

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11418 of 2009

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Brijnandan Lal Barnwal, son of Sri Prayag Lal Barnwal, resident of Village-
Mohanpur, P.O.-Pachmba, P.S.-Giridih, District- Giridih (Jharkhand)

.... Petitioner

Versus

1. Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna through its
Chairman.
2. The Chairman, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road,
Patna
3. The Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road,
Patna.
4. The Joint Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey
Road, Patna.
5. Jharkhand Urja Vikash Limited, Ranchi, Jharkhand.

.... Respondents

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Appearance:

For the Petitioner/s	:	Mr. Chittaranjan Sinha, Senior Advocate Ms. Surya Nilambari, Advocate Mr. Mahesh Kumar, Advocate
For the Bihar Electricity Board:		Mr. Anand K.Ojha, Advocate Mr. Ashok Kumar, Advocate
For the Jharkhand Urja Vikash Limited:		Mr. Satyavrat Verma, Advocate

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 21-02-2018

Heard learned counsel for the petitioner, learned
counsel for the Bihar State Electricity Board and learned counsel for
the Jharkhand Urja Vikash Limited.

2. In this case, the petitioner is challenging the Resolution
no.98 dated 29.07.2008 (Annexure-11), whereby and where-under



the following punishment has been visited to the petitioner that he will not be paid anything for the period he was absent from duty on the principle of 'no work no pay', but this period will be counted for the purposes of payment of pensionary benefit, he will not be paid anything except subsistence allowance already paid to him for the period of suspension, his five annual increments are withheld with cumulative effect and he is debarred from getting promotion for five years. This order was challenged before the Appellate Forum and the Appellate Forum vide Resolution no.53 dated 05.06.2009 (Annexure-15) has modified the order to the extent that five annual increments has been reduced to three annual increments and rests of the punishment which has been inflicted by the Disciplinary Authority has not been touched.

3. The petitioner was appointed as Assistant Executive Engineer in the Bihar State Electricity Board. A departmental proceeding was initiated against him by Resolution no.691 dated 29.07.1994 with certain charges while he was posted in Transmission Sub Division, Hatia, on account of non-submission of progress report to his higher official with respect to process of handing and taking over the charge of store by the outgoing Assistant Store Keeper Sri S.B. Bhattacharya to one Anandi Kumar,



Junior Store Keeper. It has further been alleged that the petitioner neglected his duties and unduly tried to cover up the irregularities committed in Hatia Store with the result that substantial financial loss accrued to the Board. The petitioner submitted his show-cause-cum-written statement. The Disciplinary Authority was not satisfied with the reply, started full fledged inquiry, there the petitioner participated and took plea that there was no any default from his side. The inquiry Officer submitted the Inquiry reported (Annexure-2) in which the Inquiry Officer has found that the charge of not informing the superior Officer about the progress of handing over and taking over of the charge of the store has been proved, but with regard to charge no.2 the Inquiry Officer has given a clean chit.

4. Where-after, the petitioner was served with the show-cause along with the enquiry report, but in the show-cause it has been recorded that the act of the petitioner has caused a loss of Rs.1,11,25,722/- which was not the subject matter of the charge-sheet. The petitioner has submitted his explanation and finally the final order of dismissal was passed against him, which was challenged by the petitioner before this Court in C.W.J.C. No.10493 of 1996 and this Court interfered with the order of dismissal and set aside the same. That order of the Single Judge was challenged



before the Division Bench in L.P.A. No.1356 of 1998. The Division Bench interfered with the order of the learned Single Judge with limited extent, the case was remanded back to the respondent authorities to proceed from the stage of second show-cause. Accordingly, after the order the petitioner joined the service and he was placed under suspension till the disposal of the proceeding, where-after, the petitioner was again served the second show-cause vide Resolution no.226 dated 27.12.2007, giving details of the fact. The petitioner has replied the same on 09.01.2008 by taking detailed defence in his explanation. Where-after, the Disciplinary Authority passed the order vide Resolution no.98 dated 29.07.2008, thereby the punishment as aforesaid has been inflicted upon the petitioner and the same has been affirmed but limited interference has been made by the Appellate Authority as the five annual increments has been reduced to three annual increments.

5. Learned counsel for the petitioner submits that while passing the final order the Disciplinary Authority has not taken into consideration the explanation and the defence which the petitioner has taken and without taking note of the same, has passed the order against the petitioner. In support of the submission, learned counsel for the petitioner has placed reliance on the decision of this Court in



the case of ***Hassan Muzahid vs. Bihar State Electricity Board***, reported in ***2015(4) PLJR, 435***, in which I myself is a party.

Paragraph no.7 of the said judgment is as follows:-

“7. The petitioner was dismissed by the Disciplinary Authority, after conducting enquiry. The only flaw pointed out by the petitioner and the one that weighed with the learned Single Judge, is that the Disciplinary Authority did not furnish any reason in support of his conclusions. It needs hardly any mention that the issuance of second show cause has a definite purpose to serve and that is the only occasion, or avenue where the delinquent employee can make an attempt to convince the Disciplinary Authority that the findings by the Enquiry Officer are not correct. He can also impress upon the Disciplinary Authority that the proposed punishment need not be awarded and he can plead extenuating circumstances. Since, the order passed by the Disciplinary Authority was passed without taking into account the grounds pleaded by the delinquent employee in his reply to the second show cause, it certainly turns to be defective. Time and again, the Hon'ble Supreme Court held that such exercise tends to be violative of one of the facets of the principles of natural justice, and the opportunity given to an employee would be reduced to empty formality. We, therefore, do not find any basis to interfere with the view taken by the learned Single Judge in this behalf.”

6. It is also a part of the natural justice that when



explanation is filed, the authority is supposed to take into consideration the same and apply his mind and after discussing the plea that has been taken by the delinquent officer and pass the order accordingly.

7. In such view of the matter, the order of the Disciplinary Authority suffers from patent illegality and the same is set aside. When the order of Disciplinary Authority does not survive automatically the order of the Appellate Authority will also go. The order of the Appellate Authority will also go on the point that the plea taken by the petitioner in memo of appeal has not been dealt with by the Appellate Authority. It is expected from the Appellate Authority that while exercising the power of appeal he should look into the plea that has been taken by the delinquent employee and only after proper consideration would have passed the order as the appeal is continuation of the trial.

8. In such view of the matter, the Resolution no.98 dated 29.07.2008 (Annexure-11) passed by the Disciplinary Authority as well as Resolution no.53 dated 05.06.2009 (Annexure-15) are set aside. The matter is remanded back to the Disciplinary Authority to proceed further with the matter. But what has happened, in the meantime, the petitioner has transferred to the Jharkhand Urja



Vikash Limited and has already retired.

9. In view of subsequent event, the corresponding Disciplinary Authority of the Jharkhand Urja Vikash Limited would proceed with the matter from the stage of the second show-cause notice and pass the order accordingly. All the process should be completed within a period of four months from the date of receipt/production of a copy of this order, but the time will start after receipt/production of a copy of this order.

10. With the aforesaid observations and directions, this writ petition is allowed.

(Shivaji Pandey, J)

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AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	24.02.2018
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