) Company Limited, through its Deputy General Manager (Human Resource/Administration), Vidyut Bhawan, Bailey Road, Patna.
2. The Chairman -cum- Managing Director, Bihar State Power (Holding) Company Ltd. Vidyut Bhawan, Bailey Road, Patna.
3. The Managing Director, North Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna.
4. The Managing Director, Bihar State Power Transmission Company Ltd., Vidyut Bhawan, Bailey Road, Patna.
5. The General Manager (Human Resource/Administration), Bihar State Power (Holding) Company Ltd., Vidyut Bhawan, Bailey Road, Patna.
6. The General Manager (H.R/Adm.), North Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna.

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 4992 of 2016

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Chandrabhushan Choudhary, aged about 45 years, s/o Late Ram Nandan Choudhary, resident of Gandhi colony, Lane No.-3, Pakharia Pir P.O.- Ramana, P.S.- Sadar, District- Muzaffarpur- 842002.

.... Petitioner/s

Versus

1. Bihar State Power (Holding) Company Limited, through its Deputy General Manager (HR/Adm.) Vidyut Bhawan, Bailey Road, Patna.
2. Chairman -cum- Managing Director, Bihar State Power (Holding) Company Ltd. Vidyut Bhawan, Bailey Road, Patna.
3. Managing Director, North Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna.
4. The General Manager (HR/Adm.) Bihar State Power (Holding) Company Ltd. Vidyut Bhawan, Bailey Road, Patna.
5. The General Manager (HR/Adm.), North Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna.

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 5949 of 2016

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Mokhtar Ahmad Sakib, aged about 45 years, S/o Late Jalal Ahmad, resident of Village + Post- Mohamadpur Koari, via- Waini, P.S.- Pusa Road, District- Samastipur- 848131 (Bihar).

.... Petitioner/s

Versus



- 1. Bihar State Power (Holding) Company Limited, through its Deputy General Manager (HR/Adm.), Vidyut Bhawan, Bailey Road, Patna.
- 2. Chairman -cum- Managing Director, Bihar State Power (Holding) Company Ltd. Vidyut Bhawan, Bailey Road, Patna.
- 3. Managing Director, North Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna.
- 4. The General Manager (HR/Adm.), Bihar State Power (Holding) Company Ltd. Vidyut Bhawan, Bailey Road, Patna.
- 5. The General Manager (HR/Adm.), North Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna.

.... Respondent/s

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Appearance :

(In CWJC No.557 of 2017)

For the Petitioner/s : Mr. Chittaranjan Sinha, Sr. Adv. with
Mr. Mahesh Kumar, Adv.
For the Respondent/s : Mr. Vinay Kirti Singh, Sr. Adv. with
Mr. Vijay Kumar Verma, Adv.
Mr. Akhileshwar Singh, Adv.

(In CWJC No.4992 of 2016)

For the Petitioner/s : Mr. Chittaranjan Sinha, Sr. Adv. with
Mr. Mahesh Kumar, Adv.
For the Respondent/s : Mr. Vinay Kirti Singh, Sr. Adv. with
Mr. Vijay Kumar Verma, Adv.
Mr. Akhileshwar Singh, Adv.

(In CWJC No.5949 of 2016)

For the Petitioner/s : Mr. Chittaranjan Sinha, Sr. Adv. with
Mr. Mahesh Kumar, Adv.
For the Respondent/s : Mr. Vinay Kirti Singh, Sr. Adv. with
Mr. Vijay Kumar Verma, Adv.
Mr. Akhileshwar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

C.A.V. JUDGMENT

Date: 20-06-2017

Since the subject matter of the disciplinary proceedings initiated against the three petitioners herein is the same albeit the charges, a bit at variance, that these writ petitions have been heard analogous and with the consent of parties are being disposed of at the stage of admission itself by this judgment.

Mr. Chittaranjan Sinha, learned senior counsel has appeared on behalf of the petitioners along with Mr. Mahesh Kumar,



the Advocate on record, while the respondent Power (Holding) Company is represented through Mr. Vinay Kirti Singh, learned senior counsel who appears along with Mr. Vijay Kumar Verma, Advocate and Mr. Akhileshwar Singh, Advocate.

Facts of the case briefly stated is that these petitioners were proceeded against for causing destruction with the Board's property allegedly with an intent to defalcate.

