IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10655 of 2020

Rajendra Prasad Singh S/o Late Sh. Krishna Singh, R/o Narayan Pur, PPCL Colony, Near Gausala, Post- Manikpur, P.S. - Inderpuri, Dist- Rohtas (Sasaram), Bihar- 831305.

... ... Petitioner/s

Versus

1. Chairman-cum-Managing Director, Bihar State Power Holding Company Limited, Vidyut Bhawan, Bailey Road, Patna, Bihar.
2. Managing Director, South Bihar Power Distribution company Limited, Vidyut Bhawan, Bailey Road, Patna, Bihar.
3. The Deputy General Manager (HR and Admin.), South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna, Bihar.
4. Managing Director, Bihar State Power Transmission company Limited 4th Floor, Vidyut Bhawan, Bailey Road, Patna, Bihar.
5. The Electrical Executive Engineer, Electric Supply, Division, Bhabua Bihar.
6. The Assistant Electrical Executive Engineer, Electric Supply, Sub-Division- Mohania (Bhabua) Bihar.

... ... Respondent/s

Appearance :

For the Petitioner/s : Mr. Siddharth Shankar, Adv.

For the Company : Mr. Kunal Tiwary.

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 15-12-2022

Heard learned counsel for the petitioner and learned counsel for the Company.

2. Writ petition has been filed for issuance of writ of certiorari, mandamus, or any other appropriate writ, order or direction, seeking to quash the impugned order dated 10/10/2019 passed by Chairman-cum-Managing Director of the Bihar State Power Holding Company Limited, Respondent No. 1 herein (hereinafter referred as "Appellate Authority") and subsequent Office Order bearing NO. 2465/SB-X/ CC/JAC-33004/19 dated 23/10/2019, passed by the Deputy General Manger (HR & Admn.) of the South Bihar Power Distribution Company Limited, Respondent NO. 3 herein. It is submitted that vide the said impugned order dated 23/10/2019, the Respondent No. 1 has upheld the validity of Office Order bearing No. 4005.V.Board dated 08/11/2011, passed by the Joint Secretary, erstwhile Bihar State Electricity Board, Patna(hereinafter referred as "Disciplinary Authority") whereby, the Petitioner was severally panelised, without any fault.

3. The petitioner who was a Junior Account Clerk has been proceeded against by the Respondent-Authorites by a charge Memo dated 23.08.2010, issued by the Disciplinary Authority. The background leading to issuance of the charge memo is a Special

Audit Report No. 07 of 2009-10. The charges have been reproduced in the counter affidavit and reads as follows:-

> *"(i) Posting of lower amount than (DCR) in Revenue Cash Book, amounting to Rs. 3540/- in Permanent Revenue Embezzlement.*
>
> *(ii) Lower amount entry in closing balance of Revenue Cash Book, amounting to Rs. 2208/- in Permanent Revenue Embezzlement.*
>
> *(iii) Lower amount entry in totaling in receipt side of Revenue Cash Book, found permanent Revenue Embezzlement of Rs. 30,221/-.*
>
> *(iv) Entry lower amount/Not entry in DCR of money receipt found permanent revenue defalcation of Rs. 18,276/-.*
>
> *(v) Lower totaling of DCR, Permanent Revenue Embezzlement of Rs. 3300/-.*
>
> *(vi) Did not prepare the DCR of Revenue collection Temporary Revenue defalcation of Rs. 6397/- (He had deposited the amount without permission of competent authority at the highlight of that matter).*
>
> *(vii) Revenue loss of Rs. 2,50,236=37, due of Revenue against consumer was not properly charged.*
>
> *(viii) Lower amount entry in Billing Assessment which is incurred of loss of Rs. 42,000/-*
>
> *(ix) Revenue Loss of Rs. 75,604/- to low billing. The petitioner was charged Rs. 57,548/- for permanent embezzlement/defalcation and Rs. 6,397/- for temporary Revenue embezzlement/defalcation. He was charged for Revenue loss of Rs. 3,67,840/-"*

4. From bare perusal of the record, it is obvious that as per the Audit Report, the petitioner has been proceeded against alleging certain discrepancy in maintenance of accounts and delay in raising, or carrying forward dues of customers in the electricity bills etc. spread over a period of 22 years. The loss which has been quantified on the basis of the Audit Report to the tune of Rs. 3,67,840/-. The petitioner has responded to the charge memo and appeared before Enquiry Officer. An Enquiry Report has been submitted on 17.02.2011. The Enquiry Officer did find discrepancy in maintenance of accounts or in raising bills. However, there is no detail as to which register, for which year, which month, or even for which consumer, bills/accounts have been examined. The Enquiry Officer has accepted the petitioner's defence that he was overworked, maintaining bills and accounts for four staffs, and therefore, some human error or discrepancy may have occurred. The petitioner’s plea that the discrepancy, if any would at best amount to negligence and not misconduct has been accepted by the Enquiry Officer.

5. Till this stage, the petitioner has no problem. The petitioner's problems arises from issuance of the second show-cause to the petitioner purporting to differ with the findings of the said Enquiry Officer. Before considering the petitioner’s grievance, this Court would consider it appropriate to reproduce Rule-18(2) of the Bihar CCA Rules:-

> *“The disciplinary authority, after receipt of the enquiry report as per Rules 17(23)(ii) or as per sub-*

rule (1), shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own finding on such charge, if the evidences on record is sufficient for the purpose."

