

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.219 of 2025

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Amit Kumar Agrawal son of Sri Arun Kumar Maitin, resident of 69, Gandhi Chowk, K.P. Road, Gaya-823001. Bihar.

... .. Petitioner/s

Versus

1. BHARAT HEAVY ELECTRICALS LIMITED, through its Chairman- cum- Managing Director, BHEL Bhawan, Siri Fort, New Delhi - 110049.
2. Executive Director, H.E.P.,BHEL. Bhopal-462022.
3. General Manager (Finance), H.E.P. BHEL, Bhopal - 162022.
4. AGM (Finance) and Disciplinary Authority, H.E.P..BHEL, Bhopal-462022.
5. AGM (Finance) and Inquiry Authority, H.E.P., BHEL, Bhopal-462022.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Amit Kumar Agrawal (In Person)
For the Respondent/s	:	Mr.Shailesh Kumar, Adv.
		Mr.S. Alam. Adv.

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

4 04-05-2026 Heard Mr. Amit Kumar Agrawal (the petitioner) in person and learned counsel for the State.

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

i. To issue an appropriate writ/order/direction in the nature of Certiorari for quashing the impugned email order dated 09-12-2024 (as contained in Annexure P/12) passed by Respondent No. 4, whereby non-payment of subsistence allowance for not meeting the terms and conditions of impugned order dated 18-09-2024 (as contained in Annexure-P/4). was passed by same Respondent No. 4.



ii. To issue an appropriate writ/order/direction in the nature of Certiorari for quashing the impugned order dated 18-09-2024 passed by Respondent No. 4 whereby the petitioner has been suspended illegally against the rule 20(3) of BHEL CDA rules 1975, (as contained in Annexure P/14) without giving any opportunity of being heard and also without any reason being recorded thereof by Respondent No.4.

iii. To issue an appropriate writ/order/direction in the nature of Certiorari for quashing the impugned order dated 18.09.2024 passed by Respondent No. 4 whereby the intervening period has been declared dies non violating the principle of natural justice as well as rule 20(3) of BHEL CDA rules 1975. (as contained in Annexure P/14) without giving opportunity of being heard and without any reason being recorded thereof by Respondent No. 4.

iv. To issue an appropriate writ/order/direction in the nature of Mandamus commanding the Respondent No. 1 to 3 to initiate the departmental proceeding against Respondent No 4 and Respondent No 5 under Rule 5(24) of BHEL CDA Rules 1975 for violating Rule 20(3) BHEL CDA Rules 1975 in suspending the petitioner.

v. To issue an appropriate writ/order/direction in the nature of Mandamus commanding the Respondents to make the payment



of subsistence allowance with such interest and with/without such penalty as the Hon'ble Court may decide.

3. During pendency of the writ petition, the respondents appeared and filed an I.A. No.2 of 2026 raising preliminary objection for challenging the maintainability of the writ petition on the ground of lacking of territorial jurisdiction and non-availing the statutory provision of appeals and review under Rules 32 and 33 of the BHEL Conduct, Discipline and Appeal (CDA) Rules, 1975.

4. Counsel for the respondents submits that the present writ petition is pre-mature and liable to be dismissed on the lack of jurisdiction as well as on the ground of non-availing the statutory provision of appeals and review. He further submits that the petitioner was earlier moved before this Hon'ble Court in CWJC No.8235 of 2013 for quashing of order dated 24.12.2011 by which the petitioner has been removed from his service and the orders dated 19.04.2012 and 15.10.2012 passed by the appellate as well as review authority have been set aside. Thereafter, the petitioner moved before the Hon'ble Division Bench of this Court in LPA No.718 of 2023 against the order of CWJC No.8235 of 2013 by which the said LPA was dismissed and the order passed in the said CWJC was



affirmed. He further submits that against the said order, the BHEL had moved before Hon'ble Supreme Court of India in SLP (C) No.19567 of 2024, which was finally decided on 30.08.2024. The said SLP was disposed of affirming the order passed by Hon'ble LPA Bench with observation made in paragraph 8 of the said Hon'ble Division Bench of the High Court. Thereafter, the order dated 18.09.2024 has been passed by the BHEL relating to the petitioner in compliance of order dated 19.04.2023 passed by Hon'ble High Court in CWJC No.8235 of 2013 which was affirmed upto Hon'ble Supreme Court of India. In the present writ petition, it has been alleged by the petitioner that the order dated 18.09.2024 has been passed in gross violation of Rule 20(3) and Rule 5(12) of the BHEL Conduct, Discipline and Appeal (CDA) Rules, 1975.

