

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.408 of 2022
In
Civil Writ Jurisdiction Case No.124 of 2020

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Ripu Daman Son of Ram Sharan Singh Resident of Village-Gajra Chatar (near Tilaiya Junction), P.S.-Narhat, P.O-Chhoti Jamuara, District-Nawada at present residing at C/o Dwarika Nath Choubey, Advocate, Sitaram Path Extension, Patel Nagar, P.O. and P.S.-Town, District-Patna-800023.

... .. Appellant/s

Versus

1. The Bihar State Power Holding Company Limited through its Chairman cum Managing Director, Vidyut Bhawan, Bailey Road, Patna.
2. The Chairman cum Managing Director, Bihar State Power Holding Company Limited, Vidyut Bhawan, Bailey Road, Patna.
3. The Managing Director, South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna.
4. The Genral Manager (HR and Admin) South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna.
5. The Deputy General Manager (HR and Admin.) South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna.
6. The Under Secretary, South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna.
7. The Electrical Executive Engineer, Lakhisarai Electric Supply Division, Lakhisarai.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Kumar Kaushik, Advocate.
For the Respondent/s	:	Mr. Vinay Kirti Singh, Sr. Advocate.
		Mr. Vijay Kumar Verma, Advocate.
		Mr. Akhileshwar Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

9 19-05-2023 In the instant appeal, the appellant was subjected to disciplinary proceedings and it was concluded in imposition of penalty of withholding of one increment on 05.07.2018.



2. Feeling aggrieved by the penalty order, the appellant has exhausted the remedy of appeal before the Appellate Authority and it was confirmed while rejecting the appeal on 31.12.2018. In the absence of any other provision the appellant submitted representation on 26.02.2019 and it was rejected on 12.04.2019. The appellant filed CWJC No. 18254 of 2019 and the same was disposed of permitting the appellant to challenge order dated 05.07.2018. Thus, the appellant has filed fresh CWJC No. 124 of 2020 and it was rejected, Hence, the present L.P.A.

3. Learned counsel for the appellant submitted that the alleged charges levelled against the appellant that he has disobeyed the orders of his superiors. In this regard, show-cause notice was issued seeking appellant's explanation on 11.04.2018. The appellant had submitted his reply on 26.04.2018. Thereafter, the disciplinary authority proceeded to impose the penalty of withholding of one increment without cumulative effect on 05.07.2018. It is submitted that when there are disputed issues in such an event disciplinary authority was required to initiate inquiry by framing charges and further conduct inquiry in terms of the Para 30 of the Bihar State Electricity Board, Patna. Industrial Employment (Standing



Order) Act, 1946. The same has not been appreciated by the Appellate Authority and learned Single Judge.

4. *Per contra*, learned counsel for the respondent resisted the contention of the appellant while supporting the order of the disciplinary authority, Appellate Authority and order of the learned Single Judge. It is submitted that the appellant has been punished with a minor penalty, if the minor penalty is imposed in such an event inquiry need not be held.

5. Heard learned counsels for the respective parties.

6. Undisputed facts are that the respondents have issued a show-cause notice on the allegations that the appellant disobeyed the orders of his superiors and alleged to have behaved irresponsibly in the office. The appellant has submitted his reply on 24.06.2018 and punishment of withholding of one increment was ordered on 05.07.2018. Punishment was affirmed by the Appellate Authority and by the learned Single Judge.

7. Learned Counsel for the appellant submitted that even for imposition of minor penalty departmental inquiry is necessary in the event of disputed issues are involved. It is submitted that he had submitted his reply while denying the alleged charge levelled against him in such an event the inquiry



is warranted.

8. Under Standing orders, there is no provision insofar as the imposition of minor penalty the Disciplinary Authority need not hold an inquiry.

9. It is necessary to re-produce Para 30 of the Standing Order, which read as under:-

“Disciplinary action against workman other than casual:

Subject to the provisions of these Standing Order, no orders of dismissal, stoppage of promotions or withholding of increment whether accumulative or otherwise, reduction of rank and other punishment mentioned above shall be made against a workman unless the following procedure is gone through but the appointing authority may, in its discretion, if it considers immediate suspension necessary, suspend a workman pending enquiry into the allegations made against him. However, workman convicted of an offence involving moral turpitude can be removed from service only after going through the prescribed procedure.

1st Stage

(1) A workman shall be informed in writing of the alleged act or acts of misconduct by an officer not below the rank of an Assistant Engineer. under whom the workman is working for the time being. The workman will be called upon to explain the alleged acts or his misconduct within 7 days from the date of order.

(2) If the authority mentioned in sub-clause (i) considers that the explanation furnished by the workman is unsatisfactory or if no explanation is submitted within the time allowed or



extended, he will forward the necessary papers and the explanation of the workman. if any, along with his own comments, to the appointing authority or such other subordinate authority to whom the power to inflict the punishment has been delegated along with documentary evidence, if any.

2nd Stage

On persual of the explanation, if any, of the workman and the comments, if any, of the reporting officer and the documentary evidence, if any, if the competent authority considers that:

(a) the alleged act of misconduct has not been proved he will vacate the orders of suspension, if any, and reinstate him or otherwise drop the charges and communicate his orders to the reporting authority and the workman concerned.

