

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17558 of 2018

Anil Kumar Singh Son of Late Satya Narayan Singh,
Ex-Junior Accounts Clerk-cum-Cashier, Electric Sub-
Division, Bankipore, Patna-at present residing at
Village- Danaganj, P.O. Dhobia Kalapur, P.S.
Naubatpur, Town and District- Patna.

... .. Petitioner/s
Versus

1. South Bihar Power Distribution Co. Ltd. through its
Managing Director, Vidyut Bhwan, Bailey Road,
Patna-800021
2. Chairman-cum-Managing Director of Bihar State
Power (Holding) Co. Ltd., Vidyut Bhwan, Bailey
Road, Patna-800021
3. General Manager (HR and Adm), South Bihar Power
Distribution Co. Ltd. Vidyut Bhwan, Bailey Road,
Patna-800021
4. Sri Suresh Kumar Sharma, Deputy General Manager
(HR and Adm) South Bihar Power Distribution Co.
Ltd., Vidyut Bhwan, Bailey Road, Patna-800021
5. Sri Sahadat Hussain, Land Acquisition-cum-Enquiry
Officer, South Bihar Power Distribution Co. Ltd.,
Vidyut Bhwan, Bailey Road, Patna-800021

... .. Respondent/s

Appearance :

For the Petitioner/s	: Mr. Umesh Prasad Singh, Sr. Adv. Mr. Abhimanyu Vatsa, Advocate
For the Respondent/s	: Mr. Vinay Kirti Singh, Sr. Adv. Mr. Ritesh Kumar, Adv.



: Mr. Vijay Kumar Verma, Adv.

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
CAV JUDGMENT

Date : 08-10-2021

1. The present writ petition has been filed for quashing the inquiry report dated 14.06.2017, submitted by the Respondent No. 5, the order of punishment dated 18.12.2017 passed by the Deputy General Manager (HR & Adm.), South Bihar Power Distribution company Ltd. (hereinafter referred to as the SBPDCL) whereby and whereunder the petitioner has been dismissed from service and for further quashing the order passed by the Respondent No. 2 i.e. the Chairman-cum-Managing Director, Bihar State Power (Holding) Company Ltd., Bihar, Patna, as communicated to the petitioner vide letter dated 13.07.2018, issued by the Deputy General Manager (HR & Adm.), SBPDCL, by which the appeal preferred by the petitioner has been dismissed.

2. The brief facts of the case are that the petitioner was appointed on compassionate ground



on the post of unskilled Khalasi by the then General Manager-cum-Chief Engineer, Area Board, Bhagalpur and subsequently, he had appeared in the departmental examination and being successful, was appointed as Bill Clerk with effect from 01.01.1982. Subsequently, the petitioner was transferred to Patna and at the relevant time, was functioning as a Bill Clerk at PESU under the control of General Manager-cum-Chief Engineer, PESU. It appears that on the basis of an internal audit report, defalcation / misappropriation of several lakhs of rupees had come to light and the petitioner was also one of the accused persons, having complicity in the matter, hence, he was suspended by an order dated 25.6.2015, issued by the then Deputy General Manager (HR & Adm.). Thereafter, vide resolution dated 09.06.2016, issued by the General Manager (HR & Adm.), SBPDCL, it was resolved to initiate a departmental proceeding against the petitioner and the Chief Engineer, SBPDCL, Patna, was appointed as the Inquiry Officer and a copy of the aforesaid



resolution dated 09.06.2016 was forwarded to the petitioner along with the charge-sheet and other details / documents. The petitioner had then submitted a show cause reply before the Inquiry Officer on 29.06.2016. After completion of the departmental inquiry, the Inquiry Officer had submitted his inquiry report on 14.6.2017 whereby and whereunder all the charges leveled against the petitioner were found to have been proved. The Deputy General Manager (HR / Adm.), SBPDCL, had then issued a second cause notice dated 21.9.2017, to which the petitioner had submitted his reply in detail, however, vide resolution no. 2055 dated 18.12.2017, issued under the signature of the Deputy General Manager (HR / Adm.), SBPDCL, the petitioner was inflicted with the punishment of dismissal from service. The petitioner had then filed an appeal, however, the same has stood dismissed by an order dated 02.06.2018 passed by the Chairman-cum-Managing Director, Bihar State Power (Holding) Company Ltd., Patna, as communicated to the



petitioner vide letter dated 13.07.2018.

