

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19593 of 2018

Binod Prajapati, S/o Sri Chhathan Prajapati, Resident of Village- Khan, P.O. Kapasya, P.S. Aurangabad, Mufasil, District- Aurangabad Presently Posted as Electrical Executive Engineer, Electric Supply Division, Gardanibagh, Patna.

... .. Petitioner/s

Versus

1. The Bihar State Power Holding Company Ltd.
2. The Chairman-Cum-Managing Director, Bihar State Power Holding Company Ltd.
3. The South Bihar Power Distribution Company Ltd. Vidyut Bhawan, Patna.
4. The Managing Director South Bihar Power Distribution Company Ltd. Patna.
5. The General Manager H.R. /Administration S.D.P.D.C. Ltd., Vidyut Bhawan, Patna.
6. The Deputy General Manager, H.R. /Administration S.D.P.D.C. Ltd., Vidyut Bhawan, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Mayanand Jha, Sr. Advocate Mr. Giridhar Gopal Tiwary, Advocate
For the Respondent/s	:	Mr. Kumar Priya Ranjan, Addl. S.C. Mrs. Nirmala Singh, Advocate Mr. Girish Nandan Abhishek, Advocate Mr. Sandeep Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 09-01-2024

Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The present writ petition has been filed for setting aside the Resolution No. 1720 dated 15.11.2017 issued by the South Bihar Power Distribution Company Limited (hereinafter referred to as 'the SBPDCL'), as contained in Annexure-11 to the writ petition and also the order dated 20.07.2018 passed by the Chairman-cum-Managing Director, Bihar State Power Holding Company Limited, communicated vide letter No.2366 dated 23.08.2018 (Annexure-14 to the writ petition).



3. Learned counsel for the petitioner submits that the petitioner was appointed as an Electrical Assistant Engineer in the erstwhile Bihar State Electricity Board, a Government undertaking, and joined on such post on 16.03.2009. With the span of time, the Bihar State Electricity Board was dissolved and five companies were formed in which the Bihar State Power Holding Company Limited was the main/controlling company and the services of the petitioner were placed under the SBPDCL. The petitioner was ordered to be regularized after the work of Electrical Executive Engineer, Gaya vide order dated 15.04.2013. In the year 2014, he was transferred to Bhabua as Electrical Executive Engineer then to Munger Electric Executive Engineer, Supply Division as I/c on 11.05.2015. He further submits that during his posting as Electrical Executive Engineer, Munger, the Special Task Force (hereinafter referred to as 'the STF') of the SBPDCL inspected the premises of one Yadunandan Prasad Sah and found consumption of electricity beyond the sanctioned load on a particular day i.e. 21.10.2015 as 27.42 HP as against the sanctioned load of 10 HP. Counsel further submits that on 06.04.2016, a show cause notice was issued to the petitioner alleging therein that he has not taken cognizance relating to violation of Clause 7.1 (b) of the Bihar



Electric Supply Code 2007 with a view to causing revenue loss to the company and also with a view to provide illegal benefit to the consumer.

4. Learned counsel for the petitioner further submits that the petitioner has filed its reply to the said show cause, but even then General Manager (H.R./Administration) of the SBPDCL was not satisfied and issued a charge memo vide Resolution No.1144 dated 05.08.2016 about initiation of departmental proceeding with which *Prapatra - Ka* had been attached. The petitioner contested the said charge memo and participated in the enquiry. During the enquiry proceeding which was conducted by the Chief Engineer, the Enquiry Officer found nothing adverse against the petitioner and concluded his enquiry that the allegation had been made only on suspicion, therefore, not proved. Subsequently, differing from the enquiry report, vide Resolution No. 964 dated 04.07.2017, a second show cause notice was issued to the petitioner (as contained in Annexure-P/9 to the writ petition). The petitioner submitted a reply to the second show cause notice on 22.07.2017 (as contained in Annexure -P10 to the writ petition), but the same has not been considered at all and the petitioner has been awarded the punishment of censor. Counsel for the



petitioner further submits that being aggrieved and dissatisfied with the order of punishment dated 15.11.2017, the petitioner preferred an appeal before the Managing Director, Bihar State Power Holding Company Limited, but his appeal was rejected vide order dated 20.07.2018 in which none of the points raised by the petitioner have been considered.

