

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3136 of 2017

Janardan Prasad Roy Son of Late Sheopujan Roy, Resident of Village-
Bhaluana, P.O.- Chandi, P.S.- Charpokhari, District- Bhojpur.

... .. 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. General Manager HR and Administration, South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna
4. The General Manager cum Chief Engineer, Central Electric Supply Area, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Devendra Kr. Sinha, Sr. Advocate Mr. Bajarangi Lal, Advocate
For the Respondent/s	:	None

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 29-04-2025

Heard Learned Senior Counsel Mr. Devendra Kr. Sinha assisted by Mr. Bajarangi Lal, Advocate for the petitioner. No one appears on behalf of the Bihar State Power Holding Company Ltd.

2. Upon perusal of the records, it transpires to this Court that *vide* order no.4 dated 07.02.2025, counsel appearing on behalf of the Bihar State Power Holding Company Limited submits that Senior counsel has to argue this case, but he is not available due to some personal problem. Hence, the matter was adjourned. Today, upon repeated calls, no one appears on behalf of the Bihar State Power Holding Company Limited. As such, this Court is of the view that the Bihar State Power Holding



Company Limited has nothing to say in this matter. Hence, this Court is hearing this case in absence of counsel appearing for the Bihar State Power Holding Company Limited.

3. The present writ petition has been filed for the following relief/s:-

“I. For setting aside the order passed by the Chairman cum Managing Director, Bihar State Power Holding Company Ltd, Patna communicated to the petitioner vide Letter no.357 dated 11.03.2016 (annexed as Annexure-16) issued by the Respondent no.3 whereby and whereunder, the appeal preferred by the petitioner against punishment order contained in Resolution No.2599 dated 17.12.2014 has been dismissed and the order of Disciplinary Authority has been affirmed.

II. For quashing of Resolution No.2599 dated 17.12.2014 issued by Respondent no.3 contained in Memo No.2600 dated 17.12.2014 (annexed as Annexure-14) by which the petitioner has been awarded two punishments of stoppage of three increments with cumulative effect and punishment of Censure.

III. For directing the respondents to grant consequential monetary and service benefits including seniority and promotion etc. for which petitioner is entitled.



IV. For any other relief/reliefs for which the petitioner is entitled in the facts and circumstances of the present case.”

4. Learned Senior Counsel for the petitioner submits that the petitioner was appointed and joined as Junior Electrical Engineer at Dhanbad Area Electricity Board in erstwhile Bihar State Electricity Board, Patna on 31.08.1985 and he was posted as JEE at Electric Supply Section, Ara (North) between June 2004 to July 2007. Thereafter, petitioner was granted promotion on the post of Assistant Electrical Engineer in 2009 and was posted as Assistant Electrical Engineer (revenue) at Electric Supply Circle, Munger. Later on, petitioner was posted as Assistant Electrical Engineer, Electric supply sub-division, Punpun by Board's notification no.509 dated 19.05.2010. Senior Counsel submits that while the petitioner was posted as AEE, Punpun under the orders of GM cum Chief Engineer, Central Electric Supply Area, Patna contained in notification no.750 dated 03.02.2011, petitioner was asked to look after the work of Assistant Electrical Engineer, Electric Supply sub-division, Masaurhi in addition to his original work, until further orders. Senior Counsel further submits that during petitioner's posting in the capacity of additional charge of Masaurhi electric supply sub-division, he



wrote a letter to the officials requesting him to discharge him from the additional charge of Masaurhi for reason that there was complete lack of staff in both the sub-divisions i.e. Punpun and Masaurhi. Senior counsel submits that there was huge scarcity of sub-divisional staff including skilled and unskilled employees. Whereas, it has also a vast length of electric line of 28 km of 33 kv line and 150 km of 11 kv line. Senior counsel submits that while petitioner was discharging his duties at Masaurhi electric supply sub-division, a raid under antitheft drive was conducted by the STF of the BSEB on 12.07.2011 wherein, petitioner as well as Executive Engineer, Electric Supply Division, Masaurhi were present being a member of the raiding party. It had found during inspection of LTI premises that some consumers committing theft of energy by running Atta Chakki of 10-20 HP as being LTI consumers. And so, Executive Engineer, Electric Supply Division, Masaurhi lodged an FIR which was registered as Masaurhi P.S. Case No.290 of 2011 instituted under Section 379 of the Indian Penal Code and section 135 of the Electricity Act, 2003 against those consumers.

