

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8235 of 2013

=====

Amit Kumar Agrawal S/o Sri Arun Kumar Maitin R/o 69, Gandhi Chowk,
K.P. Road, Gaya - 823001, Bihar.

... .. Petitioner/s

Versus

1. Bharat Heavy Electricals Ltd., through its Chairman-cum-Managing Director, BHEL Bhawan, Siri Fort, New Delhi - 110049
2. Executive Director Bhel-PSER, Plot No. DJ - 9/1, Sector Ii, Karunamoyee, Salt Lake City, Kolkata - 700091
3. Executive Director and Reviewing Authority Bhel, Bhopal - 462022
4. General Manager Finance And Appellate Authority, Bhel, Bhopal - 462022
5. AGM Finance and Disciplinary Authority Bhel, Bhopal - 462022
6. Sr. DGM (HRM) and Enquiry Officer, Bhel, Bhopal - 462022
7. Manager Finance And Presenting Officer Bhel, Bhopal - 462022
8. Chief Vigilance Officer, Bhel, Delhi
9. Additional General Manager-Cum-Controlling Officer SAS-Patna, BHEL.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Nikhil Kumar Agrawal, Advocate Ms. Aditi Hansaria, Advocate Mr. Yash Sahay, Advocate
For the Respondent/s	:	Mr. Binod Jee Verma, Advocate Mr. Alok Kumar Sinha, Advocate

=====

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

Date : 19-04-2023

In pursuant to order dated 28.03.2023, Mr. Janmejy
Singh, Dy. Manager (Law) is present in Court.

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

"(i) To issue an appropriate writ/order/direction in the nature of Certiorari for quashing the order dated 15.10.2012 passed by Respondent No. 3 (as contained in Anneuxre-23) whereby the order of punishment dated



24.12.2011 imposing the penalty of 'removal from service' on the Petitioner has been upheld.

(ii) To issue an appropriate writ/order/direction in the nature of Certiorari for quashing the order dated 19.04.2022 passed by Respondent NO. 4 (as contained in Annexure-21) rejecting the appeal filed by the Petitioner and upholding the punishment imposed by the Disciplinary Authority.

(iii) To issue an appropriate writ/order/direction in the nature of Certiorari for quashing the order dated 24.12.2011 passed by Respondent No. 5 (as contained in Annexure-15) imposing the penalty of 'removal from service' on the Petitioner.

(iv) To issue an appropriate writ/order/direction in the nature of Mandamus commanding the Respondents to reinstate the Petitioner on the post of Accounts Officer from the date of his dismissal, i.e., from 24.12.2011 with all consequential benefits.

(v) To issue an appropriate writ/order/direction in the nature of Mandamus commanding the Respondents to pay the salary and other dues legally admissible to the Petitioner which have been illegally and malafidely withheld by the Respondents during the pendency of the disciplinary proceedings.

(vi) To any other relief or reliefs which the Petitioner is entitled."

3. Petitioner was subjected to disciplinary proceedings on the allegation that he had falsely claimed medical reimbursement and other allowances. Such initiation proceeding is based on a communication dated 10.11.2009 of Mrs. Ambika Khatua, Chief



Vigilance Officer who is stated to have written a letter to the then Executive Director, BHEL, Bhopal. Gist of the alleged allegation or contents of the allegation reads as under:-

" CONFIDENTIAL

No. AA:VAS:2761

Dated: 10th November, 2009

Dear,

Instance has come to the notice of Vigilance that Sri Amit Kr. Aggrawal, Staff No. 2980878, Accounts Officer (who has since been transferred from SAS, Patna to HEP, Bhopal and has joined Finance Sales, HEP Bhopal on 15.07.2009) had allegedly submitted false medical claims wherein he is supposed to have got Root Canal Treatment done in multiple teeth during August to October, 2008. The expert medical opinion at Corporate Office has indicated "it is suggested that OPG may be taken to ascertain the work carried out. In case OPG facility is not available, intraoral periapical x rays of the four quadrants may be taken".

You may direct unit Medical, HEP, Bhopal to (i) examine Sri Agrawal regarding the 'veracity of the Root Canal Treatment done, if so, on which teeth, and (ii) to get the Full mouth X-ray (OPG) done on Sri Agrawal. The findings of CMO, BHEL Hospital, HEP, Bhopal in this regard may be submitted to Corporate Vigilance by 20th November, 2009.

With regards,

*Yours sincerely
(Ambika Khatua)*

*Shri M.K. Dube
Executive Director
BHEL
Bhopal*

*CC: Shri A.K. Bhat, SDGM (Vigilance),
BHEL, Bhopal*

(Ambika Khatua)"



4. Charge memo was issued on 25.05.2010. Charge memo is consisting of Statement of Imputation (Annexure-II), List of Documents (Annexure-III) and List of Witnesses (Annexure-IV). Document No. 2-Report dated 20.03.2009 by Dr. Geeta Bhatla, Consultant BHEL, Siri Fort, New Delhi has been cited as Exhibit-7 in the departmental inquiry she was not cited as witness in the list of witnesses at Annexure-IV. Therefore, there are legal lacunae in not complying relevant provision. The disciplinary authority failed to cite the communication of Sri Ambika Khatua dated 10.11.2009 which is the foundation material for the purpose of initiation of departmental inquiry against the petitioner and so also she is not cited as witness. On these grounds, the petitioner has made out *prima facie* case so as to interfere with the impugned orders dated 15.10.2012 (Annexure-23), 19.04.2012 (Annexure-21), 24.12.2011 (Annexure-15) and they are set aside.