While the petitioner Akhilesh Prasad initially appointed as Store Assistant vide order bearing Memo No.495 dated 25.07.2006, was deputed as Store Verifier vide Memo No.1847 dated 16.12.2011 present at Annexure-2 at the Central Store, Muzaffarpur, the petitioner Chandrabhushan Choudhary having been appointed as a Store Assistant vide order bearing No.423 dated 14.8.2001 was posted at the Electrical Central Stores, Muzaffarpur at the relevant time. The petitioner Mokhtar Ahmad Sakib was appointed as a Store Assistant vide order bearing No.198 dated 26.6.2004 and at the relevant time was also posted at the Central Store, Muzaffarpur. It is during the posting of these petitioners that the alleged irregularities were detected in the store and which led to drawing of disciplinary proceedings in question in which each of the three petitioners were served with the charge-sheet.

The petitioner Akhilesh Prasad was served with charge



memo vide order bearing Memo No.527 dated 14.6.2012 impugned at Annexure-6 to CWJC No.557 of 2017 and the allegation made against the petitioner was that during the course of verification of 28 kilometers of AAAC Squirrel Conductor wire, he colluded with Store Assistant in cutting 16 kilometers of wire weighing 970 kilograms in small pieces causing financial loss to the Board. The allegation is that during the course of handing over and taking over of the charge of Store Assistants, such illegalities took place in which the petitioner as a Store Verifier was also a party.

Similar charge-sheet was also drawn against the other two petitioners holding the post of Store Assistant vide order bearing Memo No.532 dated 14.6.2012 impugned at Annexure 4 to CWJC No.4992 of 2016 and the order bearing Memo No.528 dated 14.6.2012 impugned at Annexure 4 to CWJC No.5949 of 2016 with two additional charges being included regarding 24 excess materials found in the store in between the period 6.9.2010 and 4.11.2010 and some excess/short materials found during the verification work for the period 28.11.2011 to 7.1.2012.

A formal enquiry was held in each of the cases and in which evidence was led to support the allegation. The Enquiry Officer while upholding the allegation against the petitioners regarding cutting of 16 kilometers of AAAC Squirrel Conductor



wires weighing 970 kilograms into small pieces with an intent to defalcate and cause financial loss to the Board, also upheld the two additional charges levelled against the petitioner Chandrabhushan Choudhary and Mokhtar Ahmad Sakib as regarding excess material found during the stock verification period in between 6.9.2010 and 4.11.2010 and excess/short materials found during the stock verification work for the period 28.11.2011 to 7.1.2012. The petitioners were individually served with second show cause notice to which they replied rebutting all the allegations as based on no evidence but have been served with the dismissal orders passed by the Disciplinary Authority which has been affirmed by the Appellate Authority. Feeling aggrieved they are before this Court.

The petitioner Akhilesh Prasad accordingly has prayed for quashing of the order bearing Memo No.1481 dated 3.12.2014 impugned at Annexure 12 to CWJC No.557 of 2017, whereby he has been dismissed from service as affirmed by the appellate authority vide order impugned at Annexure 16.

The petitioner Chandrabhushan Choudhary prays for issuance of a writ in the nature of certiorari for quashing the order bearing Memo No.1482 dated 3.12.2014 passed by the General Manager (Human Resource/Administration) impugned at Annexure-14, whereby he has been dismissed from service. He also questions



the appellate order affirming the dismissal order impugned at Annexure-17 to CWJC No.4992 of 2016.

Similarly the petitioner Mokhtar Ahmad Sakib prays for quashing of the order bearing Memo No.1483 dated 3.12.2014 impugned at Annexure-14 to CWJC No.5949 of 2016 whereby he has been dismissed from service and which order has been affirmed by the Appellate Authority vide order impugned at Annexure-17 to the said writ petition.

Since the foundation laid for the dismissal order is common to the petitioners hence for the sake of convenience I shall be referring to the pleadings and Annexures made in CWJC No.557 of 2017 unless clarified with specific reference to the other writ petitions.

As I have already indicated that while the petitioner Akhilesh Prasad holding the post of Store verifier faced a single charge of causing financial loss to the Board, the other two petitioners holding the post of Store Assistant faced two additional charges as regarding the irregularities in the stock position.

