

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13903 of 2015

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Rajaram Prasad, Son of late Banaras Mahto, Resident of Village- Nawadah,
P.o.- Nawadah, P.s- Barauli, District Gopalganj.

... .. Petitioner/s

Versus

1. Bihar State Power Holding Company Ltd., Erstwhile Bihar State Electricity Board, through its Chairman-cum-Managing Director, Vidyut Bhawan, Baily Road, Patna.
2. The Chairman cum Managing Director, Bihar State Power Holding Company Ltd, Vidyut Bhawan, Bailey Road, Patna.
3. The Secretary, Bihar State Power Holding Company Ltd, Vidyut Bhawan, Bailey Road, Patna.
4. The Joint Secretary, Bihar State Power Holding Company Ltd, Vidyut Bhawan, Bailey Road, Patna.
5. The officer on Special Duty (O.S.D.) (HR and Adm), North Bihar Power Distribution Com Ltd, Vidyut Bhawan, Baily Road, Patna.
6. The Chief Engineer (Planning, Tech-Audit and Safety) -cum- Enquiry Officer, Bihar State Power (Holding) Co. Ltd, Vidyut Bhawan, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shivendra Kishore, Sr. Advocate Mr. Binod Kumar Sinha, Advocate Mr. Ajay Kumar Prasad, Advocate
For the Respondent/s	:	Mr. Vinay Kirti Singh, Sr. Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 01-09-2023

Heard the learned counsels for the parties.

2. In the instant petition, petitioner has prayed for
following reliefs:-

"(i) For issuance of writ in the nature of certiorari to quash the order passed by Respondent no 5 which was communicated vide memo no 87 dated 31.1.2015 as contained in Annexure-14 by which permanently 100% of pension and 100% of gratuity of the petitioner has been



seized ignoring the finding of Enquiry Officer.

(ii) For holding and declaration that order of Respondent no 5 as contained in Annexure-14 is bad in law and on facts and fit to be quashed.

(iii) For issuance of writ in the nature of mandamus commanding and directing the Respondents to exonerate the petitioner from charges as leveled against the petitioner and accordingly 100% pension and 100% gratuity be released and pay accordingly to the petitioner.

(iv) And/or pass such other order or orders as deem fit and proper in the interest of justice."

3. The petitioner while working as Assistant Electrical Engineer, he was alleged to have involved in demand and acceptance of illegal gratification of a sum of Rs. 1500/-. Arising out of trap proceeding, petitioner was subjected to parallel proceedings, like criminal and departmental proceedings. In the meanwhile, he was placed under suspension on 02.08.2012. Thereafter, on 10.12.2012, he was reinstated and on the very same day he was once again placed under suspension. Based on these material information disciplinary authority proceeded to initiate departmental enquiry on 28.01.2013. During pendency of the departmental enquiry petitioner attained age of superannuation and retired from service. The Enquiring Officer submitted report on 30th April, 2014. Thereafter, second show cause notice was issued to the



petitioner on 23.07.2014. Ultimately, Officer-on-Special Duty (OSD) proceeded to impose penalty of withholding of 100% pension and gratuity.

4. On attaining age of superannuation and retired from service on 31.01.2013, petitioner filed C.W.J.C. No. 10081 of 2013 seeking various retiral benefits. It was disposed on 18.11.2013 with an observation that question of release of leave encashment will also be considered by the authorities after conclusion of the disciplinary proceeding as per law. Feeling aggrieved by the order dated 18.11.2013 passed in C.W.J.C. No. 10081 of 2013, petitioner is stated to have preferred L.P.A. and it was dismissed for non-prosecution.

5. Petitioner was convicted on 11.01.2017 and he was sentenced to undergo two years rigorous imprisonment along with fine of Rs. 10,000/- and it is subject-matter of criminal appeal before this Court and is pending consideration.

