

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.981 of 2017

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Vijay Kumar Prasad Son of Late Dasai Sah, R/o Village-Shankar Saraiya,
Tola Bankat, PS-Turkauliya, District-East Champaran

... .. Petitioner/s

Versus

1. The Bihar State Power Holding Company Limited through its Chairman cum Managing Director, Vidyut Bhawan, Bailey Road, Patna
2. The Chairman Cum Managing Director, Bihar State Power Holding Company Limited, Vidyut Bhawan, Baile Road, Patna
3. The Managing Director, North Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road,
4. The General Manager HR/Adm., Bihar State Power Holding Company Limited, Vidyut Bhawan, Bailey Road
5. The General Manager HR/Adm., North Bihar Power Distribution Compnay Limltd, Vidyut Bhawan, Bai

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. D.K. Sinha, Sr. Advocate Mr. Bajarangi Lal
For the Respondent/s	:	Mr. Vinay Kirti Singh, Sr. Advocate Mr. Vijay Kumar Verma Mr. Akhileshwr Singh; A

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

4 29-08-2019 Heard the learned counsel for the parties.

An order dated 03.12.2014 (Annexure-19), passed by the General Manager (HR & Admin), North Bihar Power Distribution Company Limited (for short 'the Company') is under challenge in the present writ application, whereby the petitioner has been dismissed from service, after holding the departmental inquiry against him. The petitioner had preferred an appeal before the Chairman-cum-Managing Director-cum-



Appellate Authority, Bihar State Power Holding Company, which has been rejected by an order dated 13.03.2015 (Annexure-21). The said order has also been put to challenge. The petitioner had preferred a review application, which has been rejected by an order dated 04.10.2016 on the ground of its maintainability. The petitioner is seeking quashing of the said order dated 04.10.2016 also.

The alleged misconduct against the petitioner relates to the period, when he was posted as Store Assistant, Store and Purchase Section of the erstwhile Bihar State Electricity Board. There were two charges framed against him, the essence of which is as follows:-

- (i) During verification of materials at Muzaffarpur Central Stores between 28.11.2011 to 07.01.2012, 38 items of materials were found surplus and shortage of 04 items was detected.
- (ii) The stock ledger entry dated 03.09.2010 showed 0.025 kilometre balance quantity of AAAC Squirrel Conductor, but on physical verification, total 28 kilometre conductor was found in the stores and thus 27.975



kilometre conductor was found surplus, out of which 970 kg, equivalent to 16 kilometre was found cut into pieces with the help of Store Verifier to grab it and cause monetary loss to the Board.

A departmental inquiry was initiated with the issuance of a charge sheet, containing the aforesaid two charges, through Memo No. 531 dated 14.06.2012.

Before I proceed to take note of the other aspects of the matter, I consider it apt to mention here itself that other employees of the company were also proceeded against with almost the same set of charges through office order issued on the same date i.e. 14.06.2012, based on the verification of the store conducted on 28.11.2012. Mukhtar Ahmad Saqib, Chandra Bhushan Choudhary and Akhilesh Prasad, all posted in the said Store, were also proceeded against with almost identical charge/charges. The Inquiry Officer had found them guilty of the charges in his report submitted to the disciplinary authority. Agreeing with the findings recorded by the Inquiry Officer, the disciplinary authority, after supplying copies of the report of the Inquiry Officer to them and giving them an opportunity to explain dealing with the finding of the Inquiry Officer, had



imposed punishment of dismissal from service, by separate orders passed on 03.12.2014.

Mr. Sinha, learned Senior Counsel for the petitioner, has submitted that, in identical situation, based on the same set of materials available in the disciplinary proceeding against the said Mukhtar Ahmad Saqib, Chandra Bhushan Choudhary and Akhilesh Prasad, in whose cases also punishment of dismissal from service was imposed, this Court has not only interfered with the decision of the disciplinary authority, but also considered it inappropriate not to remit the matter back to the authorities for re-consideration. Reliance has been placed in this regard on the said decision in the case of Akhilesh Prasad (CWJC No. 557 of 2017), Chandra Bhushan Choudhary (CWJC No. 4992 of 2016) and Mokhtar Ahmad Sakib (CWJC No.5949 of 2016) since reported in **2017 (3) PLJR 978**. The decision rendered by this Court dated 20.06.2017 in the case of **Akhilesh Prasad** (supra) has been affirmed by the Division Bench on appeals preferred under the Letters Patent of this Court, by judgment and order dated 09.10.2018, passed in LPA Nos. 1349 of 2017, 1350 of 2017 and 1348 of 2017, certified copy of which has been produced by the learned Senior Counsel for the petitioner.