While the substance of argument advanced by Mr. Sinha, learned senior counsel appearing on behalf of the petitioners is that the charge of causing financial loss to the Board even if construed as misconduct under rule 29-B (1) of the Standing Order framed by the



erstwhile Bihar State Electricity Board, Patna which has since been reorganized to form the respondent Company, but the foundation to support the allegation is lacking because no evidence was led by the department to demonstrate either that the wires were cut by these petitioners or that they had an intent to defalcate the same. It is submitted that although the allegation made against these petitioners is of causing financial loss to the Board but neither the loss has been quantified nor the allegation of loss has been substantiated with evidence.

It is also the argument of Mr. Sinha that whereas the job of Store Verifier is only to verify the stock position available in the store, the maintenance of the material is the job of the Store Assistants but in the present case even the two petitioners holding the post of Store Assistant cannot be held responsible in absence of any evidence confirming that the cutting of wires was carried out by these petitioners. It is stated that except that these petitioners were associated with store by virtue of their position, there is no other material to connect them with the alleged charge. He further submits that the 3-Member Committee constituted to report on the allegation whose report is present at Annexure-5 as well as the enquiry report submitted by the Enquiry Officer present at Annexure-8 discusses the evidence available and mentions that during the course of stock



verification these wires were being cut and being packed in small-small bundles. He submits that there is no evidence of actual participation and neither the Disciplinary Authority nor the Appellate Authority has bothered to deal with the defence led by the petitioners nor have they discussed with the materials supporting the charge. With reference to the second show cause he submits that it is premeditated because the Disciplinary Authority has already made up his mind on the punishment. With reference to the stock verification sheet present at Annexure 3 and Annexure-4 series he submits that the very fact that the stock records clearly mentions the status of the material in question and also mentions that it was cut in small pieces, the charge against the petitioner Akhilesh Prasad becomes ill-founded because his job was only to record the status of the material available in the store. It is further submitted that the evidence recorded in the enquiry report at Annexures 5 and 8 would show that the wires were being packed in small bundles in the process of handing over and taking over of the charge and thus the allegation of defalcation as well as of causing financial loss to the Board becomes ill-founded in absence of material supporting the charge.

Mr. Sinha while contesting the findings on the additional charges facing the petitioners Chandrabhushan Choudhary and



Mokhtar Ahmad Sakib has argued that a plain reading of the enquiry report(s) would show that the opinion of the Enquiry Officer is mechanical and in absence of evidence led to support the charge. He further submits that the order(s) put to challenge primarily holds these petitioners guilty of destroying the electrical wires.

The argument of Mr. Sinha has been contested by Mr. Vinay Kirti Singh, learned senior counsel appearing for the respondent Power Holding Company to resist the three writ petitions. He submits that the allegations are very serious and there was clear attempt by these petitioners in collusion to cause financial loss to the Board. It is submitted that the wires in question have been cut in small pieces with an intent to defalcate it but somehow the misconduct was detected and the petitioners could not succeed in their game plan. It is submitted that nonetheless and in view of the stipulation present at Clause 29-B(1) of the Standing Order, there is sufficient material to uphold the charge of causing financial loss to the Board and which alone is sufficient for inviting a penalty for dismissal. In reference to a judgment reported in **1972 LIC page 627 (SC) (Union of India vs. Sardar Bahadur)** he submits that the principles governing the disciplinary proceedings stands well discussed and the allegation is to be tested on the preponderance of probability which stands fully satisfied in the case of these



petitioners. He submits that the 3-Member Committee report present at Annexure-5 very well informs that there was no requirement for these petitioners to cut the wires which was done without permission and has led to financial loss. It is submitted that the enquiry report is well discussed on the materials and it is in consideration whereof that the orders impugned have been passed.

In responding to the argument of Mr. Sinha, learned senior counsel appearing for the petitioners that the appellate order is cryptic, he submits with reference to a judgment of this Court reported in **2015(1) PLJR 117 (The Management, State Bank of India vs. Hrishikesh Mishra)** that in every case the appellate order is not required to be exhaustive specially when the Appellate Authority agrees with the finding of the Disciplinary Authority. He submits that in view of the undisputed materials on record the orders require no interference.

