

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19253 of 2015

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Dhiraj Kumar Son of Late Raj Mohan Shahi, Resident of Village - Anant Kamtaul, P.S. - Kurhni, District - Muzaffarpur.

... .. Petitioner/s

Versus

1. The Bihar State Power Holding Company Limited and Ors
2. The Chairman cum Managng Director, Bihar State Power Holding Company Limited, Vidyut Bhawan, Baile
3. The North Bihar Power Distribution Company Limited, through its Managing Director, Vidut Bhawan, Ba
4. The Managing Director, North Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road,
5. The Deputy General Manager Human Resources / Admin North Bihar Power Distribution Company Limited,
6. The General Manager cum Chief Engineer, Tirhut Area Electricity Board, Muzaffarpur.
7. The Electrical Superintending Engineer, Electric Supply Circle, Muzaffarpur.
8. The Electrical Exeuctive Engineer, M.R.T. - Muzaffarpur.
9. The Electrical Assistant Engineer, M.R.T. - 1, Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shivendra Kishore, Sr. Adv. Mr. Jai Kishor Poddar, Adv. Mr. Saroj Kumar, Adv.
For the Respondent/s	:	Mr. Vinay Kirti Singh, Sr. Adv. Mr. Akhileshwar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

5 08-01-2024 Heard Mr. Shivendra Kishore, learned senior counsel appearing for the petitioner and Mr. Vinay Kirti Singh, learned senior counsel appearing for the Bihar State Power (Holding) Company Limited.

1. The present writ application has been filed seeking following relief;



I. For quashing of order dated 02.09.2015 passed by Chairman -cum- Managing Director, Bihar State Power (Holding) Company Limited, by which thememo of appeal of the petitioner has been rejected and the order of punishment of stoppage of three annual increments with cumulative effect and denial of salary for the period of suspension except subsistence allowance has been ordered to be maintained. The appellate order has been communicated to the petitioner by the Deputy General Manager (DGM) North Bihar Power Distribution Company Limited, Patna, contained in letter No. 790 dated 04.09.2015.

ii. For quashing of order of punishment contained in resolution No. 1029 dated 08.12.2014, whereby and whereunder, in a departmental proceeding charges alleged to have been proved, petitioner has been inflicted with punishment of stoppage of three increments with cumulative effect and has been denied the salary for the period of suspension except subsistence allowance.

iii. For a direction on the respondents to pay full salary for the period of suspension with all consequential benefits including consideration of case of the petitioner for promotion to the higher post of Assistant Electrical Engineer w.e.f. date junior to the petitioners were given such promotion.

2. Learned senior counsel appearing for the petitioner submits that while the petitioner was posted as Junior Engineer, Electric supply Section, Mahua, was deputed in the M.R.T. Division, Muzaffarpur was assigned for the work of installation of Meters in the premises of the consumers relating to whole Vaishali district. Vide letter No. 1097 dated 04.07.2012, M/s. Sakti Computer, Muzaffarpur and vide letter No. 2057 dated 27.07.2012, M/s. Balaji Consultancy, Patna were allotted work for installation/replacement of single phase and three phase Meters in the premises of unmetered consumers.

3. Learned senior counsel for the petitioner submits that the petitioner had no concern with respect to the aforesaid



installation/replacement of the meters as per the Letter of Award (LOA), the agencies were required to inform in advance to the J.EE./A.EE. Regarding the places where meters were to be installed but in spite of repeated requests, the agencies did not comply the terms of LOA and have continued to install Meters as per their choice without informing the place to be installed to the authority concerned. Thereafter, the petitioner instructed the agencies to inform the places where they are to install Meters but they failed to supply such information.

4. The Chief Engineer (Commercial) of the Holding Company after receiving complaint from the consumers has directed the Electrical Executive Engineer, M.R.T., Division, Electric Supply, Muzaffarpur to submit a report by 31.12.2012 on the irregularities being committed by the agencies during the Meter installation thereafter the General Manager -cum- Chief Engineer constituted a committee consisting of himself, Deputy General Manager, Technical Secretary and J.E.E. (petitioner) and conducted an inspection on 27.01.2013 with regard to installation of Meters by the agencies. The inspecting team conducted inquiry at five consumers and found that the Meters installation contractor has simply hanged the Meters without connecting the same to the service wire of the consumers. The Chief Engineer (Commercial) vide letter No. 293 dated 27.01.2013 while directing the General Manager -cum- Chief Engineer, Tirhut Electric Supply Area, Muzaffarpur to lodge F.I.R. against the Meters installation agencies and further he has directed to place the concerned Junior Electrical Engineer, Meter Installation and to initiate



departmental proceeding for dereliction of duties, misconduct and causing financial loss to the B.S.P.H.C.L.

