

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 6831 of 2016

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Nathuni Sah Son of late Indradeo Sah Resident of Village and PO Bargaon,
PS - Bagha, District West Champaran

... .. Petitioner/s

Versus

1. The Bihar State Power Holding Company Limited through its Chairman cum Managing Director, Vidyut Bhawan, Bailey Road, Patna
2. The Managing Director, South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna
3. The General Manager (HR and Admin), South Bihar Power Distribution company Limited, Vidyut Bhawan, Bailey Road, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Devender Kr. Sinha, Sr. Advocate
		Mr. Bajarangi Lal, Advocate
For the Respondent/s	:	Mr. Vinay Kirti Singh, APP
For the BSEB	:	Mr. Nikesh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL JUDGMENT

Date : 22-08-2024

Heard Mr. Devender Kr. Sinha, learned Sr. counsel along with Mr. Bajarangi Lal, learned counsel appearing on behalf of the petitioner, Mr. Vinay Kirti Singh, learned counsel appearing on behalf of the respondent and Mr. Nikesh Kumar, learned counsel appearing on behalf of the Bihar State Electricity Board.

2. The petitioner in paragraph no. 1 of the present



writ petition has sought *inter alia* the following relief(s), which is reproduced hereinafter:-

“i. For setting aside the resolution no. 744 dated 21.04.2015 contained in memo no.745 dated 21.04.2015 issued under signature of General Manager: (HR/ Admin.), South Bihar Power Distribution Company Limited, Patna [SBP DCL] where under and whereby petitioner has been held guilty of charges alleged against him and he has been awarded punishment of permanent withholding of his entire pension, gratuity and leave encashment.

ii. Further for setting aside the order passed by the Chairman cum Managing Director cum Appellate Authority, Bihar State Power Holding Company Limited, Patna contained in letter no.1569 dated 27.11.15 by which appeal representation filed by petitioner has been rejected and order of disciplinary authority contained in resolution no.744 dated 21.04.15 has been confirmed.

iii. Further for a direction upon the respondents to grant entire post-retirement benefit of the petitioner including entire amount of his pension, gratuity and leave encashment along with its arrears as well as statutory and the penal interest to which petitioner is entitled in the facts and circumstances of case.

iv. And/or for any other relief/relief to which petitioner is entitled in the facts and circumstances of the present case.”

3. Mr. Devender Kr. Sinha, learned Sr. counsel along with Mr. Bajrangi Lal, learned counsels appearing on behalf of the petitioner informs this Court that to cut short the facts in view of the development, which has taken during the



pendency of the writ petition, has been brought on record by the respondents by filing the supplementary counter affidavit and the pleadings made in the counter affidavit. He submitted that in paragraph no.3 of the Supplementary Counter Affidavit, it has been stated that in course of the departmental enquiry, the witnesses have not been examined inspite of the repeated reminders to them to prove the charges. The only material, on which basis they have passed penalty order, is based on the evidence in respect of the trap case, which is the subject matter of the Vigilance P.S. case No.61 of 2009 pending before the court of Special Judge, Patna.

4. Learned counsel further submitted that inspite of the aforesaid admission made on behalf of the respondent(s), that no witnesses has been examined to prove the charges, the Disciplinary Authority in complete violation of principle of natural justice has passed the impugned order contained in Memo No.745 dated 21.04.2015 and thereafter the appellate order contained in Memo No.1569 dated 27.11.2015 by the Appellate Authority, can not be sustained considering that the enquiry report submitted by the Inquiry Officer is on the basis of no material and evidence to prove the charges levelled against the petitioner.



5. Learned counsel further submitted that it is well settled principle of law that the criminal proceeding and the departmental proceeding are two separate proceedings independent of each other, even having initiated on the basis of same charge can proceed separately. The disciplinary proceeding is carried on the basis of principle of preponderance of probability. In the present case, considering the violation of principle of natural justice, the petitioner seeks for interference of this Court in exercise of the power of judicial review to set aside the order of penalty.

