

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2301 of 2013

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Atiqur Rahman Son Of Late Abdul Gaffar Resident Of Village - Adhaka
Padia, P.S. - Ramgarhwa, District - East Champaran, Presently Residing At
Michel Colony, Banswariya Near Masjid, P.S. - Bettiah Town, District - West
Champaran

... .. Petitioner/s

Versus

1. The Chairman Cum Managing Director Bihar State Power (Holding)
Company Ltd. Bailey Road, Patna
2. The Secretary, Bihar State Power (Holding) Company Ltd. Bailey Road,
Patna
3. The Joint Secretary, Bihar State Power (Holding) Company Ltd. Bailey Road,
Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Aditya Nath Jha, Adv
For the Respondent/s	:	Mr. Vinay Kirti Singh, Sr. Adv

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 30-01-2018

I.A. No. 6918 of 2016

This interlocutory application has been filed by
the petitioner for amending the writ petition as during the
pendency of this writ petition, a fresh appellate order dated
27.12.2013 has been passed by the Chairman-cum-
Managing Director (Appellate authority) of Bihar State
Electricity Board, by which he has dismissed the appeal of



the petitioner as contained in Annexure-13 to this interlocutory application, and as such by way of amendment, petitioner wants to challenge the said order passed by the Appellate Authority dated 27.12.2013 as contained in Annexure-13.

Amendment petition is allowed.

The writ petition is permitted to be amended to incorporate setting aside the order dated 27.12.2013 passed by the Appellate Authority (Annexure-13) in the prayer portion as well as para 1 of the writ petition.

CWJC NO. 2301 of 2013

Heard learned counsel for the parties.

This petition under Article 226 of the Constitution of India has been filed for quashing the order dated 26.08.2000 passed by the disciplinary authority as contained in Annexure-6, by which punishment of withholding of two increments with cumulative effect, entry of censure in ACR for the year 1996-97, and nothing to be paid except subsistence allowance, has been passed against the petitioner, as also the order dated 27.12.2013 passed by the appellate authority Chairman-cum-Managing Director



of Bihar State Electricity Board as contained in Annexure-13 dismissing the appeal of the petitioner.

The petitioner was posted as Assistant Electrical Engineer, Electric Supply Sub-Division, Adityapur, and on certain acts of omission and commission, he was put under suspension and subsequently departmental proceeding was initiated against him. Three charges were framed against him for causing loss to the Board and Diwakar Mishra, Superintending Engineer, Jamshedpur, was appointed as enquiry officer by resolution dated 14.11.1998. The Enquiry Officer did not find the charges to be proved against the petitioner and submitted his inquiry report to the disciplinary authority. The disciplinary authority after considering the inquiry report issued second show cause notice to the petitioner differing with the findings of enquiry officer and held that Charge No. 1, 2 and 3 stand proved against the petitioner and issued a second show cause notice along with inquiry report and his reasons for differing with the inquiry report and gave 15 days time to the petitioner to submit his reply against the findings of disciplinary authority. In the second show cause itself, the disciplinary



authority also gave proposed punishment without considering the representation of the petitioner and without coming to a final conclusion that the charges against the petitioner stands proved.

The petitioner submitted his reply and contended that the finding of Enquiry Officer is based upon proper and indepth consideration of evidence on record whereas the disciplinary authority in his second show cause has not given tentative reasons for differing with the findings of the Enquiry Officer and has not stated that on which evidence on record, after its consideration and appreciation, he came to the conclusion that the charges against the petitioner stands proved. The disciplinary authority also did not disclose in its second show cause while differing with the findings of the enquiry officer that what was the improper consideration or wrong appreciation of evidence on record or any significant aspect of the matter which was overlooked by the Enquiry Officer leading to incorrect finding and conclusion arrived by the Enquiry Officer. The disciplinary authority if disagrees with the enquiry officer on articles of charges, and before it records its finding on



such charge, he is obliged to record his tentative reason for such disagreement based upon the material and evidence on record and give opportunity to delinquent to meet the findings recorded by disciplinary authority before he ultimately records his finding. Non furnishing of reasons which weighed with the disciplinary authority to differ with the findings of Enquiry Officer is fatal and vitiates the ultimate order of punishment imposed in view of the fact that the Enquiry Officer report exonerated the petitioner from the charge as such it was incumbent upon the disciplinary authority to grant the delinquent employee a reasonable opportunity to convince him that the report of Enquiry Officer was proper and did not require any interference. The formation of opinion at the time of issuance of second show cause by the disciplinary authority is tentative and not final and only after considering the representation of the petitioner against the finding of disciplinary authority a final opinion can be made by the disciplinary authority. However, in the present case the disciplinary authority has not considered the reasons of enquiry Officer upon which his findings are based and has



held the charges against the petitioner were proved without any discussion with respect to evidence on record and meeting reasons given by the enquiry officer the disciplinary authority in a most mechanical manner has reproduced the memo of charge in his second show cause and after receiving the reply of the petitioner without considering the grounds taken by the petitioner in his reply to second show cause, has again reproduced the memo of charge and held the petitioner to be guilty and imposed punishment.

