

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.839 of 2006

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Banke Bihari Mishra Son of Late Dhurandhar Mishra resident of village
Rajpur P.O. Rajpur P.S. Behar District Banka

... .. Petitioner/s

Versus

The Bihar State Electricity Board and Ors

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Subodh Kumar Jha
For the Respondent/s : Mr.Vinay Kirti Singh
Mr. Akhileshwar Singh

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 13-09-2019

Heard Mr. Jha counsel for the petitioner and Mr Vinay Kirti Singh learned senior counsel for the Bihar State Power (Holdings) Company Limited successor-in-interest of the original respondents in the instant proceedings.

Punishment order dated 07.03.2001 whereby petitioner has been dismissed from service is assailed in the instant proceedings. The appeal filed against the order has been rejected on 10.08.2005. The same is also challenged in the instant proceedings.

At the relevant point of time, petitioner was working as Junior Accounts clerk in the respondents-Board. A charge memo dated 09.10.1996 was issued wherein substance of the allegation was of making interpolations in cheques and paying-in-slips. Such



interpolations allegedly amounted to misappropriation of an amount of Rs 1,60,000/- by the petitioner.

Petitioner has assailed the order of punishment by asserting that the same was issued without affording opportunity to the petitioner of defending himself. Alleging violation of the principles of natural justice, it is submitted that the conclusion of the Enquiry Officer, leading to the order of punishment is legally unsustainable.

The stand of the State authorities, on the other hand, is that in spite of due opportunity granted to the petitioner by service of charge memo, petitioner has chosen not to avail the opportunity. Much after issuance of charge memo, petitioner had submitted one communication to the Enquiry Officer on 05.04.1997. Even in the said communication, petitioner had made no submission or statement on the merits of the allegation. The petitioner has requested for some audit report and the documents pertaining to handing over and taking over charge of all persons including the petitioner who were connected with accounts section in between the period 1996 to 1997. The petitioner thereafter, has chosen not to participate in the enquiry, which is evident from the enquiry report dated 21.11.2000 submitted by the Enquiry Officer.



From perusal of the enquiry report, it is apparent that adequate opportunity has been granted to the petitioner. The petitioner was present when deposition of management's witnesses was being recorded in the proceedings. He, however, has chosen to abandon the proceedings. Thereafter, he has chosen not to cross-examine management's witnesses. Enquiry proceedings further reveal that after taking time for filing written argument, petitioner chose not to file the same. In view of his conscious non-participation in the proceedings, after recording deposition of management's witnesses, Enquiry Officer has proceeded to submit enquiry report on 21.11.2000.

It would be relevant to take note of the fact that the petitioner, during the proceedings of enquiry proceedings, had approached this court in a writ proceedings arising out of CWJC No. 2207 of 2000. This court had by its order dated 28.06.2000 directed expeditious disposal of the proceedings, preferably within six months. Obligation of the petitioner to cooperate with authorities for early conclusion of the departmental proceedings had been emphasized in the order dated 28.06.2000, passed on petitioner's earlier writ proceedings. This court had specifically directed that in case of petitioner's failure to cooperate, the enquiry proceedings may continue ex parte. The enquiry proceedings



viewed in the background of the order passed on petitioner's earlier writ proceedings, and his non-participation in the proceedings are sufficient to conclude that the Enquiry Officer has not committed any procedural lapse or infirmity in proceeding ex parte.

Non-participation of the petitioner in the enquiry is also apparent from the petitioner's representation/ written statement made on the enquiry report before the Disciplinary Authority on 10.01.2001 (Annexure 5) of the writ petition. Perusal of the representation makes it abundantly clear that the petitioner after having request for the documents has not stated anything before the Enquiry Officer other than making repeated requests for adjourning the enquiry till disposal of petitioner's writ petition (CWJC No. 2207 of 2000). Relevant extract of the petitioner's response to the enquiry report in this regard reads as follows:-

“In end it is submitted that the enquiry proceeding is not in accordance with the standing order which contains several stages but apparently and obviously it is stated that even the basic documents were not supplied. The statements of the witnesses were not given. The copies of the order sheet was not made available. It is further stated that I repeatedly stated that I had to move the Hon'ble High Court and in this regard I also intimated the enquiry officer that the writ application had been filed and it is likely to be heard very shortly. But unfortunately the enquiry officer was not agreed to adjourn the enquiry and in the haste and hurry the ex-party enquiry was concluded. The witnesses were examined



behind the back. It is not correct that I left the proceeding but I requested to adjourn the proceeding till the order is not passed in C.W.J.C. matter”.

The Enquiry Officer under communication dated 24.03.1998 bearing no. 306 intimated the petitioner that papers demanded by him had no relevancy to the charges and therefore were not being supplied to him. This specific stand taken by the respondents in the counter affidavit has not been denied or disputed by the petitioner and stands admitted.

Apparently, stand of the petitioner was factually incorrect and misrepresentation of fact in respect of proceedings before the Enquiry Officer. The enquiry report has been submitted on 21.11.2000 whereas petitioner's earlier writ proceedings arising out of CWJC No. 2207 of 2000 had been disposed of prior thereto i.e. 28.06.2000 itself. After 28.06.2000 upto 21.11.2000 there was no scope for awaiting conclusion of the writ proceedings as has been suggested by the petitioner.

On consideration of the aforesaid facts, it is apparent that in spite of due opportunity, petitioner has chosen not to avail the same. Having done so, he is estopped from alleging violation of the principles of natural justice and alleging that he was not afforded any opportunity in the enquiry. Conduct of the petitioner clearly amounts to a deemed waiver of the principles of natural



justice. In this connection, this Court would refer to the decision of the Apex Court in the case of **Board of Directors, Himachal Pradesh Transport Corporation & another vs. K.C. Rahi** reported in **(2008) 11 SCC 502**.

Petitioner having waived the principles of natural justice cannot be permitted to invoke the jurisdiction under Article 226 of the Constitution of India asserting non-compliance of the principles of natural justice in the enquiry conducted.

This Court does not find any infirmity so as to exercise jurisdiction for quashing of punishment of dismissal from service and the order passed by the appellate court.

Writ petition is devoid of merit and the same is dismissed.

(Madhuresh Prasad, J)

s.hassan/-

AFR/NAFR	NAFR
CAV DATE	NA
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