

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 1175 of 2016

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Vinod Bhushan Dwivedi son of Late Kashi Nath Dwivedi, resident of House No. 26, Ro. 10, Patel Nagar, P.S. Shastri Nagar, District and Town Patna.

... .. Petitioner/s

Versus

1. Bihar State Power Holding Company Limited through its Chairman -cum- Managing Director, Vidyut Bhawan, Bailey Road, Patna
2. Bihar State Power Generation Company Limited, through its Managing Director, Vidyut Bhawan, Bailey Road, Patna
3. Bihar State Power Transmission Company Limited through its Managing Director, Vidyut Bhawan, Bailey Road, Patna
4. General Manager-cum- Chief Engineer Bihar State Power Generation Company Limited, Barauni Thermal Power Station, District - Begusarai
5. Devendra Kumar Singh, Electrical Executive Engineer, SLDC, Bihar State Power Transmission Company Limited, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr Umesh Prasad Singh, Sr Advocate with Mr Neeraj Kumar, Advocate
For the Respondent/s	:	Mr Sanjay Kr Giri, Advocate

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 21-01-2019

Heard learned Senior Counsel for the petitioner and the respondents.

2 The writ petition has been filed for quashing the communication dated 16.08.2013 of the Deputy General Manager (HR) of the Bihar State Power Generation Company Limited (for brevity, *BSPGCL*) informing the adverse entry of the Reviewing Authority in the Annual Confidential Report (for brevity, *ACR*) for the year, 2011-2012). At the relevant time, the petitioner was an Electrical Executive Engineer. The communication dated



04.01.2014 of the Secretary, BSPGCL communicating rejection of the petitioner's representation against the adverse entry has also been challenged in the instant proceedings.

3 Mr Umesh Prasad Singh, learned Senior Counsel has appeared in support of the writ petition.

4 The various submissions advanced by the learned Senior Counsel are that the adverse entry in relation to the period 2011-2012 has been communicated belatedly on 16.08.2013. Relying upon certain decisions of the Apex Court, it is submitted that the same could not have been done without issuing a show cause. The judgment relied upon in support of this submission is in the case of *Union of India & Another -Versus- S K Goel & Others, (2007) 14 Supreme Court Cases 641*. Reliance is also placed on the case of *Dev Dutt -Versus- Union of India & Others, (2008) 8 Supreme Court Cases 725*. Learned Senior Counsel has also relied upon the case of *State of Uttar Pradesh -Versus- Yamuna Shanker Misra, (1997) 4 Supreme Court Cases 7*. Reliance has been placed on paragraphs 27 and 28 of the judgment in the case of *S K Goel & Others (supra)*, paragraphs 9, 10, 11, 12 of the judgment in the case of *Dev Dutt (supra)* and paragraphs 7 and 8 of the judgment in the case of *Yamuna Shanker Misra (supra)* in support of the submissions advanced by the learned



Senior Counsel appearing for the petitioner. Another submission of learned Senior Counsel is that the adverse entry, prima facie, constitutes a charge and adverse entry of such a nature cannot be sustained as same is contrary to Chapter XII of the Bihar State Electricity Board Service Regulation, 1976 (for brevity, *1976 Regulation*).

5 Mr Sanjay Giri, learned counsel for the respondent-Board has submitted that the writ petition was filed after a delay of two years. The specific stand of the respondent-Board in the counter affidavit is that upon reviewing the functioning of the petitioner and having due regard to his performance and work in the schemes where he was posted, the adverse entry has been recorded. After restructuring of erstwhile Bihar State Electricity Board, five Corporations came into existence. BSPGCL was one of the newly constituted Corporations. The matter of the petitioner fell within the jurisdiction of BSPGCL. Accordingly, the Managing Director, BSPGCL has examined the petitioner's representation against the adverse remark and decided not to interfere with the same. It is also submitted that vide notification dated 06.04.2018 bearing Memo No 377, petitioner has already been promoted to the post of Electrical Superintending Engineer.



In view of such development, subsequent to filing of the writ petition, nothing survives in the writ petition.

6 Having considered the rival submissions of the parties, this Court finds that communication of the adverse entry under the impugned communication dated 16.08.2013 is not in terms of the provisions regarding recording of adverse entries contained in Chapter XII of the 1976 Regulation. The adverse entry, apart from being belated, is otherwise also not sustainable since the adverse entry, which has been communicated, is in fact in the nature of a charge or finding in respect of a charge. The adverse entry recorded is “*lack of dedication*”. Such finding could only be recorded after a duly constituted disciplinary proceedings. Such adverse entry, apart from constituting a charge, is also in teeth of the provisions contained in Chapter XII of the 1976 Regulation.