6. The requirement as per the said rule is explicit from a bare perusal of the same. The difference is to be specific, supported by reasons for such disagreement with tentative findings of the Disciplinary Authority; and only if evidence on record is sufficient for the said purpose. As opposed to these requirement, the conclusions of the Disciplinary Authority in his order dated 28.03.2011, purporting to have been taken under Rule 18(2) to say the least is cryptic. It shows total non-application of mind. There is no tentative finding of any specific charge. Also, there is no reference to any material adduced in the course of the enquiry. The Disciplinary Authority, apparently is overwhelmed by the fact that the charges relate to a loss caused to the Board, quantified at Rs. 3,67,840/- (Three Lakhs Sixty Seven Thousand Eight Hundred Forty Rupees). The Disciplinary Authority after purporting to differ with the findings of the Enquiry Officer as noted above, has passed the order of punishment. The same is without assigning any reasons in support of the conclusion and showing total non-application of mind.

7. From the order, it appears as if all the records relating to the departmental proceedings was examined. In the course of examination, the Disciplinary Authority has found that in between April 1983, to November 2005, the petitioner was posted as Junior Accounts Clerk/ Bill Clerk-cum-Bill Collector-cum- Cashier in the Electricity Supply Division, Mohania. He has recorded a conclusion that during this period, the petitioner has violated the rules, was negligent towards his duties and indulged in financial irregularities and misappropriation, and thereby caused a loss of revenue quantified at Rs. 3,67,840.37/- (Three Lakhs Sixty Seven Thousand Eight Hundred Forty Rupees and Thirty Seven Paise)

8. The Disciplinary Authority has also recorded that lesser entry was made in the revenue/cash book, than what had been shown as collected in the daily collection register. He has also claimed to have discovered the fact that petitioner has shown less than due amount while making entry of the total and balance amounts in the cash register. Petitioner has also entered lesser amounts, and deliberately omitted to enter amounts in the daily collection register than the amounts available as per the cash receipts. It appears from the findings, that the Disciplinary Authority, as if he has done a meticulous examination of the books of accounts, cash receipts, collection register etc., for more than 22 years. The order, however, is without reference to details of any specific cash book, money receipt, daily collection register or any other books of accounts. The order does not manifest the basis for the conclusion. There is not even a whisper as to which account of which date, and in relation to which customer/s, the findings have been recorded by the Disciplinary Authority. The order is thus without any basis.

9. The findings are also not with reference to any such books of accounts having been produced in the enquiry before the Enquiry Officer, and is thus in contravention of Rule 18(2) of the Bihar CCA Rules, 2005.

10. The order of punishment dated 12.07.2011 (as contained in Annexure-12 to the writ petition) as a consequence of such conclusion is also unsustainable.

11. The order dated 10.10.2019, passed by the Appellate Authority on the petitioner's appeal, whereby the petitioners appeal has been rejected, is also unsustainable. From bare reading of the order, it is obvious that the Appellate order is based on non est reasons and perverse. The Appellate Authority has mechanically rejected the appeal by referring to some clarification submitted by the office. The Appellate Authority has taken note of some written intimation given by one Assistant Electrical Engineer that the billing agency has not deposited the amount of revenue loss of Rs. 3,67,840/- (Three Lakhs Sixty Seven Thousand Eight Hundred Forty Rupees). This communication has weighed before the Appellate Authority to conclude that the order of the Disciplinary Authority, which as noted above, was clearly unsustainable in law, requires no interference. The appeal has been rejected by recording the following order.

> "उपर्युक्त तथ्यों से स्पष्ट है कि अपीलकर्त्ता द्वारा राजस्व हानि की राशि, रू० *3,67,840/-*, उनसे वसूल न किये जाने के समर्थन में प्रस्तुत तर्क पूर्णतः साक्षयहीन है। अपीलकर्त्ता अपने अपील अभ्यावेदन एवं सुनवाई के क्रम में ऐसा कोई भी तर्क प्रस्तुत नहीं कर सके, जिसके आधार पर प्रमाणित पाये गये आरोपों के लिए अनुशासनिक प्राधिकार द्वारा अधिरोपित शास्ति में हस्तक्षेप करने का कोई कारण स्पष्ट होता हो।"

12. The cryptic and baseless findings of the Appellate Authority, without reference to any material in support of the charges, is clearly unsustainable. The consequential order dated dated 23.10.2019 issued by the Deputy General Manager, thus, also must collapse.

13. This Court is of the considered view that the proceedings against the petitioner leading to the impugned order of punishment suffers from fatal procedural irregularities, and, cannot be sustained in the eyes of the law.

14. The impugned orders dated 08.11.2011, passed by the Joint Secretary, erstwhile Bihar State Electricity Board, and order dated 10.10.2019, passed by Chairman-cum-Managing Director of the Bihar State Power Holding Company Limited and order dated 23.10.2019, passed by the Deputy General Manager (HR & Admn.) are hereby quashed.

15. The writ petition is allowed with consequential benefits to the petitioner.

(Madhuresh Prasad, J)

Raj kishore/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	29.12.2022
Transmission Date	N.A.