5. Learned Senior Counsel for the petitioner further submits that after lodging of the FIR, the Executive Engineer, Electric Supply Division, Masaurhi *vide* Memo No.1336 dated 19.09.2011, wrote a letter to the SHO, Masaurhi making



allegation against the petitioner and other officials that they are responsible for the theft of energy in the area and he requested to register an FIR against petitioner and others. But the SHO, Masaurhi by letter dated 27.08.2012 wrote to Electrical Executive Engineer, Electric Supply Division, Masaurhi that no separate FIR could be lodged for same occurrence more so when, they are government witnesses. During investigation, role of petitioner and other local officials have not been transpired in this case. Senior Counsel submits that the petitioner was asked to submit his para wise explanation *vide* letter no.230 dated 07.02.2012 from the Joint Secretary, BSEB and in response of the said letter, petitioner has submitted his detailed para wise explanation *vide* letter no.332 dated 30.04.2012 and requested to exonerate him from the allegations which has been made in the complaint. Senior Counsel further submits that *vide* Resolution no.1617 dated 30.07.2012 contained in Memo No.1618 dated 30.07.2012, charge memo was issued to the petitioner under the signature of Joint Secretary of the Board whereby, a departmental proceeding has been initiated for the charges that he has been found *prima-facie* guilty of mis-conduct and negligence of duty as specified in the charge memo and petitioner was asked to submit his written statement in his defence within a fortnight before the Enquiry Officer to conduct



a departmental proceeding against the petitioner. Senior Counsel submits that in the said charge memo, there were five charges alleged and out of 5 charges, three charges are not relating to petitioner directly, and only two charges i.e. charge no. iv and v are directly related to the petitioner. Senior Counsel submits that upon bare perusal of the charge memo which is annexed as Annexure-7, it become crystal clear that in charge no. iv, violation of section 150 of the Electricity Act, 2003 has been alleged, whereas, in charge no. v, violation of Sections 43 & 55 of the Electricity Act, 2003 has been alleged and both are criminal offence. Senior Counsel submits that the petitioner has filed his written statement and presented himself before the Inquiry Officer and he has found charge nos.(i) & (ii) not proved against the petitioner, but found involvement of the petitioner in charge nos.(iii), (iv) and (v). Senior Counsel submits that upon reaching on the finding particularly, on charge no. (iv) and (v), it was the domain of the Criminal Court to look into this matter, but the Enquiry Officer has transgressed his jurisdiction. As he has nothing to do with the ingredients of the criminal offence as those sections are punishable and triable before Criminal Court. He has verified the same and found the petitioner to be guilty under those criminal sections i.e. under sections 43, 55 & 150 of the Electricity Act, 2003. Senior Counsel submits that the said



charge memo and second show-cause has been served upon the petitioner *vide* Annexure-11 on 24.04.2013. In the said second show-cause, the Disciplinary Authority has disagreed on charge nos.(i) and (ii) and agreed on charge nos.(iii), (iv) & (v) to be proved against the petitioner. Senior Counsel submits that at the time of disagreement memo, specific reason has not been assigned by the Disciplinary Authority as to why he disagreed from the enquiry report and what are the points of disagreement from the enquiry report which is the essential part of Rule 17(18) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as 'CCA Rules, 2005').