5. Counsel further submits that I.A. No.1 of 2025 has been filed by the petitioner for amendment in relief portion of paragraph 1 & 2 and by the said I.A., the order dated 28.01.2025 (Annexure-P/23) in which re-commencement of inquiry /disciplinary proceedings and its final order, regarding the petitioner, were challenged.

6. The petitioner has filed reply to I.A.No. 2 of 2026 in which the question of maintainability of the writ petition on



the point of territorial jurisdiction as well as on the ground of alternative remedy under Rules 32 and 33 of the BHEL Conduct, Discipline and Appeal (CDA) Rules, 1975, are not maintainable.

7. The petitioner in response of I.A. No.2 of 2026 submits that he has earlier moved before this Hon'ble Court in CWJC No. 8235 of 2013 in which the question of maintainability has already been raised by the BHEL and at that relevant period of time on which this Hon'ble Court has pleased to discuss specifically and hold that due to partial cause of action, this writ petition is maintainable here and the same was affirmed upto Hon'ble Supreme Court of India. Therefore, he submits that once with regard to petitioner's case, this Hon'ble Court entertained the writ petition, which was affirmed upto Hon'ble Supreme Court of India again raising the same objection with the same petitioner for same basic proceeding, this point of territorial jurisdiction is not available for him. On the point of alternative remedy, petitioner submits that the case of Whirlpool Corporation Vs. Registrar of Trade Marks, (1998) 8 SCC 1 which was re-affirmed in Harbanslal Sahnia Vs. Indian Oil Corporation Ltd., (2003) 2 SCC 107 are in his favour as the rule of alternative remedy does not operate as a bar where there



is violation of principles of natural justice or where the orders or proceedings are wholly without jurisdiction or where the authority has acted in defiance of directions issued by the High Court itself. Therefore, in case of petitioner, there is no question of applicability of alternative remedy and his writ petition is maintainable.

8. After hearing the parties, it transpires to this Court that for complete adjudication of this matter, what has happened earlier is necessary to be discussed, particularly, paragraph 8 of the LPA order by the Hon'ble Division Bench bearing LPA No.718 of 2023, which was subsequently approved by the Hon'ble Supreme Court of India in SLP (C) No.19567 of 2024. The paragraph 8 of the said Hon'ble LPA Bench is quoted below:-

“We find absolutely no reason to interfere with the judgment of the learned Single Judge. Consideration the delay that has been occasioned, we direct that the inquiry would be re-commenced, if it is so decided, within a period of two months from the date of uploading of this order. If the inquiry is re-commenced, the Disciplinary Authority shall also take a decision on whether the writ-petitioner has to be reinstated or not. If no such decision is taken within a period of two months., the writ petitioner shall be reinstated



in service with all attendant benefits. However, if an inquiry is proceeded with, then the writ petitioner shall abide by the decision arrived at and at the close of inquiry the Disciplinary Authority, as directed by the learned Single, Shall also decide on the back wages payable.”

9. The order passed in the said LPA has been challenged in SLP (C) No.19567 of 2024 by BHEL (here the contesting respondent) and decision comes on 30.08.2024, which states as follows:-

“No case for interference is made out in exercise of our jurisdiction under Article 136 of the Constitution of India.

However, we extend the period of two months granted in terms of paragraph 8 of the impugned order passed by the Division Bench of the High Court by a further period of two months.

The Special Leave Petition is accordingly dismissed.

Pending application also stands disposed of.”

10. In this view of the matter, the first round of litigation is ended. Thereafter, on the point of suspension and observation made by the writ court, which was affirmed by the LPA and Hon’ble Supreme Court of India, order has been passed on 19.12.2024 by which non-payment of subsistence allowance for not meeting the terms and conditions of the impugned order was passed. It transpires to this Court that order dated 09.12.2024 is an order on which question of suspension



has also been involved and payment of said period is also attached thereto.

11. The petitioner has challenged the said order of suspension and benefit before this Court afresh by virtue of filing the present writ petition bearing CWJC No.219 of 2025 initially. Subsequently, on 28.01.2025, the order of re-commencement of inquiry /disciplinary proceedings and its final order regarding the petitioner has been made. The order of suspension dated 18.09.2024 has acquired finality by its culmination into final punishment order, which the petitioner has challenged by virtue of filing I.A. No.1 of 2025 in the present case. In the meantime, respondents have filed I.A. No.2 of 2026 challenging the maintainability of the writ petition and annexed a copy of the Rules 32 and 33 of the BHEL Conduct, Discipline and Appeal (CDA) Rules, 1975 (Annexure-R/2) which states as follows:-

32. APPEALS :- (i). An employee may appeal against an order imposing upon him any of the penalties specified in Rule 23 or against the order of suspension referred to in Rule 20. The appeal shall lie to the authority specified in the Schedule.

