

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 21938 of 2014

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Pankaj Kumar Chaudhary Son of Modan Chaudhary Resident of Village -/ Mohalla
- Chora Bagicha, P.O - Rana Bigha, P.S- Morarpur, District - Nalanda.

.... Petitioner/s

Versus

1. The Bihar State Power (Holding) Company Ltd. Vidyut Bhawan, Bailey Road, Patna, through its Secretary.
2. The Secretary, Bihar State Power (Holding) Company Limited, Vidyut Bhawan, Bailey Road, Patna.
3. The Joint Secretary, Bihar State Power (Holding) Company Limited, Vidyut Bhawan, Bailey Road, Patna.

.... Respondent/s

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For the Petitioner/s : M/s Subodh Kr Jha, Bidhan Chandra Jha,
Pranav Kr Jha, Advocates

For the Respondent/s : Mr A K Ojha, Standing Counsel

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 18-07-2018

Heard learned counsel for the petitioner and the
respondent-State.

2 Petitioner has challenged the order of punishment dated 22.05.2013 issued by the Joint Secretary of the respondent-Company whereby petitioner has been dismissed from service.

3 Learned counsel appearing on behalf of the petitioner has submitted that the order of punishment has been issued pursuant to full fledged enquiry. He submits that he was not properly noticed in the enquiry and, as such, he could not appear before the Enquiry Officer. He also submits that second show cause notice was not issued to the petitioner. The last but not least submission is that the



order of punishment is retrospective in nature and such order of punishment is unsustainable in law. Petitioner has also raised objection that the quantum of punishment from dismissal of service for being on unauthorized absence is grossly disproportionate to the charge.

4 In support of his submission regarding non-supply of enquiry report, reliance is placed on the judgment of the Apex Court in the case of *Punjab National Bank and Others –Versus Kunj Behari Misra, (1998) 7 Supreme Court Cases 84*.

5 The petitioner has also relied upon the judgment of the coordinate Bench of this Court delivered in the case of *Umme Salma Jamal –Versus- State of Bihar and Others* on 18.06.2018 in CWJC No 20449 of 2010. The said judgment is relied upon in support of the petitioner's contention that the termination order could not have been passed with retrospective effect. Regarding his assertion that the punishment of dismissal is disproportionate to the allegation of unauthorized absence, he has relied upon decision of the Apex Court in the case of *Chairman –cum- Managing Director, Coal India Limited and Another -Versus- Mukul Kumar Choudhuri and Others, 2010 (1) PLJR (SC) 19*.

6 The respondents have appeared and filed counter affidavit. The facts of the case are quite glaring. The petitioner has



come into employment only recently in the year, 2009. On the allegations of misbehaving with the Chief Engineer (R & HRD) who has reported against the petitioner regarding his indecent behaviour and regarding verbally abusing him. Petitioner was served with charge memo. Departmental proceeding was initiated against the petitioner vide Resolution No 13 dated 16.01.2012. The respondents made several efforts to ensure that the petitioner appeared in the proceedings before the Enquiry Officer. Altogether three notices were issued. Apart from notice being issued to the petitioner on his home address supplied by him to the respondent-Company, the notice was also issued by way of newspaper publication.

7 Rather than appearing in the proceedings, the petitioner was unauthorisedly absent from 24.11.2011 itself. This fact regarding his absence is not disputed and denied by the petitioner. Since the petitioner was not cooperating in the enquiry and throughout chose not to appear in the proceedings, the enquiry report was finally submitted on 18.10.2012. The Disciplinary Authority, thereafter, proceeded to issue the order of punishment dated 22.05.2013. The dismissal was made effective from 24.11.2011. Petitioner chose not to appear in the entire proceedings. Apart from that even departmental remedy of appeal was not availed by the petitioner himself. The father of the petitioner filed an appeal before the



respondent-authorities. Specific averment has been made in the counter affidavit, which is not denied or disputed by petitioner by filing any rejoinder. In fact, even after exhausting the remedy of appeal, father of the petitioner has gone before the Energy Minister as well as Hon'ble Chief Minister. The complaints made by the petitioner's father are annexed by the petitioner as Annexure 11 and 12 of the writ petition.