5. Vide order dated 01.02.2013, the petitioner was placed under suspension in contemplation of departmental proceeding and vide resolution No. 284 dated 15.03.2013, a departmental proceeding was initiated against the petitioner for dereliction of duties, disobedience and serious irregularities in installation of Meters which amounts to misconduct. In response to charge-sheet dated 15.03.2013, the petitioner while denying the charges submitted written statement in defense to the charge with a request to exonerate him from the charges as the petitioner has not committed any wrong instead the agencies have disobeyed the direction of the petitioner and higher authorities and have violated the terms of LOA. Thereafter the inquiry officer has conducted the inquiry and in the proceeding, two prosecution witnesses were examined and cross examined and it has come during the inquiry that the Electric Supply Sub-division Hajipur was not allotted to M/s. Sakti computers for installation of Meters and it has also come in the deposition that J.E.E. M.R.T, A.E.E. M.R.T-I and E.E.E. M.R.T. division, Muzaffarpur were responsible for supervision of installation of Meters. It has also come in the inquiry that two agencies have committed gross irregularity in installation of meter and they have also violated the direction of the concerned authorities and also violated the terms of LOA. After the inquiry, inquiry officer has submitted the report vide letter No. 15 dated 24.01.2014 holding the charge proved against the petitioner and the disciplinary authority did not invite comment from the petitioner on the finding of the inquiry



officer and thereafter vide resolution No. 509 dated 07.07.2014 while enclosing a copy of inquiry report, a second show cause notice was issued upon the petitioner as to why appropriate order of punishment be not inflicted on the basis of proved charge against the petitioner in the departmental proceeding. The petitioner on receipt of the second show cause notice, submitted his reply stating therein all the facts but the disciplinary authority inflicted punishment to the petitioner of three annual increments with cumulative effect and denied the salary for the period of suspension except subsistence allowance. Being aggrieved, the petitioner has filed an appeal against the order of punishment dated 08.12.2014 before the Chairman -cum- Managing Director of the Company on 08.04.2015 which was rejected vide order dated 02.09.2015, which is impugned herein, on the grounds that;(i) IN terms of LOA it was the responsibility of the petitioner to supervise the work of installation of Meters and in the even any irregularity was found by him, the matter out to have been reported to the higher authorities (ii) The work of the agency was verified by the petitioner and thereby the illegality committed by the contractor against the terms of LOA, petitioner cannot be exonerated and irregularities cannot be accepted on the ground of access of work (iii) It was the responsibility of the petitioner (iv) It was the responsibility of the petitioner to ensure that the agencies are installing Meters in terms of LOA (v) G-Format was verified by the petitioner on production of fixing slip, an image of installation of Meters on the verbal instruction of A.E.E. M.R.T.-I. The appellate order dated 02.09.2015 was communicated to the petitioner by the Deputy Managing Director



(HR/Admin.), respondent No.5.

6. Learned senior counsel for the petitioner submits that there is gross violation of Rule 18(3) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 which is being reproduced herein-below for better adjudication of the case;

18. Action on the inquiry report-

(1)

(2)

(3) The disciplinary authority shall forward or cause to be forwarded a copy of the inquiry report, together with its own findings, if any, as provided in sub-rule(2), to the government servant who may submit, if he or she so desires, his or her written representation or submission to the disciplinary authority within fifteen days.

7. In support of the contention of the petitioner, learned senior counsel for the petitioner further placed reliance on the following judgments rendered in the case of; (I) Punjab National Bank & Ors. Vs. K.K. Verma, reported in **2011 (1) PLJR SC 46**; (ii) Managing Director, ECIL, Hyderabad and Others Vs. B. Karunakar and Others, reported in **(1993) SCC 727**; (iii) Baidyanath Prasad Vs. The State of Bihar & Ors. reported in **2015 (4) PLJR 130**; (iv)Roop Sing Negi Vs. Punjab National Bank and Ors. reported in **(2009) 2 SCC 570**; (v) State of Uttar Pradesh & Ors. Vs. Saroj Kumar Singh reported in **(2010) 2 SCC 772**;

8. Further the learned senior counsel appearing for the petitioner put emphasis on the paragraph Nos. 24 to 30 of judgment rendered by Hon'ble Supreme Court in the case of **Managing Director, ECIL, Hyderabad (supra), which reads as under**;