(b) The explanation if prime facie, unsatisfactory, he will frame a charge sheet setting out the details of alleged misconduct and shall call upon the workman who shall be supplied with a copy of the charge-sheet to show cause against the cause so framed against him within ten days of the date of service of the order provided that if competent authority decides to inflict a punishment of censure, warning or transfer without T. A. it will be necessary to draw charges as mentioned above.

3rd Stage

The competent authority shall proceed to enquire into the charges himself or appoint another officer to enquire into the charges and ask him to furnish a report by specified date, which may be extended by the competent authority for reasons to be recorded in writing.

4th Stage

The competent authority or the enquiring officer, as the case may be shall



hold an enquiry after notifying the parties of the date, time and place of enquiry. The parties shall be given opportunity to lead evidence (both oral and documentary) to cross examine witness and to file written statement, if any. The parties may call such witnesses at their respective expenses as they may be permitted by the competent authority or the enquiring officer to do. In case permission is refused, the competent authority or the enquiring officer shall record his reasons for refusal. The enquiring officer shall submit his report complete with all connected paper and along with his recommendations to the competent authority.

Provided that the persons against whom the enquiry is held shall be given copies of the evidence both oral and documentary upon which reliance is proposed to be placed in support of the charges against him and that he shall also be allowed an opportunity if so required by him to take assistance from a member of the executive of the union of which that workman concerned happens to be a member during the course of the enquiry when evidence is led.

5th Stage

(a) The competent authority shall consider all the materials on record and the report of the enquiring officer and shall pass necessary orders.

Provided that if the competent authority proposes to award a punishment of dismissal, discharge or reduction in rank, he shall serve the workman with a show cause notice together with a copy of the enquiring officer's report as to why the proposed punishment should not be awarded to him. The workman shall submit his show cause reply within 10 days of the date of service of the orders. On perusal of the aforesaid show cause reply of the



workman, the competent authority shall pass his final orders.

(b) (1) When a workman who has been dismissed, removed or suspended, is reinstated, the authority competent to order the reinstatement shall consider and make specific orders.

(i) regarding the pay and allowance to be paid to the workman for the period of his absence from duty, and

(ii) whether or not the said period shall be treated as a period spent on duty.

(2) Where such competent authority holds that the workman has been fully exonerated and therefore his suspension was wholly unjustified the workman shall be given the full pay to which he would have been entitled had he not been dismissed, removed or suspended as the case may be, together with any allowances, etc. which he was in receipt prior to his dismissal, removal or suspension.

(3) In other cases, the workman shall be given such proportion of pay and allowances as the competent authority concerned may prescribe or order.

Provided that the payment of allowance under clause (2) or clause (3) shall be subject to all other conditions under which such allowances are admissible.

(4) In a case falling under clause (2) the period of absence from duty shall be treated a period spent on duty for all purposes.

(5) In a case falling under clause (3) the period of absence from duty shall not be treated as a period spent on duty unless the competent authority specifically directs that it shall be so treated for any specified purpose.

Note



(a) All records of the proceedings shall be in the form or order sheet showing (1) the date of the orders (2) texts of orders (3) remarks showing, inter-alia mode of service of the notice.

(b) The proceeding shall be drawn up with following particulars at the top of first page of the order sheet.

(i) Name of the workman, rank, wage and length of the service.

(ii) Details of charges.

(c) Defence

If the workman can write he should be permitted to submit his defence in writing duly signed by him which should form a part of the proceedings. In the case of workman being illiterate the competent authority or the Enquiry officer as the case may be, may himself record the defence and obtain thumb impression of the workman.

(d) Payment of subsistence allowance :

Where any workman is suspended by the employer pending investigation or Enquiry into complaints or charges of misconduct against him, the employer shall pay to such workman subsistence allowance:

(a) at the rate of fifty per cent of the wages which the workman was entitled to immediately preceding the date of such suspension, for the first ninety days of suspension and

(b) at the rate of seventy five per cent of such wages for the remaining period of suspension if the delay in the completion of disciplinary proceedings against such workman is not directly attributable to the conduct of such workman.

(c) A receipt shall be granted to a workman for any communication in writing submitted by him."



The aforementioned procedure is to be adhered.

10. Therefore, *prima facie* the disciplinary authority, appellate authority and the learned Single Judge have committed error in not noticing that show-cause notice read with the reply that there were certain disputed issues. In such an event, even if it is a minor penalty department inquiry is attracted. Apex Court in the case of **O.K. Bhardwaj Vs. Union of India and Others reported in (2001) 9 SCC 180** wherein it is held that if there are disputed issues and allegations are involved in the alleged charge in such an event departmental inquiry is warranted.

11. In view of these facts and circumstances, penalty order, Appellate Authority order and the order of the learned Single Judge are set aside.

12. Accordingly, the present Letters Patent Appeal No. 408 of 2022 stands allowed.

(P. B. Bajanthri, J)

(A. Abhishek Reddy , J)

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