

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19036 of 2015

Purushottam Mishra Son of Late Nand Kishore Mishra Resident of Flat No. 304,
Vishal Residency Apartment, Wing - IV, Raja Bazar, Bailey Road, P.S. Airport,
Town & District - Patna (Bihar)

.... Petitioner/s

Versus

1. Bihar State Power (Holding) Company Limited, having its Office at Vidyut Bhawan, Bailey Road, Patna (Bihar) through the Chairman Cum Managing Director
2. The Chairman Cum Managing Director, Bihar State Power (Holding) Company Limited, Vidyut Bhawan, Bailey Road, Patna (Bihar)
3. Managing Director, South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna (Bihar)
4. Deputy General Manager (HR/ADMIN) South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna (Bihar)

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Raju Giri, Advocate
Mr. Santosh Kumar Mishra, Advocate
For the Respondents : Mr. Vinay Kirti Singh, Sr. Advocate
Mr. Akhileshwar Singh, Advocate
Mr. Vijay Kumar Verma, Advocate

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 16-05-2018

Heard learned counsel for the petitioner and the respondent.

2. The petitioner vide charge memo dated 30.07.2008 has been proceeded against.

3. The allegation is that he had taken illegal gratification for giving electrical connection contrary to the procedure prescribed in a newly constructed building. The petitioner submitted his response. The Enquiry Officer has submitted the enquiry report dated 25.03.2011.



4. It is submitted by the counsel for the petitioner that the enquiry report did not hold the charge of any illegal gratification accepted by the petitioner to be proved. He submits that even the allegationist has not appeared to support the charges before the Enquiry Officer. The finding therefore, was with respect to some action taken, per se, contrary to the established procedure and norms for grant of electric connection. The petitioner, at that point of time had filed writ petition bearing CWJC No. 5836 of 2014 challenging the initiation of proceedings and suspension.

5. He submits that since the proceedings, in the said writ petition were pending, and second show cause notice dated 21.03.2014 was issued by the disciplinary authority, he submitted a letter dated 18.04.2014 to the DGM (HR/Admin), South Bihar Power Distribution Company Ltd., with a request to postpone the departmental proceedings till the decision of the High Court in the proceedings pending in C.W.J.C. No. 5836 of 2014.

6. Petitioner's counsel submits that he has been denied opportunity of hearing in as much as specific request had been made by the petitioner to postpone the departmental proceedings till the final outcome of the proceedings pending in C.W. J.C. No. 5836 of 2014 but no order was issued to the petitioner either accepting his request or rejecting the same. He submits that thereafter, the disciplinary authority has proceeded to inflict the punishment of



dismissal from service upon the petitioner under order dated 22.05.2014 bearing No. 866 which is impugned in the instant writ petition.

7. In view of the said order having been passed, the petitioner thereafter, withdrew the writ petition bearing C.W.J.C. No. 5836 of 2014 on 11.09.2014 with liberty to pursue his remedy. Thereafter, the petitioner has approached the appellate authority by filing his appeal. He submitted that the appellate authority has rejected the petitioner's appeal by order dated 24.01.2015 issued by the Chairman-cum-Managing Director, South Bihar Power Distribution Company Ltd. Petitioner submits that rejection of the appeal is without reference to the points raised by the petitioner in his appeal. He submits that the order dated 24.01.2015 is a non-speaking order and is liable to be quashed being violative of the Principles of Natural Justice.

8. As noticed above, the respondent Company had not responded to the petitioner's request dated 18.04.2014 seeking postponement of the departmental proceedings during pendency of C.W.J.C. No. 5836 of 2014. The petitioner has been deprived of his opportunity of responding to the second show cause notice dated 21.03.2014 due to inaction of the respondents in not considering and disposing off the petitioners request dated 18.04.2014.

9. In terms of the law laid down by the Apex Court in the



case of *Punjab National Bank & Others vs. Kunj Behari Mishra* reported in (1998) 7 SCC 84, a vital opportunity of the petitioner to raise his points before the disciplinary authority, has thus been denied.

10. In view of the nature of findings contained in the enquiry report dated 25.03.2011 regarding violation of norms *per se*, this Court would consider it appropriate that the petitioner may be allowed his opportunity to submit his response to the second show cause notice dated 21.03.2014 bearing memo no. 525 before the disciplinary authority. The petitioner shall submit his response to the second show cause notice within 15 days from the date of receipt/production of a copy of this order before the Disciplinary Authority (respondent no. 4). On such representation being submitted by the petitioner it would be open to the disciplinary authority to consider the petitioner's case in accordance with law and the procedure prescribed, after observing the Principles of Natural Justice by a reasoned and speaking order within a period of eight weeks thereafter.

11. The order of the Disciplinary Authority dated 22.05.2014 bearing memo no. 866, without affording the petitioner vital opportunity of submitting his second show cause in terms of Rule 18 of the Bihar CCA Rules 2005 as well as the order dated 24.01.2015 rejecting the petitioner's appeal against the order passed by the Disciplinary Authority are quashed.



12. The petitioner would be treated as under suspension and the proceedings may be brought to its logical conclusion in accordance with law within the time specified. The consequential benefits of the petitioner would abide by the final result of the enquiry proceedings.

13. The writ petition is allowed to the extent indicated herein above.

(Madhuresh Prasad, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