5. Reserving liberty to the disciplinary authority to commence the inquiry from the defective stage and conclude the inquiry within a period of six months from the date of receipt of this order. Since impugned orders are set aside on technical ground therefore the disciplinary authority is hereby directed to examine as to whether the petitioner is required to be reinstated or placed under suspension in the light of Hon'ble Apex Court decision in



the case of **ECIL vs. B. Karunakaran reported in (1993) 4 SCC 727 and Chairman-cum-Managing Coal India Ltd. vs. Ananta Saha and Ors. reported in (2011) 5 SCC 142**. Paragraphs 46 to 50 reads as under:-

“46. In the last, the delinquent has submitted that this Court must issue directions for his reinstatement and payment of arrears of salary till date. Shri Bandopadhyay, learned Senior Counsel appearing for the appellants, has vehemently opposed the relief sought by the delinquent contending that the delinquent has to be deprived of the back wages on the principle of “no work-no pay”. The delinquent had been practising privately, i.e. has been gainfully employed, thus, not entitled for back wages. Even if this Court comes to the conclusion that the High Court was justified in setting aside the order of punishment and a fresh enquiry is to be held now, the delinquent can simply be reinstated and put under suspension and would be entitled to subsistence allowance as per the service rules applicable in his case. The question of back wages shall be determined by the disciplinary authority in accordance with law only on the conclusion of the fresh enquiry.

*47. It is a settled legal proposition that the result of the fresh enquiry in such a case relates back to the date of termination. The submissions advanced on behalf of the appellants that the result of the enquiry in such a fact situation relates back to the date of imposition of punishment, earlier stands fortified by a large number of judgments of this Court and particularly in *R. Thiruvirkolam v. Presiding Officer, Punjab Dairy Development Corpn. Ltd. v. Kala Singh and Graphite India Ltd. v. Durgapur Projects Ltd.**



48. In *ECIL v. B. Karunakar*, this Court held that where the punishment awarded by the disciplinary authority is quashed by the court/tribunal on some technical ground, the authority must be given an opportunity to conduct the enquiry afresh from the stage where it stood before the alleged vulnerability surfaced. However, for the purpose of holding fresh enquiry, the delinquent is to be reinstated and may be put under suspension. The question of back wages, etc. is determined by the disciplinary authority in accordance with law after the fresh enquiry is concluded.

49. The issue of entitlement of back wages has been considered by this Court time and again and consistently held that even after punishment imposed upon the employee is quashed by the court or tribunal, the payment of back wages still remains discretionary. Power to grant back wages is to be exercised by the court/tribunal keeping in view the facts in their entirety as no straitjacket formula can be evolved, nor a rule of universal application can be laid for such cases. Even if the delinquent is reinstated, it would not automatically make him entitled to back wages as entitlement to get back wages is independent of reinstatement. The factual scenario and the principles of justice, equity and good conscience have to be kept in view by an appropriate authority/court or tribunal. In such matters, the approach of the court or the tribunal should not be rigid or mechanical but flexible and realistic. (Vide *U.P. SRTC v. Mitthu Singh*, *Akola Taluka Education Society v. Shivaji* and *Balasaheb Desai Sahakari S.K. Ltd. v. Kashinath Ganapati Kambale*).

50. In view of the above, the relief sought by the delinquent that the appellants be directed to pay the arrears of back wages from the date of first termination order till date, cannot be entertained and is hereby rejected. In case the appellants choose to hold a fresh enquiry,



they are bound to reinstate the delinquent and, in case, he is put under suspension, he shall be entitled to subsistence allowance till the conclusion of the enquiry. All other entitlements would be determined by the disciplinary authority as explained hereinabove after the conclusion of the enquiry. With these observations, the appeal stands disposed of. No costs.”

6. It is to be noted that Hon'ble Apex Court reiterated the principle laid down in the case of MD ECIL in the later case in the case of **State of Uttar Pradesh & Ors. vs. Prabhat Kumar** reported in **2022 Live Law SC 736**. Insofar as whether petitioner is required to be reinstated or placed under suspension is concerned, in this regard, the disciplinary authority is hereby directed to take a decision within a period of one month from the date of receipt of this order. Further, disciplinary authority is hereby directed to regulate the intervening period from the date of dismissal till reinstatement or suspension and further period from the date of commencement of defective inquiry stage till passing of final order is required to be regulated in accordance with law. Such speaking order shall be passed in regulating the intervening period within a period of two months from the date of passing final order in disciplinary proceedings. If the disciplinary authority feels that petitioner shall be placed under suspension during the intervening period of second stage of inquiry, in that regard, subsistence al-



lowances be paid. If he is reinstated, salary attached to the post is to be paid till passing of final order in departmental inquiry.

7. With the above observations, the present writ petition stands allowed.

(P. B. Bajanthri, J)

Vikash/-

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