The Apex Court in the case of ***Anant R. Kulkarni vs Y.P. Education Society and Others since reported (2013) 6 SCC 515***, in paragraph no. 31 has held as follows:-

“31. The conclusion reached by the Division Bench that the Tribunal and the learned Single Judge had found that there was a defect in the manner in which the enquiry was held, and therefore there was no question of it recording a finding on merit to the effect that the charges levelled against the appellant were not proved, is also not sustainable in law. It is always open for the court in such a case, to examine the case on merits as well, and in case the court comes to the conclusion that there was in fact, no substance in the allegations, it may not permit the employer



to hold a fresh enquiry. Such a course may be necessary to save the employee from harassment and humiliation.”

(emphasis is mine)

As the proceeding is of the year 1998 and petitioner has retired in the year 2008, this Court is not inclined to grant liberty to the respondent authorities for initiation of fresh proceeding from the stage it stood vitiated as Board has not suffered any financial loss. This Court has examined the materials available on record i.e. memo of charge, enquiry report, second show cause, reply to the show cause and order passed by the disciplinary authority as well as appellate authority. The enquiry report submitted by the enquiry officer is well reasoned and based upon consideration and appreciation of evidence on record. The enquiry officer has conducted enquiry in a fair and impartial manner and has come to a conclusion that the charges against the petitioner are not proved. However, the disciplinary authority with a pre-determined mind and anxious to hold petitioner guilty without any consideration with respect to finding recorded by the enquiry officer or reasons for said finding has come to a conclusion that the



charges were proved and in doing so he has reproduced the memo of charge in verbatim. As the order of the disciplinary authority itself is vitiated, the order passed in appeal also is not sustainable and fit to be quashed.

Reference in this connection may be made to the judgment of this court in the case of **Md. Hanif vs the State of Bihar & Ors** since reported 2011(2) PLJR 599 of which para 8, 9 and 10 reads as follows:-

“8. The disciplinary authority however disagreed with the findings and he gave a notice of disagreement with the reason for agreement. The primary reason given in the notice of disagreement is that merely because leave was authorized it does not make the absence of the petitioner to be without the sanction of the authority concerned. The authorization of leave was a subsequent event but absence of the petitioner was an issue, against which he can be proceeded. The exoneration of the petitioner by the enquiry officer therefore was wrong. He also held that there is evidence that there was exchange of words between the petitioner and the colleague. But what actually transpired ought to have been thoroughly examined by the enquiry officer. Since it was not done it cannot be presumed that the petitioner had not misbehaved.

9. Learned counsel for the petitioner is correct in saying that disagreement is based more on inference and perverse logic rather than actual material



for disagreement. The issue of the petitioner being unauthorisedly absent no longer remained an issue if the competent authority had regularized that period by grant of leave to the petitioner. It was open for the concerned authority not to authorise that leave later, on the ground that the petitioner was habitual in absenting and disappearing from duty and that he was not entitled for the benefit of regularization of the period of absence. But to hold after regularization of leave that the period of absence to be without authority would be doing violence to a benefit which had already accrued in favour of the petitioner, by action of the respondents themselves. A charge cannot be proved on the basis of inference. There has to be categorical evidence to pronounce a person guilty of what he had been charged with.

10. Obviously the above element and components are missing from the order of disagreement or the notice issued by the disciplinary authority. If it is so then the punishment cannot be based merely because the disciplinary authority chose to disagree with the finding recorded by the enquiry officer. This part of the reasoning will be available for both the punishments which came to be imposed against the petitioner.”

(emphasis is mine)

After considering the materials available on record and going through the enquiry report and orders passed by the disciplinary authority as well as appellate authority, this court finds that the same are not sustainable either in fact or



in law as same has been passed without considering and appreciating the evidence adduced during enquiry and ignoring the findings recorded by the enquiry officer, and are accordingly set aside.

The respondents are directed to pay the petitioner full salary for the suspended period and revise his pension, gratuity, leave encashment and other post retiral benefits as no order of punishment was passed against him, within three months from the date of receipt/production of a copy of this order.

The writ petition stands allowed.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	17.03.18
Transmission Date	N.A