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

Although additional charges faces the petitioners Chandrabhushan Choudhary and Mokhtar Ahmad Sakib but a plain reading of the enquiry report(s) would show that no evidence was led to support these charges and even when both these petitioners have given their explanation to these charges but the Enquiry Officer



has ignored the same while recording his opinion. Even the punishment orders would reflect that the foundation is resting primarily on the charge that these three petitioners were a party to cutting of 16 kilometers of AAAC Squirrel Conductor wire weighing 970 kilograms which has caused financial loss to the Board and was done with an attempt to defalcate.

In my opinion, in absence of any evidence led to support the additional charges, they have no legs to stand. Adverting to the main charge facing these petitioners, in view of the ledger entry present at Annexure-3 and 4 series, the allegation of defalcation is completely ill founded for once a material stands recorded in the ledger books, it registers its presence in the store house and until such time that the records reflect that the wires had been removed for any collateral purpose with a view to secure personal gains, the allegation of defalcation would lack foundation. On the contrary, the enquiry report submitted by the 3-Member Committee at Annexure-5 as well as the report submitted by the Enquiry Officer at Annexure-8 would show that the witnesses have very clearly stated that these wires were being packed in small bundles during the process of handing over and taking over of the charge. The stock register entries present at Annexure-3 and 4 series read along side the oral evidence recorded in the two reports present at Annexures 5



and 8 would expressly clear these petitioners of any charge of defalcation because the availability of the materials stands recorded in the ledger books and its nobody's case that the materials had been removed from the store.

The petitioners yet face the charge of cutting of wires in small pieces and which according to the respondents, has caused financial loss to the Board. The petitioners in response to such allegation have referred to Annexure-15 series to submit that 15 kilometers of wire was issued on 9.11.2015 to Hajipur which is evident from Annexure-15 series and thus the allegation of financial loss is totally incorrect. A specific statement to that effect is made at paragraph 36 of CWJC No.557 of 2017, which has not been contested by the respondents. In fact they have not even bothered to reply to this statement which remains uncontested.

Last but not the least is the allegation facing the petitioners, of cutting the wires without seeking permission of the superiors as observed in the 3-Member Committee report present at Annexure-5. Now while the statement of the petitioners is that the wires in question have been utilized by the Board and thus there is no issue of financial loss to the Board, in absence of definite evidence on record showing participation of these petitioners in the cutting of wires, their association with the store by virtue of their



status, *ipso facto*, cannot be a ground to invite a punishment much less a major punishment. In fact once the charge of causing financial loss to the Board stands diluted, the petitioners sail out from the charge of misconduct defined under Clause 29B (1) and there is no evidence led by the respondent department to uphold the allegation framed under clause 29B (a) (c) and (i) of the Standing Order. In sum and substance the allegation facing the petitioners lack foundation and rest on no evidence. The order passed by the Disciplinary Authority is a perversity for it discusses no material to uphold the charge nor does it deal with the issues raised by the petitioners in their respective show cause rather blindly endorses the opinion recorded by the Enquiry Officer.

Mr. Singh, learned senior counsel appearing for the Board may be right in submitting that an appellate order need not be very exhaustive where it endorses the disciplinary authority's order but this principle would not apply where the order of the Disciplinary Authority itself is an unreasoned order lacking application of mind. The judgment relied upon by Mr. Singh rendered in the case of **Hrishikesh Mishra** (supra) would in fact lend support to my view.

Perhaps in the nature of the order passed by the Disciplinary Authority and the Appellate Authority, I would have



remitted the matter for passing a fresh order in accordance with law but in view of the uncontested position reflecting from the records of the proceedings where there is complete absence of materials to uphold the charge of misconduct as against these petitioners, I am of the considered opinion that the matter requires to be put to a quiteus.

For the reasons discussed the order bearing Memo No.1481 dated 3.12.2014 impugned at Annexure12 together with the appellate order impugned at Annexure 16 to CWJC No.557 of 2017; the order bearing Memo No.1482 dated 3.12.2014 impugned at Annexure-14 together with the appellate order impugned at Annexure-17 to CWJC No.4992 of 2016 and the order bearing Memo No.1483 impugned at Annexure14 together with the appellate order impugned at Annexure-17 to CWJC No.5949 of 2016 cannot be upheld and are accordingly quashed and set aside. The petitioners stand reinstated on their respective post with all consequential benefits.

The writ petitions are allowed.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	19-05-2017
Uploading Date	23-06-2017
Transmission Date	NA