3. The learned Senior Counsel for the petitioner, Sri Umesh Prasad Singh, has raised a short issue for consideration to the effect that the proceedings in question are contrary to Rules 16 and 17 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (herein after referred to as the "Rules, 2005") inasmuch as though the appointing authority of the petitioner is the General Manager-cum-Chief Engineer, however, firstly, the order of suspension dated 25.6.2015 has been passed, not by the disciplinary authority / appointing authority, but by the Deputy General Manager (HR & Adm.), SBPDCL. Similarly, the charge-sheet has been issued vide resolution dated 09.06.2016, not by the disciplinary authority but by the General Manager (HR & Adm.), SBPDCL and likewise the second show cause notice dated 21.9.2017 has also been issued by the Deputy General Manager (HR / Adm.). It is submitted that even the order of punishment dated 18.12.2017 has been passed by the Deputy General Manager



(HR / Adm.), SBPDCL, who is neither the appointing authority nor the disciplinary authority of the petitioner. Lastly, it is submitted that the appeal filed by the petitioner has also been rejected by the Chairman-cum-Managing Director, Bihar State Power Holding Company Ltd., Patna, however, there is no regulation or provision authorizing him as the appellate authority, thus, it is submitted that the entire disciplinary proceeding, conducted as against the petitioner stands vitiated, right from the stage of issuance of charge-sheet till the passing of the order of punishment or dismissal of the petitioner from his services as also upto passing of the appellate order. In this regard, the learned Senior Counsel for the petitioner has referred to the judgments rendered by the Hon'ble Apex Court, reported in (2014) 1 SCC 351 (**Union of India vs. B.V. Gopinath**), (2018) 17 SCC 677 (**State of Tamilnadu vs. Pramod Kumar, I.P.S. and another**), (2001) 1 SCC 182, (**Kumaon Mandal Vikas Nigam Ltd. vs. Girja Shankar Pant and others**) and AIR 1976 SC 789, (**Hukam**



Chand Shyam Lal vs. Union of India).

4. *Per contra*, the learned Senior Counsel for the Respondent-Company, Sri Vinay Kirti Singh, has submitted that though it is not disputed that the Rules, 2005 are applicable in the present case and in fact, in the earlier round of litigation, a coordinate Bench of this Court, by a judgment dated 18.08.2017 passed in CWJC No. 14196 of 2016, had though refrained from quashing the order of suspension, but had directed the respondent-Company to conclude the disciplinary proceeding within a period of four months, failing which the Respondent would consider the prayer of the petitioner for revocation of his suspension.

5. The learned Senior Counsel for the Respondent-Company has further submitted that the petitioner was appointed as a daily wager with effect from 17.12.1978, whereafter he was appointed on the post of unskilled Khalasi by the General Manager-cum-Chief Engineer in the Bhagalpur area Board in the services of the



erstwhile Bihar State Electricity Board. The petitioner had then passed the departmental examination and was appointed as a Bill Clerk with effect from 1.1.1982 at Bhagalpur and subsequently, he was transferred to Patna where he took charge as a Bill Clerk on 30.04.2010 and by the order of Electrical Executive Engineer, Electric Supply Division, Bankipore, he started working as Revenue Cashier with effect from 15.07.2011. The learned Senior Counsel for the Respondent-Company has also taken this Court through the scheme of the Electricity Act, 2003 and the "Reorganization of BSEB and transfer of personnel scheme", which deals with the transfer of personnel and employees in transmission, generation, distribution and other common services. The learned Senior Counsel for the Respondent-Company has also referred to the resolution no. 05 - 04 passed by the Board of Directors of SBPDCL in its 5th meeting held on 07.03.2013 whereby and whereunder the schedule of delegation of power, as prepared by PFCCL and



approved by the Board of Directors of Bihar State Power (Holding) Company Ltd., for North / South Bihar Power Distribution Company Ltd., has been adopted w.e.f. 22.02.2013.

It has been submitted that the power to suspend and award major punishment to the workmen of field cadre and officers in the rank of JEE or equivalent has been delegated to the concerned GM-cum-CE of the area / project, who is the Disciplinary authority and the appellate authority is the Managing Director. The learned Senior Counsel has also referred to Annexure-B to the rejoinder affidavit to the reply to the counter affidavit, filed by the respondents, more particularly Clause 1.10 thereof, which postulates that the authority higher than the authority competent to exercise power under this delegation shall have power to exercise these powers even if there is no specific delegation to that effect. The learned Senior Counsel for the Respondent-Company has also referred to the notification of the Bihar State Power (Holding) Company Ltd.



dated 05.04.2014 to contend that the Board of Directors of the Bihar State Power (Holding) Company Ltd. in the meeting held on 25.03.2014 have resolved that in all such cases where decision to inflict punishment has been taken by the Managing Director of the Bihar State Power (Holding) Company Ltd. or its subsidiaries, the appellate authority shall be the Chairman of the Bihar State Power (Holding) Company Ltd.

6. As far as the merits of the instant case is concerned, the learned Senior Counsel for the Respondent-Company has submitted that in the present case, the DGM (HR & Adm.), vide office order dated 25.06.2015 had communicated the order of suspension passed by the Managing Director of the Company to the petitioner and in fact, the decision to initiate departmental proceeding against the petitioner and others was also taken by the Managing Director of the Company. Moreover, the entire decision regarding issuance of charge-sheet, initiation of departmental proceeding, appointment of Inquiry



Officer and passing of the order of punishment of dismissal, as against the petitioner herein, was taken by the Managing Director, hence, there is no illegality if the order of suspension, the order initiating departmental proceeding and the order inflicting punishment of dismissal upon the petitioner has been communicated by the DGM (HR & Adm.) or the GM (HR & Adm.).