8 The order passed rejecting the petitioner's appeal has not been challenged in the instant proceedings. Now after having raised the issue before all the authorities, the writ petition has been filed by the petitioner seeking to take advantage by submitting that at least, the copy of the enquiry report should have been made available to the petitioner. The proceeding before the Enquiry Officer has been concluded ex parte because of total non-cooperation on behalf of the petitioner. Even in the matter of filing of the statutory departmental remedies, which is seen from the records that the appeal and complaints have been filed on behalf of the petitioner by his father. Records reveal total non-cooperation in the proceedings. He has also been away from duties on unauthorized absence, and not challenged the order rejecting appeal preferred on his behalf by his father.

9 Conduct of the petitioner is that he has absented himself from the enquiry from 24.11.2011 and there is total non-



cooperation in the proceedings. He was facing charges of indecent behaviour and using abusive language against his superior, i e, the Chief Engineer. The petitioner, therefore, cannot be permitted to take plea of principles of natural justice. Law is well settled in this regard. When the petitioner chose not to participate in the proceedings, plea regarding principles of natural justice is deemed to have been waived and he is estopped from raising the question of non-compliance with principles of natural justice. Order passed by the Appellate Authority has also not been challenged. Natural justice is not a straight jacket formula. Thus, conduct of the party alleging violation of the principles of natural justice is a relevant consideration to be taken into consideration by the Courts while deciding issue of applicability of the principles of natural justice such as in the instant case. In this connection, this Court would consider the law laid down in the case of *Board of Directors, Himachal Pradesh Transport Corporation and Another –Versus- K C Rahi, (2008) 11 Supreme Court Cases 502.*

10 Having considered the conduct of the petitioner as recorded by the respondent-authorities, which is not denied in the rejoinder, this Court is not persuaded to entertain the petitioner's plea regarding non-supply of the enquiry report by the Disciplinary Authority, moreso when the petitioner had never turned up before the Enquiry Officer in spite of repeated notices including newspaper



publication.

11 The other issue regarding the punishment being retrospective in nature, this Court would only observe that the issue is now only academic. The petitioner has been, admittedly, absent from 24.11.2011. He, in any case, would not be entitled to any benefits with effect from 24.11.2011 up till the date of award of punishment under order dated 22.05.2013. The reliance placed by the petitioner on the judgment noted hereinabove is also, therefore, not worthy of consideration. Facts of the case in the case of *Umme Salma Jamal (supra)* were different and apart from that, as considered herein, the issue, in so far as the petitioner's case is concerned, is only academic. Even if retrospectivity is taken away from the order of punishment, the petitioner cannot derive any benefit from the same.

12 The third issue, which has been raised regarding the quantum of punishment being grossly disproportionate to the charge of unauthorized absence, this Court would observe that the said plea raised by the petitioner is misconceived. Other than the unauthorized absence from 24.11.2011, the specific charge against the petitioner is of using indecent behavior and abusive language towards the Chief Engineer (R & HRD), as reported and as stated in the counter affidavit. Such conduct of the petitioner, coupled with his unauthorized absence distinguishes his case, from the facts of the



judgment relied upon by the petitioner in support of his contention. In view of the considered opinion of this Court based on facts and circumstances of the instant case, this Court does not find that the petitioner is entitled to any relief in the instant proceedings.

13 The writ petition is devoid of any merit and the same is dismissed.

14 Learned counsel for the petitioner has also submitted that since August 2010 till 24.11.2011, the petitioner would be entitled to his salary, as prior to 24.11.2011, there is no allegation of unauthorized absence.

15 If the petitioner so desires, he may make an application before the respondents who shall calculate admissible dues of the petitioner in accordance with law.

16 If such application is filed within four weeks from today, respondents would take a final decision and make payment of the admissible dues within eight weeks thereafter.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	24.07.2018
Transmission Date	NA