6. Per contra, Mr. Nikesh Kumar, learned counsel appearing on behalf of the Bihar State Power Holding Company Ltd. submitted that the petitioner has not been able to make out a case for the interference by this Court as the Inquiry Officer on the basis of sufficient evidence had conducted the enquiry. The petitioner was supplied all the documents in conduct of enquiry, in support of the imputation of charge levelled against him and at no point of time had objected or requested for examination of witnesses. The Inquiry Officer, after examining the entirety of the matter and the seriousness of charges, levelled against the petitioner, supported by the evidence of Vigilance P.S. Case No.61 of 2009, on the basis of pre and post



memorandum dated 27.05.2009 has in no manner faulted in the conduct of the enquiry and the Disciplinary Authority, based on the valid enquiry, has imposed penalty of forfeiture of pension of the petitioner can not be faulted.

7. Having considered the rival submissions made on behalf of the parties, as well as, the fact that during the pendency of the present writ petition, the supplementary counter affidavit has been filed on behalf of respondent(s), in which it has been admitted in paragraph no.3 that inspite of the best effort taken by the Presenting Officer and various reminders to the witnesses, the witnesses have not turned up to be examined. One Mr. Devender Kumar Singh and one Munna Prasad, the then Dy.S.P., Vigilance, had conducted the raid and had signed pre and post trap memorandum. In absence of their examination, the petitioner could not cross examine them, in accordance with the provision of Rule 17 of the Bihar CCA Rules, 2005.

8. In case of **Debaraj Sahoo &Anr. vs Union of India** reported in **W.P.(C) No. 39597 of 2023**, I find it apt to refer paragraph 7, 8 and 9 in which it has been held that :

“7. Justice must not only be done but must also be seen to be done. It is trite that requirement of giving reasonable opportunity of being heard before an order is made by an administrative, quasi judicial or judicial authority, particularly when such an



order entails adverse civil consequences. These consequences may involve violations of property, personal rights, and substantive deprivations for the affected party. This fundamental right to be heard should not be compromised in the pursuit of administrative expediency or swiftness. Consequently, the proceedings and decisions of administrative and quasi-judicial bodies should be characterized by actual and demonstrable fairness.

8. The Supreme Court in a catena of cases has observed that cross-examination is an integral part and parcel of the Principles of Natural Justice. It held that Cross-examination is one part of the principles of natural justice. [Maneka Gandhi v. Union of India; Maharashtra State Financial Corporation v. M/s. Suvarna Board Mills; East India Commercial Company Ltd., Calcutta v. The Collector of Customs, Calcutta].

9. Ergo, it is clear that denial of cross-examination and non-production of witnesses for cross-examination was violative of principles of natural justice. Automatically, order dated 27.09.2023 passed by the Railway tribunal without allowing cross-examination is an act of gross violation of natural justice and deserves to be quashed.”

*9. The Apex Court in the case of **State of M.P. v.***

Chintaman Sadashiva Waishampayan, 1960** reported in **SCC

***OnLine SC 82** in which, it has been held that:*

“The only general statement that can be safely made in this connection is that the departmental enquiries should observe rules of natural justice, and that if they are fairly and properly conducted the decisions reached by the enquiry officers on the merits



are not open to be challenged on the ground that the procedure followed was not exactly in accordance with that which is observed in courts of law. As Venkatarama Aiyar, J. has observed in Union of India v. T.R. Varma [(1958) SCR 499 at p. 507] “stating it broadly and without intending it to be exhaustive it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them”. It is hardly necessary to emphasise that the right to cross-examine the witnesses who give evidence against him is a very valuable right, and if it appears that effective exercise of this right has been prevented by the enquiry officer by not giving to the officer relevant documents to which he is entitled, that inevitably would be that the enquiry had not been held in accordance with rules of natural justice. That is the view taken by the High Court, and in the present appeal which has been brought to this Court under Article 136 we see no justification for interfering with it.

10. In the facts and circumstances and the discussion made hereinabove, and the law laid down in the case of **Debaraj Sahoo (Supra)** and **Chintaman Sadashiva Waishampayan (Supra)**, I am of the opinion that the cross-examination is an integral part and parcel of the Principles of Natural Justice and that without allowing cross-examination it



leads to the gross violation of the principle of nature justice. Accordingly, the penalty order contained in Memo No.745 dated 21.04.2015 and Memo No. 1569 dated 27.11.2015, are hereby set-aside and quashed. I remit the matter back to the Managing Director, South Bihar Power Distribution Company Ltd. for fresh consideration.

11. With the above observation/direction, the present writ petition stands disposed of.

(Purnendu Singh, J)

Chn/-
Ashishsingh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.08.2024
Transmission Date	NA

