

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.66 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 7680 of 2008**

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1. The Bihar State Power (Holding) Company Ltd, (erstwhile the Bihar State Electricity Board) through its Chairman-cum-Managing Director, Vidyut Bhawan Bailey Road, Patna
2. The Managing Director, South Bihar Power Distribution Company Ltd, (erstwhile the Bihar State Electricity Board) Vidyut Bhawan, Bailey Road, Patna
3. The General Manager (HR/Adm.) South Bihar Power Distribution Company Ltd, (erstwhile the Bihar State Electricity Board), Vidyut Bhawan Bailey Road, Patna
(Respondents) Appellants

Versus

Binod Kumar Jha, son of late Kameshwar Jha, Accounts Assistant, Revenue Section, erstwhile Bihar State Electricity Board, Head Quarter, Bailey Road, P.S.-Kotwali, Town and District Patna and resident of Rajeev Nagar, Police Station-Rajeev Nagar, Town and District- Patna
(Petitioner) Respondent

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Appearance:

For the Appellant/s : Mr. Ratan Prasad Sinha, Advocate.
For the Respondent/s : Mr. Shamsheer Singh Rekhi, Advocate.

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 29-06-2017

Heard counsel for the appellant, which is the erstwhile Bihar State Electricity Board, and the counsel for the sole private respondent.

Since the Writ Application of the private respondent was allowed, the order of punishment of censure and stoppage of three increments with non-cumulative effect was quashed along with the order rejecting his appeal, the Electricity Board has decided to



challenge the order of the learned Single Judge dated 25.09.2013.

Some time in the year 2004, the private respondent was served with a chargesheet in relation to certain defalcation made in the years 2000-2001 and 2001-2002 in the Electric Supply Division, Bankipure in Patna. At the relevant time he was the Accounts Assistant. Since the defalcation or misappropriation was to the tune of Rs. 2,13,285/-, as per the audit report, the authorities decided to move against the persons responsible which included the private respondent. A so-called full-fledged enquiry was held and based on the outcome thereof, the order of punishment came to visit the private respondent who managed to demonstrate before the learned Single Judge that the enquiry report is a farce since no proper procedure was followed, no evidence was led but only a conclusion reached without reason as to what formed the basis thereof.

The learned Single Judge, after considering the details, concludes in his order as under:

“On perusal of the enquiry report it is evident that neither any evidence has been discussed nor anything has been stated as to how the petitioner was held guilty. On the contrary, the enquiry report suggests that defalcation was committed by three Bill Collectors by doing manipulations in computer and D.C.R. after issue of receipt of consumers. Gross illegality in the enquiry report is further evident from



the fact that without any material or evidence or without discussing anything the enquiry officer had recorded that on examination of the case he concluded that the petitioner can not escape from the responsibility of not exercising his duty properly as a Cashier whereas, nothing has been indicated. No evidence has been referred. Even the enquiry officer has not bothered to refer even a single word from the purported audit report. The enquiry report as noticed above assigns no reason, no discussion of evidence and as such on the basis of such enquiry report no action was needed. The petitioner thereafter in reply to the second show cause notice again reiterated his entire stand and tried to establish that he was completely innocent but even then the disciplinary authority, without discussing anything about any of the plea taken by the petitioner or discussing any evidence on such farce enquiry, has imposed the order of punishment and similarly the appellate authority has committed mistake. No reason has been assigned by the appellate authority in its order (Annexure – 1/A), whereas the memo of appeal i.e. Annexure – 9 to the writ petition is self explanatory. The court is in agreement with learned counsel for the petitioner that in view of decision of the Board contained in memo no. 230 dated 18.1.1995 which is at page no. 132 the conducting officer was not required to record even any finding on the basis of audit report. Moreover, the conducting officer has not at all discussed anything



regarding the audit report whereas, petitioner has taken a specific plea that in the audit report Auditor had not said anything adverse against the petitioner. In the departmental proceeding though two witnesses were cited as witness, they were also not examined. In view of facts and circumstances as discussed above, the court is satisfied that both the orders i.e. order of disciplinary authority contained in Annexure – 1 and order of the appellate authority i.e. Annexure – 1/A to the writ petition are liable to be set aside. Accordingly, both the orders are hereby set aside and the writ petition stands allowed.”

Counsel for the Electricity Board submits that if the learned Single Judge has found such errors in the report of the Enquiry Officer, the best he could have done is to quash the punishment and at least remit the matter back for a fresh enquiry otherwise the whole thing is set to naught and serious prejudice is caused to the interest of the Electricity Board.

From a perusal of the enquiry report and other materials on record, it is evident that the private respondent was not the person who was responsible for the defalcation. The defalcation was made by three Bill Collectors who have been identified. The maximum charge which could have been brought against the private respondent was a case of failure to supervise or properly keep an eye on the going-ons



but for that also there has to have evidence. If the enquiry was not conducted properly and if the enquiry report holds a person guilty without the supporting evidence material, based on which the conclusion of such kind could be reached, then no purpose would be served by remitting the matter back and, that too, now when the private respondent has superannuated and gone back home. The enquiry was initiated in the year 2004. Thirteen years have gone past. In the said circumstances this Court is not willing to set aside the order of the learned Single Judge, especially when no legal infirmity has been committed by him, to reward the shoddy work done by the Enquiry Officer or the Electricity Board in pronouncing the private respondent as guilty without proper evidence.

In fact, the learned Single Judge was left with no option but to pass the order in the manner in which the enquiry report has been generated. It is not worth the piece of paper on which it has been written.

The appeal has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

Dilip, AR

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