7 The rating, one of which, can be recorded by the Authority, in the ACR has been categorized into six categories for the sake of maintaining objectivity. Rule 103 of the 1976 Regulations, which is relevant for the instant purpose, is being reproduced:

103. Adverse entries as regards integrity shall not be made lightly.



(i) After making detailed entries in the CCR in the prescribed proforma, if any, a cumulative overall assessment of the employee shall be made and he should be given one of the following ratings depending on his performance for the year/or part of a year as assessed objectively :-

- (a) Outstanding*
- (b) Very Good*
- (c) Good*
- (d) Satisfactory*
- (e) Fair*
- (f) Poor*

(ii) In making this categorization, the following shall be kept in mind :-

(a) Personality which would include health, tact, intelligence, aptitude for hard work and leadership.

(b) Professional competence which would include-

(1) Knowledge of the subject or trade connected with the duties of the employee.

(2) Application capacity for taking decision and initiative;

(3) Sense of responsibility;

(4) Out turn of work achievement of targets, etc.

(c) Integrity-which shall include honesty and objectivity, freedom from prejudices like caste and community, patriotism, social consciousness, sense of duty towards society, fair-play.

8 None of the six ratings specified in sub-clause (a) to sub-clause (f) of sub-rule (i) of Rule 103 of the 1976 Regulation has been recorded. On the contrary, in violation of Regulation 102, which mandates that vague entries shall not be made, the



Authority has recorded a vague entry without any rating in the ACR of the petitioner as “*lack of dedication*”. The ACR entries, therefore, are in violation of the provisions governing ACR contained in Chapter XII of the 1976 Regulation and are, therefore, unsustainable in law.

9 The letter dated 04.01.2014 rejecting the petitioner’s representation, therefore, must also fail as it upholds the illegal adverse entry contained in communication dated 16.08.2013.

10 Rule 105 of the 1976 Regulations obliges the Authority considering representation against an adverse entry to examine the representation and communicate a decision. A corresponding right is, therefore, created in favour of the representationist against an adverse entry for examination of his representation by competent authority and to communication of a decision in respect thereof.

11 Apart from that, the communication dated 04.01.2014, by itself, is also legally unsustainable inasmuch as the same suffers from the vice of non-assigning of reasons in support of the conclusion to reject the petitioner’s representation dated 29.08.2013. Non-assigning of reasons by the Authority has the effect of making the decision arbitrary and legally unsustainable. In this connection, this Court would refer to the provisions



contained in Regulation 105 of the 1976 Regulation, the same reads as follows:

“105. Communication of adverse entries -

(i) Adverse entries, if any, in the CCR of any employee pertaining to a reporting year shall be communicated to the employee concerned in a summary form, latest by October each year.

(ii) On being communicated adverse entries, an employee may represent against the same to the reviewing officer within six months of the communication, who shall communicate a decision to the representing employee not later than six months after receipt of a representation.

(iii) In the case of employees who belong to the officer cadres of the Board, no adverse remarks shall be expunged except after examination by Member (Administration) of the Board orders of the Chairman.”

12 Rule 105 of the 1976 Regulations makes it abundantly clear that a decision is to be arrived at after due consideration of the representation which can only mean by reasoned and speaking order. It is trite law that non-assigning of reasons renders the decision arbitrary. A decision on representation would necessarily mean a decision in accordance with law containing reasons so as to sustain the decision itself. The Authority, considering the petitioner's representation, has not assigned any reason. The order does not show application of



mind. In the absence of reasons in support of the decision, the communication dated 04.01.2014 rejecting the petitioner's representation is clearly unsustainable in the eyes of law. The cryptic manner, in which the petitioner's representation has been dealt with, is apparent from the communication rejecting the petitioner's representation which reads as follows:

“... ..I am directed to inform you that the authorities have found no ground or reason to modify or expunge the adverse remarks reported by the Reviewing Authority in your ACR for the year 2011-12. Accordingly, your representation stands disposed off.”

13 In view of the aforesaid findings, this Court would quash the communication dated 16.08.2013 bearing Letter No 305 of the Deputy General Manager (HR) as also the Letter dated 04.01.2014 bearing No 11 issued by BSPGCL rejecting the petitioner's representation.

14 In view of quashing of the two orders, the petitioner, needless to say, would be entitled to all consequential benefits.

15 Writ petition is allowed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/	AFR
CAV DATE	NA
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