

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2688 of 2020

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Dharmveer Kumar, Son of Satyendra Choudhary, Resident of Mogal Kaun
Baulipar, P.O. and P.S.- Sohsarai, District- Nalanda, Bihar-803101

... .. Petitioner/s

Versus

1. The Bihar State Power Holding Company Ltd. through the Managing Director, 1st Floor, Jawahar Lal Marg, Patna-800001
2. The Chairman-cum-Managing Director, Bihar State Power Holding Company Ltd., 1st Floor, Jawahar Lal Marg, Patna-800001
3. The North Bihar Power Distribution Company Ltd., through the Managing Director, 1st Floor, Jawahar Lal Marg, Patna-800001
4. The Managing Director, North Bihar Power Distribution Company Ltd., 1st Floor, Jawahar Lal Marg, Patna-800001
5. The Deputy General Manager, Human Resource/Administration, North Bihar Power Distribution Company Ltd., 1st Floor, Jawahar Lal Marg, Patna-800001
6. The Electrical Executive Engineer, Electric Supply Division, Dabhanga (Urban)

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Kumar Kaushik, Advocate Mr. Namrata Dubey, Advocate
For the Respondent/s	:	Mr.Vinay Kirti Singh, Sr. Advocate Mr. Akhileshwar Singh, Advocate Mr. Venkatesh Kirti, Advocate

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 09-02-2024

Heard Mr. Kumar Kaushik, learned counsel for the petitioner and Mr. Vinay Kirti Singh, learned Sr. Counsel for the Bihar State Power Holding Company Limited assisted by Mr. Akhileshwar Singh, Mr. Venkatesh Kirti, advocates.

2. The present writ petition has been filed for quashing and setting aside the order dated 11.01.2018 issued under the signature of respondent No. 5, namely, the Deputy General Manager, Human Resource/Administration, North



Bihar Power Distribution Company Limited under which the disciplinary authority has imposed the punishment of withholding of two increments with cumulative effect. Further prayer has been made for quashing and setting the order dated 29.12.2018 passed by the appellant authority, i.e. the Chairman-cum-Managing Director, Bihar State Power Holding Company Limited whereby the appeal preferred by the petitioner against the aforesaid order of punishment dated 11.01.2018 has been rejected by the Appellate Authority.

3. Learned counsel for the petitioner submits that the petitioner was appointed as Junior Engineer in the year 2011 in the erstwhile Bihar State Electricity Board by way of selection process through campus selection. He was posted at Pandasarai, Electricity Supply Division, Darbhanga from 20.09.2011 to 03.12.2017 and thereafter, he was transferred and posted at Electricity Supply Division, Chhapra (East) at Taraia from 04.12.2017 to 13.12.2019. Thereafter, the petitioner was transferred to Motihari Division. He further submits that with the span of time, the Bihar State Electricity Board has converted into the Bihar State Power Holding Company Limited and the company has decided to initiate a departmental proceeding against the petitioner vide Memo No. 948 dated 09.10.2017. He



further submits that the said memo which is Annexure -C to the counter affidavit issued vide Resolution No. 947 dated 09.10.2017 clearly indicates that the delinquent has to submit a written statement in his defense to the enquiry officer to conduct the proceedings.

4. Learned counsel further submits that the DGM, Human Resource/ Administration, North Bihar Power Distribution Company Limited who is the competent authority has taken a decision in a gross violation of rule 17(4) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as the 'CCA Rules, 2005'). Counsel submits that the said rule clearly shows, that it is the mandatory obligation imposed upon the disciplinary authority that after going through the written statement to the charges, shall decide whether to close or to continue the departmental proceeding. Here in this case, the disciplinary authority has directed the delinquent to file the written statement before the enquiry officer, which is not the mandate of law.

