

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 12831 of 2014

=====

Ashok Kumar Kashyap, son of Late Umesh Prasad, r/o LIG Flat No. 4/113,
Hanuman Nagar, Kankarbagh, P.S. Patrakar Nagar, Town and Distt - Patna

... .. Petitioner/s

Versus

1. The Bihar State Power (Holding) Company Ltd through its Chairman -cum- Managing Director, Vidyut Bhawan, Bailey Road, Patna
2. The General Manager (Human Resources/Administration) Vidyut Bhawan, Bailey Road, Patna
3. The Officer on Special Duty, (Human Resources/Administration) Vidyut Bhawan, Bailey Road, Patna
4. The Director (Security), Vidyut Bhawan, Bailey Road, Patna

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr Shivendra Kishor, Sr Advocate
For the Respondent/s	:	Mr Vinay Kirti Singh, Sr Advocate with M/s Vijay Kr Verma, Akhileshwar Singh, Advs

=====

CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 09-07-2019

Heard Mr Shivendra Kishore, learned Senior Counsel for the petitioner as also Mr Vinay Kirti Singh, learned Senior Counsel representing the respondent-Bihar State Power (Holding) Company Limited (for brevity, respondent-Company).

2 The petitioner has sought quashing of the order dated 03.07.2014 issued by the Chairman -cum- Managing Director of the respondent-Company communicated under the signature of the General Manager (HR/Admn) whereby and where under, the petitioner has been visited with the punishment of zero pension



and also to the extent that other than subsistence allowance, petitioner shall not be paid any other dues for the period of suspension from 11.09.2006 to 18.03.2008. The order has been passed after the petitioner's retirement under Rule 43 (b) of the Bihar Pension Rules.

3 Mr Shivendra Kishore, learned Senior Counsel appearing for the petitioner submits that the order of punishment has been passed in violation of the provisions contained in Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (for brevity, Bihar CCA Rules, 2005). The petitioner was subjected to proceedings on the basis of a charge memo dated 08.02.2008. The Enquiry Officer, after conducting the enquiry, submitted his report on 30.08.2010 finding charges not proved. The facts are that subsequently, there was some directives of the State Government to expedite such matters. As a result thereof, the Disciplinary Authority has expressed his difference with the findings of the Enquiry Officer by order dated 09.04.2014 and the petitioner has been given an opportunity of second show cause by the same order. On going through the second show cause notice dated 09.04.2014, it is clear that the same is not in accordance with the requirements of Rule 18 of the Bihar CCA Rules, 2005. Charges had been found not proved by the Enquiry Officer.



Charges were identical and same which were pending consideration by the Vigilance Court alleging that the petitioner had been caught red hand while accepting a bribe of Rs 10,000/-. Relying upon the post trap memorandum and documents, which formed part of the investigation of the criminal proceeding, the Disciplinary Authority has differed with the findings of the Enquiry Officer. A post trap memorandum, and documents which form part in the criminal investigation could not have formed the basis of a conclusion against the petitioner in the departmental proceeding as the same did not constitute valid evidence. Issue stands settled by the Apex Court in the case of Roop Singh Negi -Versus- Punjab National Bank & Ors, (2009) 2 Supreme Court Cases 570.

4 The said reason, which is assigned by the Disciplinary Authority relying upon documents forming part of the criminal investigation, is, therefore, unsustainable in the eye of law.

5 The second reason, which has been assigned, is that before the Enquiry Officer, there is written statements of two witnesses, namely, Vijay Kumar Srivastava and one Jorawar Prasad Singh. The Enquiry Officer has, however, not relied upon the same since they did not appear before the Enquiry Officer and



the petitioner was deprived to cross-examine the said two persons. On account of the said reasons, Enquiry Officer has refused to rely upon the written statements of the said two persons which had been recorded in the criminal investigation, and veracity of which was yet to be considered at the trial.

6 The action of the Enquiry Officer was, therefore, in conformity with the procedure prescribed under Rule 18 (14) of the Bihar CCA Rules, 2005. The Disciplinary Authority, however, has held such action of the Enquiry Officer to be wrong. He has held that the Enquiry Officer has overlooked the said two statements and, therefore, he has differed with the findings of the Enquiry Officer. The grounds of difference are clearly unsustainable and illegal having regard to the procedure prescribed under Rule 18 (14) of the Bihar CCA Rules, 2005. The said two persons had not appeared before the Enquiry Officer nor the petitioner had an opportunity to cross-examine the said two persons. In the circumstance, the same could not be considered as material on record so as to justify the second show cause issued by the Disciplinary Authority expressing difference with findings of the Enquiry Officer. Disciplinary Authority has to record reasons for disagreement, and has his own tentative findings, only if the evidence on record is sufficient for the purpose. The evidence on



record, as noticed above, is not sufficient for the purpose of differing with findings of the Enquiry Officer. The second show cause notice issued by the Disciplinary Authority dated 09.04.2014 is clearly unsustainable in the eyes of law.

7 In view of the said procedural irregularity, the subsequent order as a result of such a procedural lapse, i e, the order of punishment dated 03.07.2014 is clearly unsustainable.

8 The order of punishment dated 03.07.2014 is hereby quashed.

9 Writ petition is, therefore, allowed.

10 This order, however, will not stand in the way of the Disciplinary Authority examining the issue in accordance with law on the basis of the enquiry report earlier submitted by the Enquiry Officer.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.07.2019
Transmission Date	NA