6. Learned Senior Counsel for the petitioner further submits that the petitioner has submitted reply to the second show-cause in which he has meticulously submits that the said raid was conducted on 12.07.2011, for the period of electricity connection which took place during the period of January 2010 to January 2011 and during the said period, petitioner was not posted in the said area. Therefore, petitioner cannot be absolutely treated at fault for an electric connection which has not been installed during his period. But this aspect has been completely ignored and in the final order, there is no whisper on this regard and petitioner was held guilty in which two



punishments of stoppage of three increments with cumulative effect and punishment of Censure was awarded to the petitioner. Senior Counsel submits that being aggrieved and dissatisfied with the order passed by the Disciplinary Authority, petitioner has preferred appeal before the Chairman cum Appellate Authority, but the Appellate Authority has not considered his single point as mentioned in Memo of Appeal and rejected his claim only stating that petitioner has not placed before the appeal forum any relevant facts and thereafter, petitioner has preferred this writ petition before this Hon'ble Court. Senior Counsel submits that counter affidavit has been filed in this case but, on the legal aspect, the counter affidavit is completely silent. Senior Counsel submits that the charge memo issued by the Disciplinary Authority is itself defective and in gross violation of Rule 17(3) and 17(4) of the CCA Rules, 2005. It neither indicates the documents on the basis of which the disciplinary proceeding is going to be conducted nor disclosed the names of witness in the said memo. Senior Counsel submits that Rule 17(4) and (5) of CCA Rules 2005 categorically indicates that the Disciplinary Authority after issuance of charge memo shall demand the written statement from the delinquent and after considering the written statement filed by the delinquent, the Disciplinary Authority shall refer the matter



before the Enquiry Officer for departmental proceeding.

7. Learned Senior Counsel for the petitioner further submits that here in the present case, written statement has not been considered by the Disciplinary Authority himself, rather, it was directed to present the written statement before the Enquiry Officer which is in gross violation of CCA Rules, 2005. Senior Counsel submits that from Annexure-7 i.e. Memo No.1618 dated 30.07.2012, the Enquiry Officer was appointed, but there is no indication that who shall be the Presenting Officer. And the entire proceeding has been conducted in absence of the Presenting Officer. Senior Counsel submits that it is the Enquiry Officer who himself played the role of Presenting Officer and in this regard, the Hon'ble Division Bench of this Court in case of ***Upendra Pandit Vs. The State of Bihar & Ors.*** decided in ***LPA No. 507 of 2017*** reported in ***2023(4) PLJR 568*** categorically held that in the absence of Presenting Officer, the departmental proceeding shall vitiate. Senior Counsel further put emphasis on the point that the charge nos. iv and v are allegation of violation of sections 43, 55 & 150 of the Electricity Act, 2003. Senior Counsel submits that under these three sections, it is the criminal wrongs which has been explained and under the Indian Law, the criminal allegation has to be checked by the Criminal Court only. Senior Counsel submits that the respondent



authorities tried their level best to file criminal case against the petitioner which has been refused by the SHO and letter has been returned back. Thereafter, the authorities have not proceeded further to file any criminal case against the petitioner which is permissible under the Cr.P.C. by way of filing complaint, if FIR shall not be lodged. But instead thereof, directed in the charge memo to be test the ingredient of those sections which are criminal in nature by the Enquiry Officer. Senior Counsel submits that the finding of Enquiry Officer about the presence of ingredient of the section which is penal in nature is beyond the jurisdiction of the Disciplinary Authority and any finding given by them in the departmental proceeding about presence of the ingredient which is subject of the criminal matter, cannot be tested. Senior Counsel submits that petitioner has specifically demanded certain documents which has not been provided to him. In this regard, Annexure-12 has been annexed and specific documents/papers have been demanded which has also not been provided to the petitioner and this aspect has completely been ignored by the Enquiry Officer, by the Disciplinary Authority as well as by the Appellate Authority. Senior Counsel further submits that there is a gross violation of Rule 17(18) of the CCA Rules, 2005 as on disagreement memo, the specific finding of the Disciplinary Authority is necessary as



to why he is disagree on the finding and what are the points available due to which he is reaching on the other conclusion. Senior Counsel submits that those points are lacking in that. So, on the basis of those things, he submits that not only on fact, rather, on law also, this disciplinary proceeding is bad in law and not sustained in the eye of law and accordingly, the original order i.e. order contained in Resolution No.2599 dated 17.12.2014 contained in Memo No.2600 dated 17.12.2014 (annexed as Annexure-14) as well as the appellate order i.e. order contained in Letter no.357 dated 11.03.2016 (annexed as Annexure-16) are fit to be set aside.