6. Learned counsel for the petitioner submitted that in the charge-memo two witnesses have been cited. They have not been examined and cross-examined. It is also submitted that complainant Ripusudan, who is a prime witness for the alleged charge, has not been cited as witness in a departmental enquiry. It is further submitted that author of the penalty order is O.S.D.,



who is not disciplinary authority insofar as petitioner- Assistant Electrical Engineer is concerned. It is submitted that disciplinary authority insofar as Assistant Electrical Engineer is concerned Board.

7. In support of non-examination of witnesses, petitioner is relying on Apex Court's decision rendered in the case of ***Roop Singh Negi Vs. Punjab National Bank*** reported in ***(2009) 2SCC 570*** (para 14).

8. *Per contra*, learned counsel for the respondent submitted that petitioner has statutory remedy of appeal against the Officer-On-Special Duty's order of penalty before the Managing Director. It is further submitted that appointing authority to the petitioner is General Manager. The O.S.D. has only communicated the decision of the General Manager. On the other hand, General Manager who is the disciplinary authority to the petitioner has passed the order. Therefore, the petitioner has remedy of appeal and impugned penalty order is in order.

9. Heard the learned counsels for respective parties.

10. Petitioner was subjected to parallel proceedings, arising out of trap proceedings conducted on 31.07.2012, in respect of alleged demand and acceptance of



illegal gratification of a sum of Rs. 1500/-. He was placed under suspension and subjected to disciplinary proceedings and it was concluded in imposition of penalty of withholding of 100% pension and gratuity. In the criminal proceeding he has been convicted on 11.01.2017 and it is subject-matter of Criminal Appeal before this Court.

11. Learned counsel for the petitioner submitted that impugned penalty order has not been passed by the disciplinary authority. O.S.D. is not the competent authority and two cited witnesses have not been examined in support of the charge. Further, it is submitted that prime witness- complainant Ripusudan has not been cited as a witness. For non-examination of witnesses, he has cited the decision of **Roop Singh Negi**. On the other hand, learned counsel for the respondent submitted that petitioner has not availed the remedy and the Officer-on-Special Duty has communicated the decision of the General Manager. Such contention is not acceptable for the reasons that competent authority has not passed the order of penalty so as to resort the petitioner to avail the remedy. That apart, there is a dispute as to who is the disciplinary authority. According to the petitioner, disciplinary authority is Board. On the other hand, respondents are of the view that disciplinary authority to the



petitioner is General Manager.

12. Be that as it may, the impugned order has been passed by the Officer-on-Special Duty. He is not the competent authority to the extent that he is not the disciplinary authority to the petitioner who is holder of the post of Assistant Electrical Engineer and retired from service. The other contention of the respondent is that General Manager who is the disciplinary authority passed the penalty order and it has been communicated by the O.S.D. The same cannot be accepted in view of the impugned order of penalty to the effect that O.S.D. has proceeded to impose penalty and it is not the communication of any General Manager's order insofar as imposition of penalty. Accordingly, it is rejected. The petitioner has made out a case insofar as non-examination of two witnesses, in not citing the prime witness Ripusudan-complainant. The matter is covered by **Roop Singh Negi** case insofar as non-examination of the witnesses. On all these counts, petitioner has made out a case so as to interfere with the impugned order of penalty dated 31.01.2015 (Annexure-14). Hence, the impugned order dated 31.01.2015 (Annexure-14) stands set aside. The concerned authority is hereby directed to examine pendency of criminal proceedings and settle the



petitioner's retiral benefits including arrears of pension and other service benefits which are due to the petitioner during the intervening period from 02.08.2012 to 31.01.2013 and further difference of pay and arrears of pension shall be calculated and disbursed within a period of three months from the date of receipt of this order, if otherwise petitioner is eligible.

13. Accordingly, the present writ petition stands allowed.

(P. B. Bajanthri, J)

rakhi/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	05.09.2023
Transmission Date	N.A.

