IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1100 of 2016
In
Civil Writ Jurisdiction Case No.6177 of 2015

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Narayan Jha, son of Late Maheshwar Jha, resident of village + P.O. Gosain Gaon, P.S. Gopalpur, District-Bhagalpur.

... ... Petitioner- Appellant/s

Versus

1. The Bihar State Power Holding Company Limited, Vidyut Bhawan, Bailey Road Patna through its Deputy General Manager (Human Resources), Vidyut Bhawan, Bailey Road, Patna.
2. The Chairman-cum-Managing Director, Bihar State Power (Holding) Company Limited, Vidyut Bhawan, Bailey Road, Patna.
3. The Director (Administration), Bihar State Power (Holding) Company Limited, Vidyut Bhawan, Bailey Road, Patna.
4. The Managing Director, North Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna.
5. The General Manager (Human Resource and Administration), North Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna.
6. The Joint Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna.

... ... Respondents-Respondent/s

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Appearance :
For the Appellant/s : Mr. Siyaram Sahi, Advocate
Mr. Makardhwaj Upadhyay, Advocate
Ms. Shaly Kumari, Advocate

For the Respondent/s : Mr. Vinay Kirit Singh, Senior Advocate
Mr. Vijay Kumar Verma, Advocate
Mr. Akhileshwar Singh, Advocate
Mr. Kunal Tiwary, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY

CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 05-10-2023

The appellant, who was the petitioner, was issued with an order dated 18.09.2012 by which 100% of his pension and the entire gratuity, due to him on his retirement, have been forfeited on a permanent basis, for misconduct alleged and proved at a domestic enquiry. The order impugned is produced as Annexure-30 in the writ petition and an appeal also turned unsuccessful as is revealed from Annexure-31 in the writ petition. The learned Single Judge also dismissed the writ petition filed against the order of penalty, finding the penalty to be permissible under Rule 43(b) of the Bihar Pension Rules.

2. We have heard learned counsel appearing for the appellant Sri Siyaram Sahi and learned Senior Counsel Sri Vinay Kirti Singh, who appeared for the respondent-Board.

3. The learned Single Judge at the outset noticed the well-heeled principle of judicial review against the order of punishments, arising out of departmental proceeding being very limited; wherein the Courts do not weigh the evidence nor go into the sustainability of the charges, but only interferes if it is a case of no evidence. The appellant was found to have been assigned the duties of a Billing Clerk though his designation was Correspondence Clerk. The allegation was of

misappropriation of Rs.16,65,331/- which was detected in the course of a special audit. There were also other defalcations noticed for which proceedings were taken against other responsible persons. The allegation against the appellant was supported by a report of the special audit team, comprised of two auditors, who have been examined before the enquiry officer. Despite cross-examination of one of them, the appellant was not able to shake their testimony. The appellant's claim of non-supply of documents cannot be sustained since the third copy of the DCR, which is prepared in triplicate, was in the custody of the appellant and he had caused it to disappear.

4. The findings in the enquiry report and the contention in defence of the delinquent employee, the appellant, were said to have been elaborately dealt with by the disciplinary authority, which order produced as Annexure-30 was extracted in the judgment. It was found that there was sufficient evidence to substantiate the charges of misappropriation against the appellant, which stood proved and every single defence was examined not only by the enquiry officer but also by the disciplinary authority. The receipt of the DCR by the appellant having been proved by the counter signature in the ledger, he had made the counter foils to disappear was the finding. It was

found that the appellant in the capacity of the Billing Clerk has misappropriated huge amounts. It was found that there was no violation of principles of natural justice or statutory regulations regarding the conduct of an enquiry nor consideration of any extraneous material. The conclusions of the authority were not arbitrary or capricious and the evidence led was sufficient to find the appellant guilty. The findings of the enquiry officer, as affirmed by the disciplinary authority, were upheld. The mitigation sought regarding quantum of punishment was also looked into. It was found that Rule 43(b) of the Bihar Pension Rules permit such punishment of forfeiture of the entire retirement benefits. The appellate authority's order was also extracted and it was affirmed that there is no cause for any mitigation of the penalty imposed.

5. At the hearing of the appeal, we directed the respondent-Board's Senior Counsel to produce a copy of the enquiry report which has been produced across the bar and it has been marked by us in this appeal, as Court Exhibit-C-1. The allegations levelled against the appellant are evident from the enquiry report, which are in the form of six charges. The first charge was a receipt book in triplicate called the DCR having been handed over to the Assistant Electrical Engineer/Cashier

