

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8599 of 2017

Malay Kumar Singh Son of Dhir Narayan Singh Resident of M.I.G. House
No. 338, Kankarbagh Colony, P.O. Lohiyanagar P.S. Kankar Bagh, District
Patna.

... .. Petitioner

Versus

1. The Bihar State Power Holding Company Limited
2. The Secretary, the Bihar State Power Holding Company Limited Vidyut Bhawan, J.L. Nehru Marg, Patna.
3. The Joint Secretary, the Bihar State Power Holding Company Limited Vidyut Bhawan, J.L. Nehru Marg,
4. The Chief Engineer Supply and Distribution, the Bihar State Power Holding Company Limited Vidyut Bh
5. Chief Engineer, Planning, the Bihar State Power Holding Company Limited Vidyut Bhawan, J.L. Nehru M

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Manendra Kumar Sinha, Advocate Mr. Anirudha Kumar, Advocate
For the Respondents	:	Mr. Vinay Kirti Singh, Senior Advocate Mr. Bijay Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 21-08-2021

The petitioner is son of one Dhir Narayan Singh, who retired from the service of erstwhile Bihar State Electricity Board as Executive Engineer with effect from 01.02.1996. He was granted monthly pension at the rate of 75 percent, withholding 25 percent, admittedly by way of punishment, in exercise of power under Rule 43(b) of the Bihar Pension Rules.

2. Petitioner's father had earlier approached this Court by filing writ petition giving rise to C.W.J.C. No. 694 of 2013.



During the pendency of the said writ petition, the petitioner's father died.

3. It appears from an order dated 01.09.2016 passed in the aforesaid C.W.J.C. No. 694 of 2013 that the said matter was adjourned on several dates so as to enable substitution. As learned counsel for the petitioner, who was representing the petitioner in that case, did not receive any instructions, the writ petition abated and stood disposed of accordingly.

4. The petitioner has now filed the present writ application seeking the same relief, as was sought in C.W.J.C. No. 694 of 2013. He is seeking quashing of punishment order bearing Resolution No. 208 dated 28.01.2000, whereby it was decided to withhold 25 percent of pension and 25 percent of gratuity permanently upon conclusion of a departmental enquiry. Appeal against the said order was also dismissed by an order communicated vide Memo. No. 2061 dated 01.10.2012, which is being challenged in the present writ application.

5. This is to be noted that the Bihar State Electricity Board has hence been reconstituted and restructured into various companies including Bihar State Power Holding Company Limited (respondents herein).



6. There is averment in paragraph 6 of the writ petition to the effect that the order of punishment was never communicated to the petitioner's father and, therefore, he could not prefer an appeal. The petitioner has brought on record a representation filed by the petitioner's father on 11.02.2010 addressed to the Joint Secretary, Bihar State Electricity Board for reconsideration of the order of punishment of withholding of pension. No where, in his representation, it is mentioned that the order of punishment was not served upon him. The petitioner's father had made a representation before the Chairman of Bihar State Electricity Board on 28.04.2010, wherein also he did not raise any objection to the effect that the order of punishment was not served upon him. The said representation dated 28.04.2010, rather discloses that the petitioner's father raised a grievance that the said appeal was being preferred belatedly because the pension was sanctioned, few months ago. For the first time, the petitioner's father, in his subsequent representation dated 17.08.2012 addressed to the Chairman, asserted that till that date, the order of punishment had not been communicated/supplied/handed over to him and, therefore, he could not prefer any appeal against the order of punishment.



7. The appeal filed by the petitioner's father was dismissed by an order issued vide Memo No.2016 dated 01.10.2012 on the ground that the same was belated.

8. This fact is not in dispute that the petitioner's father was proceeded against departmentally vide a Resolution No. 1542 dated 03.08.1992 on the charge of defalcation of a sum of Rs.15,000/-. The enquiring authority, in his report, held that the charges against the petitioner's father could not be said to have been proved. The disciplinary authority, however, found that charge No. 3 and 4 against the petitioner's father stood proved on the basis of materials available on the record of the departmental enquiry. Accordingly, disagreeing with the finding of the enquiring officer in respect of charge No. 3 and 4 and after discussing the reasons why said charges were found to be proved, a second show cause notice was issued to the petitioner's father asking him to reply as to why appropriate punishment be not imposed upon him by withholding 25 percent of pension.