"24. Since the Government of India Act, 1935 till the Forty-second Amendment of the Constitution, the Government servant had always the right to receive the



report of the enquiry officer/authority and to represent against the findings recorded in it when the enquiry officer/authority was not the disciplinary authority. This right was however, exercisable by him at the second stage of the disciplinary proceedings viz., when he was served with a notice to show cause against the proposed penalty. The issuance of the notice to show cause against the penalty necessarily required the furnishing of a copy of the enquiry officer's report since held by the Courts, the right to show cause against the penalty also implied the right to represent against the findings on the charges. This was considered to be an essential part of the 'reasonable opportunity' incorporated earlier in Section 240(3) of the GOI Act and later in Article 311(2) of the Constitution as originally enacted. The right to receive the enquiry Officer's report and to show cause against the findings in the report was independent of the right to show cause against the penalty proposed. The two rights came to be confused with each other because as the law stood prior to the Forty-second Amendment of the Constitution, the two rights arose simultaneously only at the stage when a notice to show cause against the proposed penalty was issued. If the disciplinary authority after considering the enquiry officer's report had dropped the proceedings or had decided to impose a penalty other than that of dismissal, removal or deduction in rank, there was no occasion for issuance of the notice to show cause against the proposed penalty. In that case, the employee had neither the right to receive the report and represent proposed penalty. The right to receive the report and to represent against the findings recorded in it was thus inextricably connected with the acceptance of the report by the disciplinary authority and the nature of the penalty proposed. Since the Forty-second Amendment of the Constitution dispensed with the issuance of the notice to show cause against the penalty proposed even if it was dismissal, removal or reduction in rank, some courts took the view that the Government servant was deprived of his right to represent against the findings of guilt as well. The error occurred on account of the failure to distinguish the two rights which were independent of each other.

25. While the right to represent against the findings in the report is part of the reasonable opportunity available during the first stage of the inquiry viz., before the disciplinary authority takes into consideration the findings in the report, the right to show cause against the penalty proposed belongs to the second stage when the disciplinary authority has



considered the findings in the report and has come to the conclusion with regard to the guilty of the employee and proposes to award penalty on the basis of its conclusions. The first right is the right to prove innocence. The second right is to plead for either no penalty or a lesser penalty although the conclusion regarding the guilt is accepted. It is the second right exercisable at the second stage which was taken away by the Forty-second Amendment.

26. *The reason why the right to receive the report of the Inquiry Officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the Inquiry Officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is the negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the Inquiry Officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the Inquiry Officer along with the evidence on record. In the circumstances, the findings of the Inquiry Officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the Inquiry Officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the Inquiry Officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority.*



while arriving at its conclusion. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the Inquiry Officer's findings. The disciplinary authority is then required to consider the evidence, the report of the Inquiry Officer and the representation of the employee against it.

27. *It will thus be seen that where the Inquiry Officer is other than the disciplinary authority, the disciplinary proceedings break into two stages. The first stage ends when the disciplinary authority arrives at its conclusions on the basis of the evidence, Inquiry Officer's report and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. If the disciplinary authority decides to drop the disciplinary proceedings, the second stage is not even reached. The employee's right to receive the report is thus, a part of the reasonable opportunity of defending himself in the first stage of the inquiry. If this right is denied to him, he is in effect denied the right to defend himself and to prove his innocence in the disciplinary proceedings.*

28. *The position in law can also be looked at from a slightly different angle. Article 311(2) says that the employee shall be given a "reasonable opportunity of being heard in respect of the charges against him". The findings on the charges given by a third person like the enquiry Officer, particularly when they are not borne out by the evidence or are arrived at by overlooking the evidence or misconstruing it, could themselves constitute new unwarranted imputations. What is further, when the proviso to the said Article states that "where it is proposed after such inquiry to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed", it in effect accepts two successive stages of differing scope. Since the penalty is to be proposed after the inquiry, which inquiry in effect is to be carried out by the disciplinary authority (the Inquiry Officer being only his delegate appointed to hold the inquiry and to assist him), the employee's reply to the Inquiry Officer's report and consideration of such reply by the disciplinary authority also constitute an integral part of such inquiry. The second stage follows the inquiry so carried out and it consists of the issuance of the notice to show cause against the proposed penalty and of*



considering the reply to the notice and deciding upon the penalty. What is dispensed with is the opportunity of making representation on the penalty proposed and not of opportunity of making representation on the report of the Inquiry Officer. The latter right was always there. But before the 42nd Amendment of the Constitution, the point of time at which it was to be exercised had stood deferred till the second stage viz., the stage of considering the penalty. Till that time, the conclusions that the disciplinary authority might have arrived at both with regard to the guilt of the employee and the penalty to be imposed were only tentative. All that has happened after the 42nd Amendment of the Constitution is to advance the point of time at which the representation of the employee against the enquiry Officer's report would be considered. Now, the disciplinary authority has to consider the representation of the employee against the report before it arrives at its conclusion with regard to his guilt or innocence of the charges.