which was received from the Electricity Supply Division, Katihar. Charge No.2 was with respect to, again, the Assistant Electrical Engineer, Electricity Supply Sub-Division, Katihar having received a receipt book by signing the Divisional Stock Book, which was not recorded in the stock register of the sub-divisional office. Charge No.3 was with respect to a receipt received book by one, Vasudev Prasad Yadav, then Accounts Assistant for collection at Kursela Camp, which receipt book was the subject of a theft reported by the Accounts Assistant to the Assistant Electrical Engineer, who lodged first information before the police. Charge No.4 again was with respect to the issuance of a receipt book to the Accounts Assistant which was found missing from the custody of the Accounts Assistant, based on which another FIR was registered. Charge No.5 was with respect to a receipt book obtained from the Electricity Supply Division, Katihar, without naming the person who received it. It has to be noticed that Charges no.1 to 5 does not mention the appellant having received the receipt book. The only receipt book received by the appellant, as alleged in the charge sheet, is Money Receipt Book No.743 with Receipt No.148401 to 148600 obtained from Electricity Supply Division, Katihar by the appellant himself. The facts alleged in Charge No.6 are violation of Article 6.96 of Part V of the Board's Financial and Accounting Code. It has also been alleged that unautrhorized use of receipt book in any office leads to an additional embezzlement and criminal conduct. We also have to specify that though every charge speaks of a revenue collection, neither was any of the receipts on which such collection is allegedly made, were produced before the enquiry officer, nor was there any enquiry conducted from the persons from whom the collections were alleged to have been made.

6. We specifically notice Charge No.1 which speaks of a receipt of five money receipt books, out of which allegations are raised with respect to four money receipt books. The used money receipts are specifically indicated and the amount collected on account of energy sale also specified. However, there is nothing to show that these amounts were collected by the appellant nor are the receipts produced before the enquiry officer. The enquiry report, the translated copy of which is produced before us, does not speak of any documents, the verification of which proved the defalcations alleged against the appellant. The appellant is said to have requested the third copy of the money receipt, DCR and the photo copy of the consumer accounts which were not made available. The finding

of the enquiry officer was that the appellant had nothing to say in defence and despite threatening an *ex parte* proceeding, there was no cross-examination done of the witnesses.

7. The Board's witnesses who were in the Audit Team was specifically named, one of whom was not cross-examined. A perfunctory statement has been made in the enquiry report that *"no evidence has been produced against the allegations levelled by the Board against the accused Mr. Narayan Jha, then Correspondence Clerk, to prove that the allegations levelled against the accused are wrong even in the written arguments by the presenting officer of the prosecution, the charges against accused Sri Jha have been upheld."* We cannot but observe that the enquiry officer has totally misdirected himself in finding that the allegations have to be disproved by the delinquent employee, without the department offering any proof to substantiate such allegations.

8. The Senior-in-Charge, Audit, one Mr. Rajendra Jha who was examined spoke of the Board's Financial and Accounts Code and the issuance of receipts which are to be prepared in triplicate and the daily amounts along with the counter foils which are to be handed over to the Cashier. The daily collections are checked and kept by the Cashier in a chest, the

keys of which are with the Cashier and the Assistant Electrical Engineer. The contention of the delinquent employee was that the FIRs regarding the theft and the missing of receipt books indicates that this was the reason for any unauthorized collection, if at all made, for which the appellant cannot be held responsible.

9. The enquiry officer had referred to various clauses in the Finance and Accounts Code, without detailing the facts which would lead to establishment of the defalcation of amounts alleged against the appellant, which also led to the violation of the various provisions. It was found by the enquiry officer that the procedure was of the daily revenue collection challan being counter signed by the Assistant Electrical Engineer and the deposit of cash being made to the Accounts Assistant, by the Bill Collector. It was alleged that the accused produced no evidence to establish the remittance having been made. We cannot but, again, immediately observe that the question of proof being offered by the delinquent employee arises only after the department establishes that there were collections made by the delinquent employee. If the counter foils were not available, then on what basis allegation of defalcation was made against the appellant, is not clear and in that circumstance the amount of

defalcation also could not have been determined.

10. The enquiry officer also found that the work of the appellant was not correctly monitored by the Assistant Electrical Engineer which brings forth serious supervisory lapses, especially when the appellant, who was posted as a Correspondence Clerk, was given the responsibility of revenue collection and verification having not been done of the money receipt books, issued by the Assistant Electrical Engineer. The enquiry officer has, without any substantiating evidence asserted that the delinquent employee had used the receipt books which were stolen from the Kursela Camp without reference to the conclusion of the investigation as per the FIR registered. The theft of the receipt books or the missing of another receipt book was not alleged as that engineered by the appellant nor is he established to be an accused in the crime registered.

11. We find absolutely no evidence against the appellant, having been dealt with by the enquiry officer, but for noticing the procedure to be followed from the Finance and Accounts Code and reliance placed on the unsubstantiated deposition of the witnesses. The audit report even if produced before the enquiry officer, it was not supplied to the delinquent employee. There is also no reference to the contents of the audit

report in the enquiry report.

12. The allegations levelled as specific charges against the delinquent employee, as we noticed at the outset, does not at all indicate the delivery of the receipt books to the appellant. There is nothing produced to show that the appellant who was posted as Correspondence Clerk was entrusted with the work of a Billing Clerk. There is also no evidence of any collection of amounts by the appellant; which collection has to be from the consumers. If such collections were not remitted at the office as per the procedure delineated in the Financial Code, then definitely there would have been complaints raised by the consumers; none of which is even referred to in the charges or brought forth in the enquiry conducted. There is also no evidence as to how the Board arrived at the amount alleged to have been defalcated by the delinquent employee.