5. In support of his claim, learned counsel relied on a judgment dated 29.06.2017 rendered in the case of **Shankar Dayal Vs. the State of Bihar and Ors. passed in CWJC No. 7207 of 2016** reported in **2018 (2) PLJR 308**, the relevant



paragraphs 9,10 and 11 whereof is reproduced as under :-

“ 9. Rule 17(3) of „the Rules” casts an obligation on the Disciplinary Authority to draw a charge against a delinquent Government servant or cause it to be drawn up against the officer delinquent. Sub-rule (4) thereof further mandates the delivery of such charge memo so drawn up either through the Disciplinary Authority or through an officer duly authorized. The obligation cast on the Disciplinary Authority does not stop here rather he has yet to satisfy himself whether the explanation so forwarded by a delinquent on the proposed charge, requires an enquiry by the Enquiry Officer or requires a closure. This power exclusively vested in the Disciplinary Authority under rule 17(4) cannot be delegated.

10. In the present case this mandatory obligation cast on Disciplinary Authority has been flouted as confirmed from the letter dated 1.2.2008 (Annexure-2) issued by the Enquiry Officer directing the petitioner to file his reply on the charges before him. This is a gross statutory violation and has been commented upon by a Division Bench of this Court in a judgment reported in 1996 (2) PLJR 95 (Ravindra Nath Singh vs. Bihar State Road Transport Corporation) when the Division Bench has expressed the following opinion at paragraph 6 of the judgment:

“6. The Enquiry Officer is not the competent authority to consider the reply to the charges. It is for the disciplinary authority to consider the reply to charges and on consideration of the causes shown in the reply to decide as to whether to close or to continue with the



proceedings by holding domestic enquiry into the charges.”

11.In my opinion the enquiry at its very inception is vitiated for the Enquiry Officer has no business to seek reply on the charges from the delinquent. „The Rules” again do not authorize him to do so. The illegality did not stop here and continues further.”

5.1 Learned counsel further relied on a judgment dated 27.06.2018 passed in **CWJC No. 470 of 2018** in the case of **Dharmendra Kumar Vs. the State of Bihar and Ors**, relevant paragraph 7 whereof is reproduced as under :-

“7. I have heard the learned counsel for the parties and perused the materials on record. Rule 17 & 18 of the Bihar Government Servant (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as the ‘Rules 2005’), lays down a mandatory procedure to be followed by the disciplinary authority which begins from the stage of service of charge memo by the disciplinary authority enabling the delinquent to respond thereto, giving an equal obligation on the disciplinary authority to satisfy himself whether the allegations are required to be pursued and only after the disciplinary authority is satisfied as also upon completion of such exercise as mandated under Rule 17(3) read with Rule 17(4), the disciplinary authority can either



interfere into the matter himself or delegate an Enquiry Officer under Rule 17(6) to enquire into the same and only thereafter the Enquiry Officer takes over the proceeding. Under Rule 17(6) of the Rules, 2005, the disciplinary authority has another obligation i.e. to appoint a Presenting Officer for leading the case of the Department, which in the present case has been given a go-bye. It is apparent from the records that the proceeding under challenge has been held de hors the procedure inasmuch as neither the petitioner has been heard on the charge by the disciplinary authority which is apparent from the copy of the charge memo framed by the Superintendent of Police dated 04.06.2016 (Annexure-P-5 to the writ petition). Moreover, the absence of the Presenting Officer as mandated under Rule 17(6) perpetuates the illegality, which is a serious lacuna and has rendered the entire proceeding illegal. The said legal position is no long res integra inasmuch as the same has been settled by this Court in a judgment dated 29.06.2017 passed in CWJC No. 7207 of 2016 (Shankar Dayal vs. State of Bihar & ors.), relevant portion whereof is reproduced hereinbelow:-