9. It is the case of the petitioner in this writ application that though his father had been visiting the office of the Board regularly for payment of his post retirement dues, but he was never communicated about passing of order under Rule 43(b) of the Pension Rules. It has been stated, on the other hand, in the counter



affidavit filed on behalf of the Board that as the father of the petitioner had failed to reply to the second show cause notice, he was regularly reminded in this regard. A copy of the enquiry report was supplied to the father of the petitioner. After supply of the enquiry report as demanded by the petitioner's father, reminder was sent, but he did not reply and accordingly, on the basis of materials on record, the proposed punishment of withholding of 25 percent of pension was confirmed by Board's Resolution No. 208 dated 28.01.2000, which was communicated to the petitioner's father.

10. The statement made in the writ petition that the punishment order was not communicated to the petitioner's father has been specifically denied in the counter affidavit. A supplementary affidavit has been filed on behalf of the petitioner, wherein it has been stated that the deceased employee had two issues, namely, the petitioner and his brother Kishlay Kumar Singh, who are living separately and the petitioner has obtained a family certificate showing his status as the son of deceased retired employee. It has been stated that there is mutual understanding between the petitioner and his brother to pursue this matter.



11. A reply has been filed to the counter affidavit reiterating the plea that the final order passed by the disciplinary authority was never communicated to the petitioner's father.

12. When the matter was taken up on 25.06.2021, this Court had directed the Power Holding Company to inform whether the order imposing punishment of withholding of 25 percent of pension was in fact communicated. In pursuance thereof, a supplementary counter affidavit has been filed stating therein that the file of the departmental proceeding could not be located since the departmental proceeding was initiated in 1994-95 and the order of punishment was passed on 28.01.2000. It has been asserted in the writ petition that though the appeal was dismissed on 19.07.2010, the petitioner's father approached this Court more than two years thereafter.

13. Learned counsel appearing on behalf of the petitioner has submitted that the action of the imposition of punishment of withholding of 25 percent of pension on the petitioner's father is wholly arbitrary and in violation of the principles of natural justice. He has argued that the disciplinary authority, after having made up his mind to impose punishment, issued second show cause notice, disagreeing with the report of the enquiring authority and recording his own finding that charges No.



3 and 4 stood proved. He has submitted that the impugned order of imposition of punishment of withholding of pension suffers from prejudice and bias. He has urged that as the order of punishment was not communicated to the petitioner's father, his appeal ought not to have been rejected by the appellate authority on the ground of delay.

14. Mr. Vinay Kirti Singh, learned Senior Counsel appearing on behalf of the respondents has submitted that the petitioner's father admittedly did not respond to the second show cause notice and, therefore, he cannot raise the point of violation of principles of natural justice. He has further submitted that both, the petitioner and his father, have not been diligent enough in pursuing this matter before this Court as is evident from the records and, therefore, this Court may decline to allow relief as sought for by the petitioner.

15. Whether the order of the disciplinary authority imposing punishment of withholding of pension was ever communicated to the petitioner's father is one of the main issues involved in the writ petition. This is for the reasons that the appeal was dismissed on the ground of delay and now the petitioner is taking a plea that the petitioner's father could not have preferred



appeal in the absence of order of punishment communicated to him.

16. The order of punishment was passed admittedly on 28.01.2000. For the reasons best known to the parties, the pension was sanctioned in favour of the petitioner's father in 2009. The petitioner's father had filed representation before the Joint Secretary of the Board on 11.02.2010. In his representation, he did not assert that the order of punishment was not served upon him, rather he wanted the order of punishment to be recalled. In his representation dated 11.02.2010, in the nature of appeal before the Chairman, the petitioner's father did not take a plea that copy of the order was not served upon him. The appeal preferred by the petitioner's father was rejected on the ground of delay. After rejection of the appeal, the petitioner's father again submitted representation on 17.08.2012, wherein he, for the first time, raised a plea that the order of punishment was never communicated to him. The belated plea on the part of the petitioner's father of non-supply of order of punishment for the first time made nearly 12 years after passing of the order of punishment is not acceptable to this Court.

17. Further, apparently the petitioner's father approached this Court much after passing of the order by the appellate



authority, which was not pursued by his heirs after his death leading to abatement of the writ petition, as noted above.

18. In the aforesaid circumstances, considering all the facts and circumstances taken together, I do not find it to be a fit case for this Court's interference exercising power under Article 226 of the Constitution of India.

19. This application is accordingly dismissed being devoid of merit.

(Chakradhari Sharan Singh, J)

Pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	24.08.2021.
Transmission Date	N/A