13. We have also looked into the translated copies of the orders of the disciplinary authority and the appellate authority, which have been translated by the Translation Wing of the Registry; produced & marked in this appeal as Court Exhibits-C-2 and C-3 respectively. It is trite that the Disciplinary Authority also could look into the evidence led at the enquiry and arrive at an independent finding.

14. We have also gone through the order of the disciplinary authority which has been extracted by the learned Single Judge in the impugned judgment. We cannot but find that the order of the disciplinary authority is also based on surmises and conjectures. The delinquent employee had specifically pleaded that there is absolutely no evidence except the audit report presented by the prosecution, based on which the charges cannot be considered to have been proved. He also contended that he was not a Bill Collector and only was intermittently given the said duties which he carried out diligently under the supervision of senior officials. There was absolutely no evidence as to receipt book having been received by the delinquent nor can he be held responsible for the theft of one of the receipt books and the missing of another receipt book. He had in fact given the receipts/DCR with the money collected to the Cashier and it was the Assistant Electrical Engineer and the Cashier who were responsible accordingly.

15. The Disciplinary Authority merely found that there is evidence to establish the defalcation, but without any discussion of such evidence. The Disciplinary Authority found the charges framed against the delinquent employee are with respect to the details of the revenue collected which were not found in the cash book

and deposited in the Bank. In the enquiry, the Cashier was not examined nor was the Assistant Electrical Engineer. The only witness proffered by the Department were the auditors. It was also found by the Disciplinary Authority that involvement in the embezzlement against the delinquent stood proved by the investigating officer. As we found the enquiry report does not proffer any such proof based on evidence.

16. The Appellate Authority's order merely presumed that in the process of misappropriation, receipt book was received without demand letter; indulged in by the appellant and other staff and corresponding entries were not made in the relevant register. It was categorically found that the matter does not arise due to complaint of the consumer, but the third copy of the money receipt and DCR has not been returned nor is the collected amount deposited.

17. As we find from the enquiry report, there is nothing to indicate that the receipt books were obtained by the delinquent employee. The receipt books were obtained even as per the charges framed against the delinquent by the Assistant Electrical Engineer and the Accounts Assistant who were also responsible for bill collection and deposit of money to the account of the Board. The Accounts Assistant has registered an

FIR with respect to theft of a receipt book and another FIR with respect to the missing of a receipt book. Both these FIRs were not produced before the enquiry officer and there is nothing to hold the delinquent employee responsible for such theft or missing. As we noticed, while dealing with the enquiry report there is not even an allegation of receipt of money from the consumers. It is not clear as to how the amounts were quantified to allege a misappropriation against the employee. Under Charge No.1 specific money receipts are mentioned against which the amount of collection on account of energy sale is also noticed. There is no evidence led as to from whom such collections were made and how the amounts were computed to make the specific allegation of misappropriation against the appellant. Even such an allegation of quantification of amount with reference to receipt numbers is not made against the delinquent employee in the other five charges levelled against him. There is absolutely no evidence led as to how the quantification of amounts mentioned in each charge has been arrived at.

18. We find the enquiry having not found the delinquent to have received any receipt books or misappropriated the amounts collected from the consumers. The

only evidence produced before the enquiry officer was the audit report based on which the delinquent employee was proceeded against. In fact, the specific procedure, as pointed out by the Auditor from the Board's Financial and Accounting Code speaks of the DCR being prepared in triplicate and the money collected along with the third counter foil being produced before the Cashier who keeps the amount in the chest maintained under the supervision of the Assistant Electrical Engineer. The keys of the chest were with the Cashier and the Assistant Electrical Engineer and the collections are to be deposited by the Cashier on the same day or on the very next day. If the procedure was as delineated above, the Cashier and the Assistant Electrical Engineer was also responsible for the defalcation. They were not even examined as witnesses before the enquiry officer. There is no evidence of the appellant having been entrusted with bill collection. He admits it but asserts that the counter foils with cash were handed over to the Cashier.

19. We are of the opinion that the enquiry officer, the disciplinary authority and the appellate authority found the delinquent employee/petitioner/appellant herein to be guilty of the charges levelled against him; on no evidence. We set aside the order withholding of 100% pension. The appellant retired

while he was under suspension. The appellant shall be paid the entire wages minus the subsistence allowance during the period of his suspension. The appellant also shall be entitled to the entire retirement benefits which shall be computed and the same paid within three months from today. The appellant shall also be entitled to further pension as provided under the Bihar Pension Rules.

20. The Letters Patent Appeal stands allowed setting aside the order of the learned Single Judge as also the order of punishment imposed on the appellant.

(K. Vinod Chandran, CJ)

Partha Sarthy, J. I agree.

Sunil/-

(Partha Sarthy, J)

AFR/NAFR	
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