

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3873 of 2021

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Sunil Kumar Son of Late Gyan Chand Paswan, resident of Village - Rani Sarai, Police Station- Bakhtiyarpur, District - Patna. At present Flat no. R-2, Block - D Mahendrapuram Apartment, P.S. Digha, Dist. - Patna .. **Petitioner**
Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
 2. The Bihar State Power (Holding) Company Limited through its Chairman cum Managing Director, Vidyut Bhawan, Bailey Road, Patna.
 3. The Chairman cum Managing Director, The Bihar State Power (Holding) Company Limited, Patna, Vidyut Bhawan, Bailey Road, Patna.
 4. The Managing Director, South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna.
 5. The General Manager, (Human Resources and Administration) The Bihar State Power (Holding) Company Limited, Vidyut Bhawan, Bailey Road, Patna.
 6. The General Manager (Human Resources and Administration), South Bihar State Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna.
 7. The Deputy General Manager, (Human Resources and Administration), The Bihar State Power (Holding) Company Limited, Vidyut Bhawan, Bailey Road, Patna.
 8. The Deputy General Manager, (Human Resources and Administration), South Bihar State Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna.
- Respondents**

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Appearance :

For the Petitioner	:	Mr. Sanjeev Kumar, Advocate
For the State	:	Mr. Subhash Pd. Singh, GA 3.
For SBPDCL	:	Mr. Kunal Tiwary, ASC for the Company

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL JUDGMENT

Date : 19-01-2023

Heard learned counsel for the petitioner and the respondents.

2. Writ petition has been filed for quashing order dated 7.4.2014 (Annexure 10 to the writ petition) by which three increments of the petitioner have been withheld with cumulative



effect. Petitioner has also challenged order dated 25.8.2018 communicated to the petitioner vide letter dated 7.9.2018 (Annexure 22 to the writ petition), by which Appellate Authority has affirmed the punishment order dated 7.4.2014.

3. Brief facts of the case are that while working as the Executive Engineer in Patna City office of the Company, departmental proceeding was initiated against the petitioner vide resolution dated 23.12.2011 and having been found *prima facie* guilty of misconduct and negligence of duty, he was served charge sheet to which he submitted his written statement. On conclusion of enquiry, enquiry report was submitted on 6.2.2013 (Annexure 7). However, Enquiry Officer did not find charges to be proved and held that all the charges are based on suspicion and conjectures. Thereafter, Disciplinary Authority recorded opinion of the disagreement to the enquiry report and issued 2nd show cause with a copy of the enquiry report (Annexure 8) which was replied by the petitioner vide letter dated 7.12.2013 (Annexure 9). On consideration of reply of the petitioner, Disciplinary Authority imposed major punishment of withholding of/stoppage of 3 annual increments with cumulative effect. Petitioner's appeal dated 22.10.2014 (Annexure 11) was also rejected by enhancing the punishment of reverting him to the post of Assistant Electrical



Engineer vide resolution dated 15.6.2015 (Annexure 12). Being aggrieved, petitioner filed C.W.J.C.No. 13265/2015 with prayer that his appeal may be heard and decided on merits. Writ petition was allowed vide judgment dated 16.4.2018 (Annexure 14) in compliance of which petitioner preferred appeal. Thereafter petitioner was asked for explanation which was submitted by him on 29.6.2018 (Annexure 20 & 21). Finally, appeal was rejected vide order dated 25.8.2018 communicated to the petitioner vide letter dated 7.9.2018 (Annexure 22).

4. Learned counsel for the petitioner assails impugned orders dated 7.4.2014 (Annexure 10) and order dated 25.8.2018 communicated to the petitioner vide letter dated 7.9.2018 (Annexure 22) on the ground that the petitioner had been exonerated in the enquiry report dated 6.2.2013 (Annexure 7) observing that the charges were based on suspicion and conjectures. He submits that Disciplinary Authority has not given any findings on the articles of charge. Besides this, he has neither assigned any reason nor any material has been discussed by him upon which he has formed opinion to arrive at such findings that punishment be imposed upon the petitioner. It is also the case of the petitioner that the petitioner was not served 2nd show cause notice with the points of disagreement to his reply, before



awarding major punishment. He submits that the Disciplinary Authority, instead of issuing separate show cause notice dealing with point of disagreement, issued further show cause notice asking for submission of reply, which is in violation of the disciplinary rules as also the principle of natural justice. He submits that the 2nd show cause reply of the petitioner has not been considered at all. Impugned orders do not disclose application of mind as to why defence submitted by the petitioner was not found acceptable or satisfactory to the Disciplinary Authority as also the Appellate Authority. He next submits that the action of the respondents is in violation of Rule 18(4) of the Bihar CCA Rules. Reliance is place on the decision of the Hon'ble Apex Court rendered in the case of **Punjab National Bank and others Vs. Kunj Bihar Mishra**, reported in (1998) 7 SCC 84.

5. On the other hand, learned counsel appearing for the Company (respondent nos. 2 to 8) supports impugned orders and submits that the impugned orders do not suffer from any illegality as the same have been passed after following due procedure of law and also after giving adequate opportunity to the petitioner to explain his case and taking into consideration stand of the petitioner with regard to the allegation as well as the enquiry officer's report.



6. On going through the materials available on record, it appears that the Disciplinary Authority, while passing the order of major punishment, has not dealt with the reply of the petitioner. It has been merely mentioned in the impugned order that no new fact was disclosed by the petitioner in his reply to the 2nd show cause notice and the reply merely reiterated the same facts which were narrated by him in his explanation submitted earlier. Impugned orders do not contain any discussion as to how the petitioner's reply to the 2nd show cause notice was not acceptable to the disciplinary authority referring to the points taken therein. Impugned orders, therefore, suffer from non-application of mind. Reference can be made to the judgment of a co-ordinate bench of this Court passed in the case of **Shekhar Chandra Verma Vs. State of Bihar**, reported in **2014(1) PLJR 532**. Paragraph 20 of the judgment reads as follows:-

“By now, it is well settled that passing of a reasoned order in a quasi judicial proceeding is the requirement of the compliance of the principle of natural justice. Reference in this connection may be usefully made to the judgment of the Apex Court in the case of “Siemens Engineer & Manufacturing Co. of India Ltd. Versus Union of India and Anr. reported in AIR 1976 SC 1785 and in the case of S.N. Mukherjee Vs. Union of India reported in 1990 SC 1984.”



7. On careful consideration of the rival submissions of the parties as also the legal precedents discussed above, this Court is of the view that the Disciplinary Authority has passed order of punishment in violation of law laid down by this Court as well as disciplinary rules, as such, impugned order of punishment dated 7.4.2014 and appellate order dated 25.8.2018, are hereby set aside.

8. Since, this Court has quashed these impugned orders only on the ground of procedural lapses, and its being in violation of the principle of natural justice, matter is remitted to the Disciplinary Authority from the stage of second show cause. Liberty is given to the respondents to pass a fresh order after issuing the petitioner second show cause meeting out the points of disagreement to the reply of the petitioner and on consideration of his reply thereof, within a period of two months from the date of receipt of a copy of the 2nd show cause reply.

9. Writ petition is accordingly allowed only to the extent indicated above.

Shashi	(Prabhat Kumar Singh, J)
AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.02.2023.
Transmission Date	