It has been argued by Mr. Sinha, learned Senior Counsel for the petitioner, that the reasons assigned by this Court in the case of **Akhilesh Prasad** (supra) for interfering with the order of dismissal from service, fully applies to the case of this petitioner as well.

Learned counsel for the Company has not been able to distinguish the case of the petitioner from the case of other employees of the Company, who were also proceeded against for the same set of charges, on the basis of identical materials. He has, however, submitted that since the petitioner has failed to establish any procedural irregularity in conduct of the departmental inquiry and decision of the disciplinary authority to impose punishment of dismissal from service, this Court may not interfere with the impugned decisions.

I have carefully gone through the records, particularly the charges framed against the petitioner and other employees, who were also proceeded against with the issuance of charge sheet on the same day. It seems that with the same allegation an FIR was also registered, implicating the petitioner and the said three persons, namely, Mukhtar Ahmad Saqib, Chandra Bhushan Choudhary and Akhilesh Prasad.

On perusal of the decision of this Court in the case of



Akhilesh Prasad (supra), I find substance in the submission made by the learned Senior Counsel for the petitioner that there is no similarity in the nature of allegation in the charge memo made against the petitioner and other persons. Paragraphs 19, 20, 21 and 22 of the decision in the case of **Akhilseh Prasad** (supra) indicate that the charges against the petitioners were similar based on the same set of facts. Para 22 of the said decision reads thus:-

“Last but not the least is the allegation facing the petitioners, of cutting the wires without seeking permission of the superiors as observed in the 3-Member Committee report present at Annexure-5. Now while the statement of the petitioners is that the wires in question have been utilized by the Board and thus there is no issue of financial loss to the Board, in absence of definite evidence on record showing participation of these petitioners in the cutting of wires, their association with the store by virtue of their status, ipso facto, cannot be a ground to invite a punishment much less a major punishment. In fact once the charge of causing financial loss to the Board stands



diluted, the petitioners sail out from the charge of misconduct defined under Clause 29B (l) and there is no evidence led by the respondent department to uphold the allegation framed under clause 29B (a) (c) and (i) of the Standing Order. In sum and substance the allegation facing the petitioners lack foundation and rest on no evidence. The order passed by the Disciplinary Authority is a perversity for it discusses no material to uphold the charge nor does it deal with the issues raised by the petitioners in their respective show cause rather blindly endorses the opinion recorded by the Enquiry Officer.”

The said decision in case of **Akhilseh Prasad** (supra) has been affirmed by a Division Bench, noticing the reasons assigned in the case of **Akhilesh Prasad** (supra). Relevant paragraph of the Division Bench decision of this Court is being reproduced hereinbelow”-

“One can very clearly peep into the mind of the Learned Single Judge when he writes :

“Perhaps in the nature of the order passed by the Disciplinary Authority and the Appellate Authority, I would



have remitted the matter for passing a fresh order in accordance with law but in view of the uncontested position reflecting from the records of the proceedings where there is complete absence of materials to uphold the charge of misconduct as against these petitioners, I am of the considered opinion that the matter requires to be put to a quietus.

We are in complete agreement with the reasoning given by the learned Single Judge and, therefore, are of the view that no interference is called for at our end.”

The Division Bench has held that the charge of causing financial losses to the Board could not be proved as no evidence was led with respect to the specific role played by the employees, nor any effort was made for quantifying the losses. The witnesses also stated before the Inquiry Officer that there could not have been any intention of pilfering or causing losses to the Board as the reference of the wires, which have allegedly been cut into smaller pieces, would not have been found in the ledger book.

There is specific averment made in the second supplementary affidavit filed on behalf of the petitioner that his case is identical to the cases of other three employees of the Company, as noted above, which has remained uncontroverted in the absence of specific denial.



In the above noted situation, I find no other option but to interfere with the impugned order in the light of this Court's decision by a Coordinate Bench in the case of **Akhilesh Prasad** (supra) and the Division Bench decision in the case of **Bihar State Power (Holding) Company Limited and others Vs. Mokhtar Ahmad Sakib** (supra).

The impugned order dated 03.12.2014 is accordingly set aside. The order of the appellate authority also consequently stands set aside. The petitioner stands reinstated on the post with all consequential benefits.

This writ application is allowed.

There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

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