5. Learned counsel for the petitioner further submits that the Enquiry Officer who is the Chief Engineer and a technical person holding a high post has well considered every point and found the charge not proved, but this aspect has not been considered by the disciplinary authority at all. He further submits that it has not been stated in the second show cause what action has been proposed to be taken by the disciplinary authority and as such, the second show cause is in violation to the provision laid down under the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005. Counsel further submits that the connection of consumption in question remained disconnected between 30.10.2015 to 12.02.2016 due to non-payment. The loss to the tune of Rs.81341/- had been caused to the Company and it was subsequently realized in the form of a penalty issued vide Annexure-16 to the rejoinder affidavit. According to the petitioner, discrimination has been



made in imposing the punishment as the Assistant Electrical Engineer was imposed lighter punishment (as contained in Annexure P-12), i.e. stoppage of one increment without cumulative effect even though he was responsible for doing the meter reading and not the petitioner. He further submits that violation of Clause 7.1(b) of the Bihar Electric Supply Code 2007 has not been made as this provision used to apply in case of consumption of higher load for three consecutive months because in the present case, the electricity was disconnected on 30.10.2015 and it was restored only on 12.02.2016 and inspection was done on 16.03.2016 whereas the higher load was registered by the meter on 21.10.2015, but while testing the punishment order, neither the disciplinary authority nor the appellate authority have considered this aspect. The punishment order was passed without any evidence and it is discriminatory in nature as those persons who were liable for meter reading and supervision have been given lighter punishment whereas the present petitioner has been given a punishment which resulted in heavy loss to him as his promotion was cancelled and he was reduced to a lower grade and pay.

6. To substantiate his argument, learned counsel for the petitioner relied on a judgment rendered in the case of



Chairman-cum-Managing Director Coal India and Anr. Vs. Mukul Kumar Chaudhary and Ors. reported in (2009) 15 SCC 620 and submitted that paragraphs **17 and 18** are relevant in his case. In addition to that counsel for the petitioner also relied on paragraphs 12 and 13 of the decision rendered in the case of *B.C. Chaturvedi Vs. Union of India and Ors.* reported in (1995) 6 SCC 749.

7. Lastly, counsel for the petitioner submits that in the entire service, no pecuniary loss has been caused to the petitioner. He also submits that during the service period, the petitioner was granted an appreciation letter for the work done by him during his posting at Gaya as Electrical Executive Engineer, Gaya, but this aspect has also not been considered at all.

8. Learned counsel for the SBPDCL submits he has filed a detailed counter affidavit on behalf of the SBPDCL. He further submits that a full-fledged enquiry has been conducted in the case of the petitioner. For the said wrong two show cause notices were issued to four persons holding the post of Electrical Executive Engineer (L/A), Assistant Electrical Engineer, Junior Electrical Engineer, and JAC. Departmental proceedings have been initiated against all four persons separately and all were



punished. He further submits that there is no procedural lapse in holding the departmental proceeding. The disciplinary authority had issued a second show cause by virtue of assigning reasons in the said second show cause and as such, there is no illegality in the issuance of second show cause. It is further submitted that the petitioner being an Executive Electrical Engineer has been awarded the punishment of Censor. The Assistant Executive Engineer has been imposed the punishment of stoppage of one increment with non-cumulative effect. The JEE was imposed with the punishment of stoppage of two annual increments with cumulative effect while the JAC was imposed the punishment of warning.

9. Learned counsel for the SBPDCL relied on a judgment rendered in the case of *Union of India and Ors. Vs. P. Gunasekaran reported in (2015) 2 SCC 610* and submits that in paragraphs 12 and 13 of the said judgment, there were guidelines that under which circumstances, the High Court may interfere and under which circumstances, the High Court shall not interfere. He further submits that there is not a single point in favour of the petitioner as there is neither any procedural lapse nor there is any violation of the doctrine of proportionality which is the basis of the judicial review. Counsel for the



respondent also relied on the same judgment on which the petitioner relied in the case of *B.C. Chaturvedi Vs. Union of India and Ors.* reported in (1995) 6 SCC 749, paragraph nos. 12 and 13.

