

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 14010 of 2005

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Banke Bihari Mishra, son of late Durandhar Mishra, resident of Village –
Rajpur, PS – Belhar, District - Banka

... .. Petitioner/s

Versus

- 1 The Bihar State Electricity Board, Patna through its Chairman, Vidyut Bhawan, Jawahar Lal Nehru Marg, Patna
- 2 The Chairman, Bihar State Electricity Board, Vidyut Bhawan, Jawahar Lal Nehru Marg, Patna
- 3 The Secretary, Bihar State Electricity Board, Vidyut Bhawan, Jawahar Lal Nehru Marg, Patna
- 4 The Joint Secretary, Bihar State Electricity Board, Jawahar Lal Nehru Marg, Patna

... .. Respondent/s

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Appearance :

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

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 22-11-2019

Heard learned counsel for the petitioner as well as the learned Senior Counsel representing the respondent-Company.

2 The petitioner was in the service of the predecessor Bihar State Electricity Board and was visited with the punishment of demotion from Accounts Assistant to the post of Junior Accounts Clerk with immediate effect from 28.07.1994. Thereafter, the petitioner was again served with a charge memo dated 09.10.1996 and was put under suspension on 12.03.1996. Pursuant to the said suspension, the petitioner was dismissed from



service on 07.03.2001. Dismissal of the petitioner from service was assailed in CWJC No 839 of 2006. The same stood dismissed under order dated 13.09.2019, copy of which has been placed on the records in this case. It appears from the said order that the petitioner chose not to avail the opportunity granted to him in the proceedings arising out of second charge memo dated 09.10.1996. Having not availed of the opportunity of natural justice, he had assailed the order of dismissal alleging violation of the principles of natural justice. This Court held that the petitioner was stopped from assailing the findings as he had chosen not to participate in the proceedings. Dismissal of the petitioner dated 07.03.2001 by now has attained finality between the parties.

3 The issue, which arises in the instant case, is the fixation of salary to which the petitioner is entitled upon his demotion as Junior Accounts Clerk with effect from 28.07.1994 till his dismissal pursuant to the second disciplinary proceeding on 07.03.2001.

4 Petitioner's counsel submits that the petitioner was entitled to fixation of salary at the highest scale in the pay scale of Junior Accounts Clerk. The respondent-Board was not allowing such benefits to the petitioner. He, accordingly, moved this Court by filing a writ petition. CWJC No 11867 of 2004, filed by the



petitioner, was considered by this Court. The grievance of the petitioner before this Court, which has been recorded in order dated 15.03.2005, is that though the petitioner was allowed Selection Grade, no Dearness Allowance or increment was ever allowed. Only basic pay of Selection Grade was allowed.

5 The petitioner sought only disposal of the writ petition with a direction upon the Authorities to dispose of his representation in respect of the said claim. The claim of the petitioner has been disposed of by the Secretary of Board on 30.07.2005. Upon due consideration of the facts, the Secretary has passed a well considered and reasoned order.

6 The fixation of the petitioner's pay was done by the Electrical Superintending Engineer, Electric Supply Circle, Giridih in purported exercise of power under Rule 87 of the Bihar Service Code. The Authorities considered the fact that Rule 87 of Bihar Service Code speaks of fixation of pay by the Authority who gave the order of punishment. The petitioner was visited with the order of demotion by the Secretary who was his Disciplinary Authority and not the Electrical Superintending Engineer. Therefore, the Secretary was of the view that the petitioner cannot claim any benefit on account of fixation done by the Superintending Engineer, Electric Supply Circle, Giridih. The Secretary, being the



competent Authority, has therefore, fixed the petitioner's pay in the scale of Junior Accounts Clerk at Rs 1300/- with effect from 28.07.1994. The said payment was to be made to him from 28.07.1994 till his dismissal on 07.03.2001. The only rider was that in respect of the period of suspension, i e, between 12.03.1996 to 07.03.2001, he was entitled only to subsistence allowance for the said period.

7 Learned counsel appearing for the petitioner submits that since the fixation of pay has been done by the Electrical Superintending Engineer then keeping in view equity, the same should not have been altered by the Secretary on 30.07.2005. Other than submission of the learned counsel for the petitioner, no provision has been brought to the notice of the Court that the Electrical Superintending Engineer was the Disciplinary Authority for fixation of the petitioner's pay.

8 The learned Senior Counsel appearing for the respondent-Company, on the other hand, submits that the petitioner has got his due under order dated 30.07.2005 by the competent Authority, he cannot claim any benefit on account of illegal fixation done by the incompetent Authority.

9 This Court has considered the rival submissions. There is nothing on record to show that the Electrical



Superintending Engineer was the competent/Disciplinary Authority of the petitioner. The fixation done by an incompetent authority cannot be made the basis of claiming any other benefit. The very foundation being illegal, petitioner cannot be permitted to invoke equity. The competent Authority, being the Secretary, by detailed and reasoned order, has fixed the petitioner's pay on 30.07.2005.

10 Petitioner has not been able to make out a case for grant of any benefit in excess of that which has been fixed by the Secretary under the impugned order dated 30.07.2005.

11 Writ petition is, therefore, devoid of merit and the same is dismissed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
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