“Rule 17(3) of „the Rules” casts an obligation on the Disciplinary Authority to draw a charge against a delinquent Government servant or cause it to be drawn up against the



officer delinquent. Sub-rule (4) thereof further mandates the delivery of such charge memo so drawn up either through the Disciplinary Authority or through an officer duly authorized. The obligation cast on the Disciplinary Authority does not stop here rather he has yet to satisfy himself whether the explanation so forwarded by a delinquent on the proposed charge, requires an enquiry by the Enquiry Officer or requires a closure. This power exclusively vested in the Disciplinary Authority under rule 17(4) cannot be delegated. In the present case this mandatory obligation cast on Disciplinary Authority has been flouted as confirmed from the letter dated 1.2.2008 (Annexure 2) issued by the Enquiry Officer directing the petitioner to file his reply on the charges before him. This is a gross statutory violation and has been commented upon by a Division Bench of this Court in a judgment reported in 1996(2) PLJR 95 (Ravindra Nath Singh vs. Bihar State Road Transport Corporation) when the Division Bench has expressed the following opinion at paragraph 6 of the judgment:

“6. The Enquiry Officer is not the competent authority to consider the reply to the charges. It is for the disciplinary authority to consider the reply to charges and on consideration of the causes shown in the reply to decide as to whether to



close or to continue with the proceedings by holding domestic enquiry into the charges.”

6. Learned counsel for the petitioner conclusively submits that the said decision for initiating the departmental proceeding itself is bad in law and, therefore, any further action on the basis of such defective decision, shall not be sustained in the eyes of law and, therefore, the original order as well as the appellate order be set aside.

7. Mr. Vinay Kirti Singh, learned Sr. Counsel for the Bihar State Power Holding Company submits that it transpires from a bare reading of Annexure P-1 to the writ petition (Annexure -C to the supplementary counter affidavit) that direction was given by the authority to submit the written statement before the enquiry officer which is not in consonance with Rule 17(4) of the CCA Rules, 2005, but this is an obligatory provision of law therefore not binding.

8. In the light of the statement made by the parties and upon perusal of the documents it transpires to this Court that the said annexure -P8 to the writ petition and Annexure P1 to the writ petition (Annexure -C to the supplementary counter affidavit) by which the delinquent has been directed to submit a written statement in his defense to the enquiry officer to conduct



the proceedings have been made in a gross violation of Rule 17(4) of the CCA Rules, 2005 which is a mandatory provision of law. The relevant portion of the Annexure P-1 to the writ petition (Annexure - C to the supplementary counter affidavit) reads as under :-

“Where as the NBPDCCL has reasons to believe that Sri Dharmvir Kumar, JEE, ESS, Pandasara, Darbhanga (Urban) has been found prima facie guilty of gross misconduct as specified in the charge sheet contained in the Annexure, the Company has decided that a departmental proceeding be drawn up against Sri Dharmvir Kumar, JEE, ESS, Pandasara, Darbhanga (Urban).”

2. Sri Dharmvir Kumar JEE is required within a fortnight of the issue of Resolution to submit a written statement in his defence to Sri Jitendra Prasad, DGM (HR/A), NBPDCCL, Patna who is hereby appointed as Enquiry Officer to conduct the proceedings, Sri Dharmvir Kumar will also inform the Enquiry Officer whether he desires to be heard in person and like to examine the witness, if any on his behalf.

3. Sri Vijay Kumar Sinha, Section Officer, Section N-IX, NBPDCCL, Patna will represent the company before Enquiry Officer.”

Hence, in the light of this reasons the entire



proceeding was drawn against the delinquent followed by enquiry report, subsequent order of the disciplinary authority dated 11.01.2018 issued under the signature of respondent No. 5, namely, the Deputy General Manager, Human Resource/Administration, North Bihar Power Distribution Company Limited and order dated 29.12.2018 passed by the appellant authority, i.e. the Chairman-cum-Managing Director, Bihar State Power Holding Company Limited cannot uphold. Accordingly, the same are set aside. The petitioner shall be entitled to all the consequential relief/s.

9. In result, the writ petition stands allowed.

10. It is made clear that this Court has not expressed any opinion on the merit of the charge memo nor has quashed the charge memo and this decision is entirely for the disciplinary authority to decide whether he will proceed in the matter in accordance with law or not.

(Dr. Anshuman, J)

Ashwini/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	15/02/2024
Transmission Date	NA

