

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8316 of 2016

Uma Shankar Pandey Son of late Ram Das Pandey, Resident of Village - Rampur Telari, P.S. Shivsagar, District- Rohtas at Sasaram, Presently residing at Civil Line, Rauza Road, Road No. 1, at and P.O. and P.S. - Sasaram, (Model Thana), District- Rohtas at Sasaram.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Bihar State Power (Holding) Company Ltd., Vidyut Bhawan, Bailey Road, Patna, through its Chairman - cum- Managing Director (hereinafter referred to as the C.M.D.)
3. The C.M.D., The Bihar State Power (Holding) Company Ltd., Vidyut Bhawan, Bailey Road, Patna.
4. The Director, (HR and Admin), Bihar State Power (Holding) Co. Ltd., Vidyut Bhawan, Bailey Road, Patna.
5. The Managing Director, South Bihar Power Distribution Co. Ltd., Vidyut Bhawan, Bailey Road, Patna.
6. The General Manager, (HR and Admin), South Bihar Power Distribution Co. Ltd., Vidyut Bhawan, Bailey Road, Patna.
7. The General manager, (Revenue), (The Then Financial Controller-I), South Bihar Power Distribution Co. Ltd., Vidyut Bhawan, Bailey Road, Patna.
8. The Resident Audit Officer Bihar State Power (Holding) Co. Ltd., Vidyut Bhawan, Bailey Road, Patna.
9. The Account Officer, Magadh Electrical Supply Area/Circle, SBPDCL, Gaya.
10. The Dy. G.M. - cum- Electrical Superintending Engineer, Magadh Electric Supply Area, Gaya.
11. The Electrical Superintending Engineer, Electrical Supply Circle, SBPDCL, Gaya.
12. The Electrical Executive Engineer, electric Supply Division (Urban), Jehanabad.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Chitranjan Sinha, Sr. Adv. Mr. Sheojee Mishra, Adv.
For the State	:	Mr. Vinay Kirti Singh, GA-2 Mr. Sumant Kumar Singh, AC to GA- 2
For the SBPDCL	:	Mr. Nikesh Kumar, Adv.



**CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT**

Date : 22-04-2025

Heard learned senior counsel for the petitioner, learned counsel for the State and learned counsel for the South Bihar Power Distribution Company Limited (hereinafter referred to as SBPDCL).

2. The present writ petition has been filed for the following reliefs:-

i. For quashing / setting aside the order of punishment contained in Resolution No. 1920 dated 30.09.2014 issued under the pen and signature of respondent no. 6, i.e., the General Manager, [HR & Admin] South Bihar Power Distribution Co. Ltd., Vidyut Bhawan, Bailey Road, Patna, whereby and whereunder, after superannuation [in the year 2009], punishment of recovery of an amount of Rs. 13,13,495/= along with interest and permanent deduction of 50% of pension has been awarded;

ii. For quashing the resolution dated 19.06.2006 by which departmental proceeding has been initiated including the main charge sheet and the supplementary charge sheet dated 14.12.2009;



iii. For quashing the resolution No. 1302 dated 12.09.2013 by which the so-called second show-cause notice has been issued to the petitioner;

iv. For quashing / setting aside the order contained in Letter No. 1635 dated 11.12.2015 issued under the signature of respondent no. 3, i.e., the C.M.D., Bihar State Power [Holding] Co. Ltd., Vidyut Bhawan, Bailey Road, Patna, whereby and where under the Statutory Appeal preferred by the petitioner has been rejected and the order of punishment contained in Resolution No. 1920 dated 30.09.2014 has been affirmed;

v. For directing the respondents to allow all due promotions as well as all the consequential monetary benefits along with penal and statutory interest and cost of litigation;

vi. For grant of any other relief or reliefs, if the petitioner is found entitled to.

3. Learned senior counsel for the petitioner submits that the petitioner joined on the post of Operator at Patratu Thermal Power Project in the year 1971, and while serving the erstwhile Bihar State Electricity Board, now the successor respondent company, superannuated from the post of Assistant