7. It is also submitted by the learned Senior Counsel for the Respondent-Company that during the course of departmental inquiry, five witnesses were examined in support of the charges leveled against the petitioner and then, the Inquiry Officer, after a detailed and a thorough inquiry, has come to a conclusion that charge nos. 1, 2 and 3 have been found to have been proved as against the petitioner and there was temporary defalcation on the part of the petitioner since he had failed to deposit a sum of Rs. 43,48,296/- for about four years, after having collected the same from the consumers. It is also submitted that a bare perusal of the various orders under challenge would show



that the same have merely been communicated by the DGM (HR & Adm.) or the GM (HR & Adm.) inasmuch as above their signatures, it has been mentioned- "as per orders" and in fact, the order has actually been passed by the Managing Director of the Company, who is higher in rank to the appointing / disciplinary authority of the petitioner i.e. the GM cum C.E, thus, it is submitted that there is no ambiguity or irregularity in the procedure adopted by the Respondent-Company, right from the stage of suspension of the petitioner to initiation of the departmental proceeding to issuance of charge-sheet and up to the stage of infliction of punishment of dismissal from service upon the petitioner herein. Lastly, it is submitted that as per the aforesaid resolution dated 05.04.2014, the Chairman of the Bihar State Power (Holding) Company Ltd. is the appellate authority in cases where the order of punishment has been passed by the Managing Director of a company.

8. I have heard the learned Senior Counsel for the parties and perused the materials on record. At



the outset, it must be pointed out that the facts stated in the rejoinder affidavit to the reply to the counter affidavit filed on behalf of the Respondents No. 1 to 3, regarding the Managing Director having taken all the decisions, right from the stage of suspension to initiation of the departmental proceeding to issuance of charge-sheet to appointment of Inquiry Officer and upto passing of the punishment order, dismissing the petitioner from his services, as has been categorically stated in paragraph no. 15 of the said rejoinder affidavit (at running Page No. 184 of the brief), has neither been refuted nor denied by the petitioner, thus, it is clear that the DGM (HR & Adm.) or for that matter, GM (HR & Adm.) had merely communicated the order of suspension dated 25.6.2015, the resolution initiating departmental proceeding against the petitioner dated 09.6.2016, the second show cause notice dated 21.09.2017 and the order of punishment dated 18.12.2017, to the petitioner, although all the decisions had been taken by the Managing Director of the Respondent-



Company. Admittedly, the appointing / disciplinary authority of the petitioner is the General Manager-cum-Chief Engineer, however, as per the scheme of delegation of power, more particularly Clause 1.10 thereof which postulates that the authority higher than the authority competent to exercise power under this delegation shall have power to exercise these powers even if there is no specific delegation to that effect, the Managing Director of the Company, who admittedly is an authority higher to the General Manager-cum-Chief Engineer, was / is fully competent and empowered to act as the disciplinary authority of the petitioner. Thus the contention of the learned Senior Counsel for the petitioner to the effect that the proceedings in question are contrary to Rules 16 and 17 of the Rules, 2005 inasmuch as though the appointing authority of the petitioner is the General Manager-cum-Chief Engineer, but the subordinate officials have donned the role of disciplinary authority / appointing authority is not only incorrect but also misconceived. In fact, even Rules 16 and 17 of the



Rules, 2005, postulate institution of disciplinary proceedings against any Government Servant and passing of appropriate orders by acting as the Disciplinary authority, either by the appointing authority or any authority to which the appointing authority is subordinate or any other authority empowered by general or special order of the Government. Therefore, this Court is of the view that the argument advanced by the learned Senior Counsel for the petitioner is not only misplaced but also fallacious and bereft of any merit, hence, is rejected. Consequently, all the judgments, referred to by the learned Senior Counsel for the petitioner are not applicable in the facts and circumstances of the present case.

9. Now coming to the issue as to whether the Chairman-cum-Managing Director, Bihar State Power (Holding) Company Ltd., is the competent appellate authority or not, it would suffice to state that it is apparent from the resolution dated 05.04.2014, as referred to in the preceeding paragraphs, hereinabove, that the Chairman-cum-



Managing Director, Bihar State Power (Holding) Company Ltd., is the competent appellate authority in such cases where the order of punishment has been passed by the Managing Director and moreover, the petitioner had also filed the appeal before the Chairman-cum-Managing Director, Bihar State Power (Holding) Company Ltd., Patna, hence, on this score as well, the argument advanced by the learned Senior Counsel for the petitioner is misplaced and devoid of any merit, thus is rejected.

10. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, I do not find any merit in the present writ petition, hence, the same stands dismissed.

(Mohit Kumar Shah, J)

Ajay/-

AFR	AFR
CAV DATE	05.08.2021
Uploading Date	13.10.2021
Transmission Date	NA