29. Hence it has to be held that when the Inquiry Officer is not the disciplinary authority, the delinquent employee has right to receive a copy of the inquiry Officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the Inquiry Officer's report before the disciplinary authority takes its decision on the charges is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.

30. Hence the incidental questions raised above may be answered as follows:

(i) Since the denial of the report of the Inquiry Officer is a denial of reasonable opportunity and a breach of the principles of natural justice, it follows that the statutory rules, if any, which deny the report to the employee are against the principles of natural justice and, therefore, invalid. The delinquent employee will, therefore, be entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject.

(ii) The relevant portion of Article 311(2) of the Constitution is as follows:

"(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those



charges."

Thus the Article makes it obligatory to hold an inquiry before the employee is dismissed or removed or reduced in rank. The Article, however, cannot be construed to mean that it prevents or prohibits the inquiry when punishment other than that of dismissal, removal or reduction in rank is awarded. The procedure to be followed in awarding other punishments is laid down in the service rules governing the employee. What is further, Article 311(2) applies only to members of the civil services of the Union or an all India service or a civil service of a State or to the holders of the civil posts under the Union or a State. In the matter of all punishments both Government servants and others are governed by their service rules. Whenever, therefore, the service rules contemplate an inquiry before a punishment is awarded, and when the Inquiry Officer is not the disciplinary authority the delinquent employee will have the right to receive the Inquiry Officer's report notwithstanding the nature of the punishment.

(iii) Since it is the right of the employee to, have the report to defend himself effectively, and he would not know in advance whether the report is in his favour or against him, it will not be proper to construe his failure to ask for the report, as the waiver of his right. Whether, therefore, the employee asks for the, report or not, the report has to be furnished to him.

(iv) In the view that we have taken, viz., that the right to make representation to the disciplinary authority against the findings recorded in the inquiry report is an integral part of the opportunity of defence against the charges and is a breach of principles of natural justice to deny the said right, it is only appropriate that the law laid down in Mohd. Ramzan Khan's case (AIR 1991 SC 471) (supra) should apply to employees in all establishments whether Government or non-Government, public or private. This will be the case whether there are rules governing the disciplinary proceeding or not and whether they expressly prohibit the furnishing of the copy of the report or are silent on the subject. Whatever the nature of punishment, further, whenever the rules require an inquiry to be held, for inflicting the punishment in question, the delinquent employee should have the benefit of the report of the Inquiry Officer before the disciplinary authority records its findings on the charges levelled against him. Hence question (iv) is answered accordingly.



(v) The next question to be answered is what is the effect on the order of punishment when the report of the Inquiry Officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non- furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to a "unnatural expansion of natural justice" which in itself is antithetical to justice."

9. Learned senior counsel appearing on behalf of the Bihar State Power (Holding) Company Limited on the other hand vehemently opposed the submission advanced on behalf of the petitioner on the ground that the order impugned are passed in accordance with law and after affording due opportunity to the petitioner and after considering the show cause filed by the petitioner, the impugned orders have been passed and therefore, there is no infirmity in the order passed by the disciplinary authority as well as appellate authority.



10. In view of the aforesaid, it transpired that there is violation of Rule 18(3) of the CCA Rules and it is admitted fact that the inquiry officer' report has not been served to the petitioner as required under Rule 18(3) of the CCA Rules. It is admitted fact that the inquiry report dated 24.01.2014 was served upon the petitioner for the first time on 07.07.2014 along with the second show cause notice whereas it ought to have been served upon the delinquent officer immediately after conclusion of the inquiry and, therefore, the inquiry proceeding is against the principle of natural justice in as much as the inquiry report has not been served to the petitioner and his comments were not called for on the inquiry officer's report. Even the disciplinary authority has not considered the reply to the show cause filed by the petitioner. Accordingly, the order dated 08.12.2014 (Annexure-2) contained in resolution No. 1029 passed by the Deputy General Manager (Human Resources/ Admin.) and order dated 02.09.2015 (Annexure-1) passed by the Chairman -cum- Managing Director, Bihar State Power (Holding) Company Limited are quashed and set aside. It is settled legal proposition that once the Court sets aside the order of punishment on the ground that the inquiry was in breach of principles of natural justice, the matter required to be remitted to the concerned disciplinary authority to conduct the inquiry from the stage it stood vitiated and to conclude the same after following the due principles of natural justice.

11. In such view of the matter, the matter is remitted to the disciplinary authority to proceed with the inquiry from the stage it stood vitiated and to conclude the same after furnishing a copy of the



inquiry officer's report and after giving an opportunity to the delinquent to submit his comments on the inquiry officer's report and also after following all the principles of natural justice in accordance with the law. The aforesaid exercise must be completed within a period of six months from the date of production or receipt of a copy of this order.

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

(Rajesh Kumar Verma, J)

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