Electrical Engineer in the year 2009, with spotless service career save and except the present one. Counsel further submits that the petitioner was posted on the post of Assistant Electrical Engineer at Jehanabad from 05.06.2002 to 31.10.2005. Then, he detected a defalcation in the department which was going on since 1993, and in this regard, he has intimated to his higher authorities *vide* his letter No. 662 dated 19.10.2005. Counsel further submits that in spite of rewarding the petitioner for unearthing a defalcation, an FIR bearing Jehanabad P.S. Case No. 284 of 2005, dated 22.10.2005, was lodged by the respondent in which the petitioner was falsely implicated and on this ground, the petitioner was suspended *vide* Office Order No. 1170 dated 03.04.2016, without issuance of any show-cause. Counsel further submits that a departmental proceeding was initiated and a charge-sheet was served upon him. In response to the charge contained in Resolution No. 525 dated 19.06.2006, the petitioner submitted his written statement in his defense before the Inquiry Officer and also filed a representation on 29.09.2008, enclosing a list of documents. While during the enquiry proceedings, findings of the Inquiry Officer were awaited, a supplementary charge-sheet was served upon the petitioner on 14.12.2009.



4. Learned senior counsel for the petitioner further submits that thereafter, the petitioner submitted a specific written statement on 07.10.2010, in defense against each of the allegations made in the supplementary charge-sheet. After the enquiry was conducted, the Inquiry Officer found the charge not proved against the petitioner. Counsel further submits that the criminal case which had been lodged, in which the petitioner was also made an accused, namely, Jehanabad P.S. Case No. 284 of 2005, has also been closed against the petitioner. After investigation, the petitioner was found innocent, and a final form was submitted by the police. The said final form was accepted by the Court of the learned S.D.J.M., Jehanabad, and the petitioner was discharged *vide* order dated 04.11.2009. Counsel further submits that the Inquiry Officer, in his inquiry report dated 04.07.2012, found no involvement or connivance of the petitioner in the alleged defalcation committed in the Electric Supply Subdivision, Jehanabad (Urban). Learned senior counsel submits that the Disciplinary Authority differed with the findings of the inquiry report and issued a notice *vide* Memo No. 1303 dated 12.09.2013, serving a show-cause notice upon the petitioner with a direction to submit his reply as to why not punishment be awarded against him by treating the charges



to be proved on five new grounds. Learned senior counsel further submits that the issuance of the show-cause notice on the basis of new points is a gross violation of the CCA Rules, 2005, as in the said points of difference, new charges have been shown which had never been placed at any level in the earlier charge memo or in the supplementary charge memo. Counsel further submits that upon receiving the disagreement memo, the petitioner filed his detailed show-cause reply on 15.11.2013, but none of his points were considered by the Disciplinary Authority, and passed a punishment order *vide* Resolution No. 1920 dated 30.09.2014, issued by respondent No. 6, i.e., the General Manager [HR & Admin], South Bihar Power Distribution Company Limited. In the said order, recovery of an amount of Rs. 13,13,495/- along with interest was directed. A further order was made for permanent deduction of 50 per cent of the petitioner's pension, which shall be realized from the petitioner. Counsel further submits that being aggrieved and dissatisfied with the order of the disciplinary proceeding dated 30.09.2014, the petitioner preferred an appeal before the C.M.D., Bihar State Power [Holding] Company Limited, Patna, and submitted all his points, but the appeal was also rejected, without taking into consideration that in charge memo only



allegation is required not the finding.

5. Learned senior counsel further submits that after the rejection of the same, the petitioner challenged both the orders before this Hon'ble Court by way of filing the present writ petition. Counsel, upon placing the present writ, submits that there are gross violations of established rules as well as violations of the principles of natural justice in conduction of the present disciplinary proceeding and in passing orders by both the Disciplinary Authority and the Appellate Authority against the petitioner. Counsel specifically mentions that a charge memo was issued firstly to the petitioner, and subsequently, before the Inquiry Officer, a supplementary charge memo, annexed as Annexure-6, was also issued, in which a total of 18 supplementary charges were added. Counsel further submits that upon bare reading of the supplementary charge-sheet, it becomes crystal clear that it is basically not a charge memo, due to the reason that at the end of every charge memo, there is a finding that the petitioner is responsible for the charge, which is in gross violation of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as CCA Rules, 2005). Counsel further submits that the Inquiry Officer, in his inquiry, clearly found



that there was no involvement of the petitioner and there is no basis for the same, save and except an observation was made that there was negligence in revenue work. Counsel further submits that negligence is something entirely different from misconduct. He further submits that the Disciplinary Authority differs from the findings of the Inquiry Officer, and in the difference he again violated the Rules laid down under Rule 17(18) of the CCA Rules, 2005, and differing from the inquiry report he has made fresh charges in his show-cause / memo of difference. Counsel submits that, as per the rules, when new charges have been alleged in difference memo then a further inquiry has to be held. However, in the present case, no such further inquiry was directed to be held.