8. Upon hearing Learned Senior Counsel for the petitioner and upon perusal of the counter affidavit, it transpires to this Court that demand of supply of papers have been specifically pleaded in paragraph no.16 of the writ petition which has not been answered specifically in counter affidavit filed by the respondent Board, rather, one line statement is that, it is not acceptable in the eye of law. Upon minute reading of the charge memo, enquiry report, order passed by the Disciplinary Authority, it transpires that this departmental proceeding has been conducted in the absence of Presenting Officer. In this regard, Hon'ble Division Bench of this Court in case of Upendra Pandit (*supra*) has made observations in paragraph



nos.10, 11 & 12 which states as follows:-

“10. So far as the facts of the instant case are concerned, on perusal of the charge-sheet in Form-'ka', this Court finds that the same mentions about the charges levelled against the appellant, which are ten in number. It also transpires from the records that as many as fourteen witnesses were examined in support of the charges. However, so far as the contents of the charge-sheet and/or the covering letter dated 27.11.2004 is concerned, the same neither contains the list of documents nor the list of witnesses by which the articles of charges were proposed to be sustained.

11. In the opinion of the Court, Rule 17 (3) and (4) of the Rules of 2005 are very clear when they provide that where it is proposed to hold an inquiry against the government servant under the said Rules, the disciplinary authority shall draw up or cause to be drawn up the substance of the imputation of misconduct or misbehaviour in support of each article of charge, the same shall contain a statement of relevant facts, list of documents and list of witnesses by which the articles of charges are proposed to be sustained. Thus, non supply of the list of documents and the list of witnesses to the appellant in the instant case on which the



disciplinary authority proposed to sustain the charges levelled against the appellant in the disciplinary proceeding as also the proceeding being conducted without appointment of a Presenting Officer was a clear and serious lapse of the provisions of Rule 17 of the Act of 2005. The requirement of Rule 17 (3) and (4) not having been fulfilled, the order of punishment of dismissal from service of the appellant cannot be sustained. Both the orders of dismissal dated 29.12.2005 and the order dated 30.04.2008 rejecting the appeal preferred by the appellant are both set aside. The order of the learned Single Judge also cannot be sustained and is hereby set aside.

12. The appeal is allowed with all consequential benefits. There cannot be a resumption of the enquiry proceedings, from the stage at which the defect is noticed, since by virtue of the appellant having crossed the age of superannuation there exists no employer-employee relationship. In view of the order of dismissal having been passed on 29.12.2005 and the appellant having superannuated from service with the passage of time, although the appellant has not worked, in the facts of the case, it is directed that the appellant will be entitled for 50 percent of his arrears of salary which



will be paid to the appellant within a period of four months. The appellant will also be entitled for pension admissible to him as per law and arrears, if any, under this head shall also be paid, fully within four months. It is made clear that in computation of pension, the full salary due to the appellant shall be reckoned as the last pay drawn, despite our limiting disbursement of salary to 50% for the remaining period of service. In case of the petitioner not being paid the amount under any head, for no fault of his, he will be entitled for interest on the total unpaid amount at the rate of 8% p.a. from the date of this order.”

9. Upon perusal of the appellate order, it transpires that none of the points raised by the petitioner has been discussed in the memo of appeal. This Court also surprised to read the charge memo and enquiry report which is in violation of Rule 17(4) of the CCA Rules, 2005 and as to those ingredients on the basis of which criminal offence is constituted has been tested in the departmental proceeding and this method is unknown to law. But, it has been done by the Enquiry Officer, approved by the Disciplinary Authority and subsequently, by the Appellate Authority which is completely illegal. Hence, it is due to the aforesaid reasons, this Court finds that this disciplinary proceeding is bad in law and fit to be set aside. Accordingly, the



enquiry report dated 17.01.2013, original order i.e. order contained in Resolution No.2599 dated 17.12.2014 contained in Memo No.2600 dated 17.12.2014 (annexed as Annexure-14) as well as the appellate order i.e. order contained in Letter no.357 dated 11.03.2016 (annexed as Annexure-16) are hereby set aside.

10. As such, with the aforesaid observations, this writ petition is hereby allowed.

(Dr. Anshuman, J)

Divyansh/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	06/05/2025
Transmission Date	NA

