

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No 4458 of 2016**

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Dilip Kumar Sharma, S/o of Sri Govind Prasad Sharma, resident of village-  
Jorla, PO- Bela, PS- Lakhnour, Distt- Madhubani

... .. Petitioner/s

Versus

1. Bihar State Power (Holding) Company Limited, Vidyut Bhawan, Bailey Road, Patna
2. Chairman-cum- Managing Director, Bihar State Power (Holding) Company Limited, Vidyut Bhawan, Bailey Road, Patna
3. Director, (Human Resource/Administration), Bihar State Power (Holding) Company Limited, Vidyut Bha
4. Managing Director, South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna
5. General Manager (Human Resource/Administration), Bihar State Power (Holding) Company Limited, Vidyut Bhawan, Bailey Road, Patna
6. General Manager (HR/Adm), South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna

... .. Respondent/s

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**Appearance :**

|                      |   |                                                                                       |
|----------------------|---|---------------------------------------------------------------------------------------|
| For the Petitioner/s | : | Mr Chitranjan Sinha, Sr Advocate with<br>Mr Mahesh Kumar, Advocate                    |
| For the Respondent/s | : | Mr Vinay Kirti Singh, Sr Advocate with<br>M/s Vijay Kr Verma, Akhileshwar Singh, Advs |

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**CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD**

**ORAL JUDGMENT**

**Date : 20-06-2019**

Heard learned Senior Counsel appearing for the petitioner and learned Senior Counsel appearing for the respondent-Company.

2 The petitioner, while posted as Junior Electrical Engineer in the General Cadre of the respondent-Company, was arrested by the Vigilance Department as there was an allegation



that he had demanded bribe of Rs 5,000/- for allowing electric connection. The petitioner was placed under suspension on 21.12.2012 and the Department proceeded against him by issuing a charge memo on the same charges. The charge memo was dated 05.10.2013. The Enquiry Officer submitted enquiry report dated 20.03.2014 exonerating the petitioner from the charges. The Disciplinary Authority, that is the Deputy General Manager (Revenue), purporting to differ with findings of the Enquiry Officer, issued a second show cause to the petitioner on 11.04.2014. The petitioner submitted his response thereto on 08.05.2014.

**3** Submission advanced by learned Senior Counsel for the petitioner is that the second show cause notice was served on the petitioner on 24.04.2014. Exercising due diligence, he has submitted his response within a period of 15 days thereafter that is on 08.05.2014. The Disciplinary Authority, however, has refused to consider the petitioner's response dated 08.05.2014 for the reason that the same was not submitted within 15 days from the date of issuance of second show cause that is from 11.04.2014.

**4** Mr Vinay Kirti Singh, learned Senior Counsel appearing for the Company submits that the petitioner has failed to exercise due diligence and submitted his second show cause with



delay having violated the time set out in the second show cause. He was not entitled to any consideration of his response and the Disciplinary Authority has rightly taken cognizance of his delayed response.

5 Petitioner's learned Senior Counsel submits that such non-consideration is wholly unjustified. The period of 15 days, was to be counted from the date of service and could not be counted from the date of issuance. Since the notice was served on 24.04.2014, the petitioner should have been granted time till 15 days thereafter for submitting his response to the second show cause notice. The response of the petitioner dated 08.05.2014 was, therefore, well within time and non-consideration of the same has seriously prejudiced the petitioner as consequent to non-consideration of the petitioner's response, he has been visited with the impugned punishment order dated 15.05.2014 terminating his services.

6 In this connection, learned Senior Counsel placed reliance on unreported judgment of the Delhi High Court in the case of Balwant Rai Gupta -Versus- Jammu & Kashmir Bank Limited, Equivalent Citations : 47 (1992) DLT 39. It is submitted with reference to paragraph 26 of the said judgment that the date of service of the second show cause notice was relevant for



calculating 15 days period within which the petitioner was required to submit his response.

7 Reliance is also placed on a decision of this Court in the case of Balmukund Prasad -Versus- State of Bihar & Others reported in 2018 (3) PLJR 633. This Court would find that under similar circumstances, where the delinquent had submitted his response to second show cause notice and the Disciplinary Authority had passed the final order thereafter without taking into consideration the response, on the same ground of delayed submission of response, this Court, in the said judgment, has held as follows:

*“10 The Disciplinary Authority has passed order of punishment dated 28.03.2014 (Annexure 12) imposing severe penalty of dismissal from the service without taking into consideration the issues which have been raised by the petitioner in his reply to the second show cause notice dated 21.03.214. The only reason assigned for not considering the second show cause is that the petitioner did not submit his reply to the second show cause upto 19.03.2014.*

*11 Even, at this stage, order of the Disciplinary Authority is in violation of the principle of Natural Justice as the response to the second show cause was received in his office prior to 21.03.2014. However, the Disciplinary Authority has refused/declined to consider the same by assigning reason that no response was received upto 19.03.2014. The Disciplinary Authority should not have declined to consider petitioner's response to the second show cause on such technical ground. Once the response of the*



*petitioner has been received, prior to passing of the order of punishment dated 21.03.2004, it was incumbent upon the Disciplinary Authority to consider the same in terms of Rule 18 of the Bihar CCA Rules, 2005.”*

**8** Facts of the instant case are such that petitioner's case is squarely covered by the said judgments as in the instant case also, petitioner had submitted his response within 15 days from receipt of the second show cause and prior to passing of the order by the Disciplinary Authority.

**9** Writ petition is, therefore, allowed and the order dated 15.05.2014 passed by the Disciplinary Authority is hereby quashed due to non-consideration of the petitioner's response to second show cause notice.

**10** Petitioner has also challenged the order of Disciplinary Authority before the Appellate Forum. Appeal of the petitioner has been rejected affirming the order of the Disciplinary Authority which, in view of the consideration herein above, has been held by this Court to be unsustainable and violative of principles of natural justice. The order of the Appellate Authority affirming the illegal order, therefore, must also collapse. The order of the Appellate Authority communicated under Letter dated 12.01.2015 (Annexure 22) is also quashed.



**11** Matter is remanded to the Disciplinary Authority to proceed afresh after considering the petitioner’s response dated 08.05.2014 in accordance with law.

**12** Disciplinary Authority should conclude the process expeditiously, without any undue delay and in any case within three months from the date of receipt/production of a copy of this order.

**(Madhuresh Prasad, J)**

**M.E.H./-**

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| <b>AFR/NAFR</b>          | NAFR       |
| <b>CAV DATE</b>          | NA         |
| <b>Uploading Date</b>    | 24.06.2019 |
| <b>Transmission Date</b> | NA         |