10. Learned counsel for the respondent concludes his argument and submits that there is no scope for judicial review in the present case as there is neither any procedural lapse nor error of fact.

11. In the light of the submissions made above, this Court finds that the disciplinary authority has assigned the reasons with his disagreement from the enquiry report in which violation of Clause 7.1 (b) of the Bihar Electric Supply Code 2007 has been taken into consideration and with a view to proper appreciation, the provision of Clause 7.1 (b) is hereby reproduced as under :-

“The contract demand for L.T. consumer, with maximum demand indicator, shall be the demand contracted by the consumer. The billing demand will be the contract demand or recorded demand in consumer’s meter whichever is higher. In such cases provision of clause 6.37 and 6.39 shall not apply.

The licensee shall install load arrestor of suitable capacity upto 150% of the contracted



load.”

12. For further appreciation, it is necessary to quote the relevant paragraph Nos. 12 and 13 of the judgment rendered in the case of B.C. Chaturvedi Vs. Union of India and Ors. reported in (1995) 6 SCC 749, cited by the petitioner, as under :-

12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not



act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel [(1964) 4 SCR 718 : AIR 1964 SC 364 : (1964) 1 LLJ 38] this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.

13. Similarly, relevant paragraph- 19 of the judgment



rendered in the case of the **Chairman-cum-Managing Director Coal India and Anr. Vs. Mukul Kumar Chaudhary and Ors.** reported in **(2009) 15 SCC 620**, is quoted as under :

“The doctrine of proportionality is, thus, well-recognised concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision-maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review.”

Similarly, the relevant paragraphs 12 and 13 of the judgment rendered in the case of the Union of India and Ors. Vs. P. Gunasekaran reported in (2015) 2 SCC 610, cited by counsel for the respondent is quoted, as under :-

12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise



of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;*
- (b) the enquiry is held according to the procedure prescribed in that behalf;*
- (c) there is violation of the principles of natural justice in conducting the proceedings;*
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- (i) the finding of fact is based on no evidence.*

13. *Under Articles 226/227 of the Constitution of India, the High Court shall not:*

- (i) reappreciate the evidence;*
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*
- (iii) go into the adequacy of the evidence;*



(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience.”

14. Upon going through the provisions, it transpires to this Court that the petitioner has not taken cognizance of the said letter which was already implemented on 19.05.2015 whereas by virtue of subsequent amendment in the year 2016, the provision of sanction was granted. It also transpires to this court that there is no procedural lapse in this matter and, therefore, it is not a case of judicial review. The only point that has to be taken into consideration by this Court that for the same alleged wrong four different punishments, such as punishment of censor; punishment of stoppage of one annual increment; punishment of stoppage of two annual increments, and punishment of warning have been awarded to the different persons.

15. At the time of testing the doctrine of proportionality, it has been found by this Court that while dealing with the question of the quantum of punishment, would any reasonable employer has to impose such punishment in like



circumstances likely. Meaning thereby a reasonable employer is expected to take into consideration the measure, magnitude, and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment. In a case like the present one where the misconduct of the delinquent was not following Rule- 7.1(b) of BESC, 2007 resulted in a harsh punishment for the delinquent who has been deprived of his promotion and has been reduced to a lower grade and pay for about five years. It is due to this reason, this court only sets aside the punishment of the censor casted in the disciplinary order dated 15.11.2017 as well as in the appellate order dated 20.07.2018 and directs the respondent authorities to pass an order afresh on the point of reasonable punishment considering the measure, magnitude, and degree of wrong done by the delinquent within 90 days from the date of production of a copy of this order.

16 With the aforesaid observation and direction, the writ petition stands partly allowed.

(Dr. Anshuman, J)

Ashwini/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	10/01/2024
Transmission Date	NA