6. Counsel further submits that the petitioner has submitted a second show-cause, explaining each and every point on the point of difference. Counsel further submits that Rule 18(2) of the CCA Rules, 2005 clearly indicates that the Disciplinary Authority, if it disagrees with the findings of the inquiring authority on any article of charge, records its reason for such disagreement and records its own finding on such charge, if the evidences on record is sufficient for the purpose. Counsel further submits that in the present case, there is no



finding, no reason for such disagreement on any of the articles of charge separately, as to why the enquiry report was not accepted. Counsel further submits that the Disciplinary Authority shall have to pass order only after considering the representation or submissions of the delinquent and shall have to reach to its finding all of the charges. However, in the present case, there is not a whisper regarding the consideration of the points raised by the delinquent petitioner in his second show-cause, nor there is any finding on any of the articles of charge in the final order. Counsel submits on what basis the order of realization of Rs. 13,13,495/- was come has not been mentioned. Counsel further submits that what is the basis for the deduction of 50 per cent pension has also not been mentioned. Counsel also submits that in passing the final order by the Disciplinary Authority, there is a gross violation of the CCA Rules, 2005.

7. Counsel further relies on a judgment of the Hon'ble Supreme Court of India in ***Lav Nigam v. Chairman & Md. ITI Ltd. and Anr.***, reported in ***(2006) 9 SCC 440***, wherein it was held that *it is only after hearing the appellant that the disciplinary authority would at all arrive at a final finding of guilt. Thereafter, the employee would again have to be served*



with a notice relating. to the punishment proposed. Counsel submits that here in the present case, no such notice regarding the proposed punishment has been served on the petitioner. On this ground, counsel submits that the impugned order is bad in law. He further submits that when the original proceeding is itself bad in law due to the reason of non-fulfillment of the CCA Rules, 2005, the appellate order is also not sustainable in the eyes of law. In the second show-cause, the defence taken by the petitioner was not considered at all and it is due to this reason the proceeding itself is bad in law and the Appellate Authority has not considered the single point and rejected the claim of the petitioner. Therefore, he submits that both the original order dated 13.09.2014 annexed as Annexure-12 and the final order dated 11.12.2015 passed by the Appellate Authority be set aside.

8. Learned senior counsel further relies on another judgment of this Hon'ble Court in the case of ***The State of Bihar through the Chief Secretary & Ors. v. Narmadeshwar Sharma & Anr.***, reported in ***(2017) 1 PLJR 252***, wherein it was held that an order of withholding of pension to the extent of 50 per cent, and that too for life, cannot be lightly interfered with, that too in the evening of life of an employee. Withholding of pension for life is harsh irrespective of the extent of financial



loss suffered by the State even on the proved misconduct against an employee. Counsel submits that in the present case, the situation is entirely different, as the alleged misconduct was not approved by the Inquiry Officer. The Disciplinary Authority, in its disagreement memo, has come with different charges, and for those charges no inquiry was conducted. Counsel further submits that in the second show-cause, the defense taken by the petitioner was not considered at all and it is due to this reason the proceeding itself is bad in law. The Appellate Authority has also not considered the single point and rejected the claim of the petitioner. Therefore, he submits that the order contained in Resolution No. 1920, dated 30.09.2014, annexed as Annexure-12 and order contained in Letter No. 1635, dated 11.12.2015 passed by the Appellate Authority annexed as Annexure- 14 be set aside.

9. Learned counsel for the SBPDCL, on the other hand, submits that in the counter affidavit, the contentions of the writ petitioner have been opposed. It has been submitted that, with a view to take precaution, a Four-Men Committee was constituted, which submitted a report in which the total loss was calculated. Only thereafter the amount of Rs. 13,13,495/- has been ascertained. Counsel further submits that the conclusion



reached by the Disciplinary Authority regarding the realization of the said amount is not arbitrary but is based on the findings of the Four-Men Committee report. Counsel further submits that the charge memo was duly issued, and the issuance of the supplementary charge memo is within the domain of law and it has been rightly issued. Counsel further submits that although the Inquiry Officer reached on a certain conclusion but in law, the Disciplinary Authority is not bound to follow and accept the inquiry report, Therefore, the disagreement was made completely in accordance with the law. Hence it is submitted that, there is no violation of any procedure in the present case. Counsel further submits that, upon considering of the show-cause, the Disciplinary Authority has passed order and all the points raised by the petitioner before the Appellate Authority were meticulously examined, and a reasoned order was passed. In this background, he submits that the orders passed by both the Disciplinary Authority and the Appellate Authority are sustainable in the eyes of law, and the present writ petition is fit to be dismissed.

