

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1995 of 2018

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Bishnu Deo Singh S/o late Bhola Prasad Singh Resident of Village P.O. -
Udhadih, P.S. Sultanganj, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The Bihar State Power Holding Company Ltd. Through Its Chairman Cum Managing Director
2. The Managing Director, South Bihar Power Holding Company Ltd. Through its Chairman Cum Managing Director
3. Managing Director, South Bihar Power Distribution Company Ltd. , Vidut Bhawan, Baily Road, Patna.
4. General Manager H.R./ Administration, South Bihar Power Distribution Company Ltd. , Vidut Bhawan, Baily Road, Patna.
5. The General Manager Cum- Chief Engineer, Transmission Zone, Muzaffarpur.
6. Special Work Officer H.R./ Administration, South Bihar Power Distribution Company Ltd. , Vidut Bhawan, Baily Road, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ram Hriday Prasad, Adv.
	:	Ms. Maruti Kumari, Adv.
For the BSPHCL/s	:	Mr. Ritesh Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

4 03-10-2023 Heard learned counsel for the petitioner and learned
counsel for the Bihar State Power Holding Company Ltd.

2. Counsel for the petitioner submits that the Enquiry Officer has concluded the enquiry with the specific finding that the prosecution has failed to prove the allegations against the delinquent, but after this conclusion, the Enquiry Officer has made further opinion that the said delinquent has not supervised the work of his subordinate time to time which he supposed to

do.

3. Counsel further submits that the under the rule, the Enquiry Officer is bound to test the allegations made in the memo of charge only. Any observations beyond the findings of the allegations in the memo are bad in law. He further submits that from the order of punishment, it transpires that the findings of Enquiry Officer for non-supervision of his subordinate is the base. Counsel further submits that in the order passed by the appellate authority also, the non-supervision of the work of the subordinate is the basis of affirming the punishment. Counsel submits that there is a categorical finding of the Enquiry Officer that charges made in the memo against the petitioner have not proved. He submits that if the disciplinary authority wanted to punish him on the basis of non-supervision of his subordinates, then he ought to frame a fresh charge, but he has not done so and in his conclusion, counsel submits that it is case in which punishment is based on the basis of the allegations which is not present in the charge memo.

4. Learned counsel for the Bihar State Power Holding Company Ltd. fairly submits that Annexure-1 is the charge memo. In the charge memo, there were 5 specific allegations, but failed to supervise his subordinate's work is not present in

the memo of charge.

5. Counsel further submits that it is well within the power of the disciplinary authority that he may vary from the charge memo and impose punishment. He submits that the order of disciplinary authority has been affirmed by the appellate authority.

6. Counsel also submits that in this regard, second show-cause was issued differing from the opinion made by the Enquiry Officer, but he submits that a fresh charge for non-supervision of the subordinate has not issued.

7. In the light of the submissions made by the parties and from the perusal of the record, it transpires to this Court that order of punishment is based on failure of supervision of subordinate's work and order of appellate authority is also based on the same. But it transpires to this Court that violation of non-performance of supervision work to his subordinate has neither been alleged in the charge memo nor after disagreement memo, a fresh charge has been issued.

8. In this view of the matter, this Court is of the opinion that punishment is based in the present case on the basis of allegations which is not the part of the charge. As such, the original order of punishment dated 04.03.2017 passed by

General Manager (H.R./ Admin.), South Bihar Power Distribution Company Ltd. and the appellate order dated 04.09.2017 (Annexure-9) passed by Chairman -cum- Managing Director are hereby set aside with liberty to the disciplinary authority that he may issue fresh charge memo within 60 days, if required and after granting opportunity to the petitioner pass fresh order in accordance with law.

(Dr. Anshuman, J.)

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