10. Upon hearing the arguments made by both counsel, and particularly upon going through the supplementary charge memo, this Court has two opinion. Firstly, the issuance



of the supplementary charge memo is well within the domain of the Disciplinary Authority. However, upon going through the contents of the said charge memo, this Court is surprised as to whether it is a charge memo or a finding or it is a result, because in the charge memo, charge is alleged, but here, in the supplementary charge memo, the Disciplinary Authority reached on the finding and held that the petitioner is responsible and guilty for the charges, which shows the bias mind of the Disciplinary Authority at the time of framing the supplementary charge memo.

11. This Court is also surprised upon going through the disagreement memo, wherein the Disciplinary Authority has indicated a different type of allegation which is absolutely differs from the original and supplementary charge memo. It is within the powers of the Disciplinary Authority to point such things in the disagreement memo, but when any new allegation, in the form of charge, comes afresh then he supposed to do or direct for a fresh enquiry for reaching on the conclusion on the fresh allegations. It also transpires to this Court, upon going through the inquiry report, that the Inquiry Officer, on the one hand, reached on the conclusion that there was no involvement of the petitioner in the alleged defalcation, but on the other



hand, also reached on the conclusion that there was negligence on the part of the petitioner in revenue work. This is also not acceptable to this Court, because in the charge memo, this allegation was not there and the inquiry officer must have to restrain himself from reaching on new type of conclusion, which is not in the charge memo particularly when that negligence is not a misconduct. It is further surprising to this Court that, although the petitioner, in his second show-cause, has answered all the points, which has been raised in the disagreement memo, but none of those points have been discussed in the final order which is another violation of Rule 18 of the CCA Rules, 2005, as the Disciplinary Authority must have to consider all the points and then reach on his separate finding but he has not considered a single point, answered by the petitioner, at all.

12. As to the contention of SBPDCL that the conclusion regarding the amount of Rs. 13,13,495/- was based on the report of the Four-Men Committee, but from the record, it transpires that on no occasion, in the entire departmental proceeding, the said Four Men Committee report was placed before Inquiry Officer, delinquent petitioner or before presenting officer and when a document which was never been tested in the disciplinary proceeding then the Disciplinary



Authority cannot reach on the conclusion and pass punishment on the basis of that report. The notice for proposed punishment has also not been issued. In this regard, the judgment of the Hon'ble Supreme Court of India in the case of ***Lav Nigam (Supra)*** particularly paragraph 10 , is extremely relevant and is quoted hereunder:—

10. The conclusion of the High Court was contrary to the consistent view taken by this Court that in case the disciplinary authority differs with the view taken by the inquiry officer, he is bound to give a notice setting out his tentative conclusions to the appellant. It is only after hearing the appellant that the disciplinary authority would at all arrive at a final finding of guilt. Thereafter, the employee would again have to be served with a notice relating to the punishment proposed.

13. The judgment of ***The State of Bihar through the Chief Secretary & Ors. (Supra)*** is also relevant whose paragraph 10 is reproduced below:-

10. Since the allegation against the Respondent No. 1 was of causing loss along with other officials, the extent of loss suffered is a relevant consideration. before quantifying the punishment. A perusal of the order of punishment does not show that any



such consideration has been adopted while ordering for withholding of pension to the extent of 50 per cent and that too for life. A Government servant earns pension on account of his services rendered to the State for large number of years. The benefit of such services cannot be lightly interfered with, that too in the evening of life of an employee. Withholding of pension for life is harsh irrespective of the extent of financial loss suffered by the State even on the proved misconduct against an employee. Such punishment is shockingly disproportionate to a former employee. Therefore, we find that the order of punishment is too harsh which cannot be sustained.

14. After the discussions made above, and upon going through the relevant records, it becomes crystal clear that there have been gross violations of a series of provisions under the CCA Rules, 2005, in the conduct of the departmental proceedings against the petitioner. Accordingly, this Court hereby sets aside the order contained in Resolution No. 1920, dated 30.09.2014, passed by the respondent No. 6 (Annexure-12) and the order contained in Letter No. 1635, dated 11.12.2015, passed by the respondent No. 3 (Annexure- 14).

15. Accordingly, with this direction, the present



writ petition stands allowed. The petitioner is entitled for the
benefits in accordance with law.

(Dr. Anshuman, J.)

Aman Kumar/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	29.04.2025
Transmission Date	NA