(ii). An appeal shall be preferred within one month from the date of communication of the order appealed against. The appeal shall be addressed to the Appellate Authority specified in the schedule and submitted to the authority whose



order is appealed against. The authority whose order is appealed against shall forward the appeal together with its comments and the records of the case to the appellate authority within 15 days. The Appellate Authority shall consider whether the findings are justified or whether the penalty is excessive or inadequate and pass appropriate orders within three months of the date of appeal. The Appellate Authority may pass orders confirming, enhancing, reducing or setting aside the penalty or remitting the case to the authority which imposed the penalty or to any other authority with such direction as may deem fit in the circumstances of the case.

Provided that if the enhanced penalty which the Appellate Authority purposes to impose is a major penalty specified in clauses (f), (g), (h), (i) and (j) of Rule 23 and an inquiry as provided in Rule 25 has not already been held in the case, the Appellate Authority shall direct that such an enquiry be held in accordance with the provisions of Rule 25 and thereafter consider the record of the inquiry and pass such orders as it may deem proper. If the Appellate Authority decides to enhance the punishment but an inquiry has already been held as provided in Rule 25, the Appellate Authority shall give a show cause notice to the employee as to why the enhance penalty should not be imposed upon him. The Appellate Authority shall pass final order after taking into account the representation, if any, submitted by the employee.

33. REVIEW:-Notwithstanding anything contained in these rules, the Reviewing Authority as specified in the schedule may call for the record of the case within six months of the date of the final order and after reviewing the case pass such orders thereon as it may deem fit.

Provided that if the enhanced penalty, which the Reviewing Authority purposes to impose



is a major penalty specified in clauses (f), (g), (h), (i) and (j) of Rule 23 and an enquiry as provided under Rule 25 has not already been held in the case, the Reviewing Authority shall direct that such an enquiry be held in accordance with the provisions of Rule 25 and thereafter consider the record of the enquiry and pass such orders as it may deem proper. If the Reviewing Authority decides to enhance the punishment but an enquiry has already been held in accordance with the provisions of Rule 25, the Reviewing Authority shall give show cause notice to the employee as to why the enhanced penalty should not be imposed upon him. The Reviewing Authority shall pass final order after taking into account the representation, if any, submitted by the employee.

12. Upon perusal of the said Rule 32 of the BHEL Rules, 1975, it transpires that there is provision of appeal in two situation. Firstly, challenging the order of suspension referred in Rule 20 and the penalty order made in Rule 23. It transpires to this Court that order dated 09.12.2024 has been passed in consonance with Rule 20 of the said rule, which is basically an appealable order, but inspite of preferring the appeal, the petitioner has challenged the said order in the writ petition. The order dated 28.01.2025 has been passed in compliance of order passed in LPA No.No.718 of 2023, which was affirmed in SLP (C) No.19567 of 2024. On the point of territorial jurisdiction, the contention of petitioner is absolutely right that this Hon'ble Court at the time of deciding the writ petition, has already



discussed on the territorial jurisdiction vide order dated 25.08.2022 passed in CWJC No.8235 of 2013, whose operative part is stated below:-

“It is to be noted that partial cause of action accrued in the State of Bihar with reference to the alleged allegations. Learned counsel for the respondent contention that cause of action would be from the date of issuance of Article of charges, the aforesaid contention cannot be accepted for the reasons that time and again Courts have held that if partial cause of action is accrued in particular State, in that event, territorial jurisdiction of the High Court can entertain a writ petition. Further it is to be noted that reading of Article 226 (2) of the Constitution of India suffice to read with the fact that partial cause of action accrued in the State of Bihar with reference to the alleged charge that petitioner was working in Patna. Hence, the aforesaid preliminary contention raised by the respondent is hereby rejected.

Re-list this matter on 08.09.2022 to hear on merits.”

13. Upon considering the point of territorial jurisdiction, this Court is of the view that this Hon'ble Court vide order dated 25.08.2022 passed in CWJC No.8235 of 2013 has categorically discussed and reached on the finding that the preliminary contention raised by the respondent on territorial



jurisdiction has been rejected relating to the petitioner. Therefore, this Court agreed on the decision of Hon'ble High Court on the point of territorial jurisdiction and this Court is not inclined to interfere and the ground raised by the respondent is hereby rejected.

14. On the other hand, upon going through the order which is challenged in the writ petition *i.e.*, 19.12.2024 under Rule 20 of the BHEL Rules, 1975 and upon perusal of Rule 32, it becomes crystal clear that the order passed under Rule 20 is appealable order under Rule 32 of the BHEL Conduct, Discipline and Appeal (CDA) Rules, 1975.

15. The petitioner has also challenged the final order dated 28.01.2025 by way of filing I.A. No.01 of 2025. The said order is appealable before the appellate forum under Rule 32 of the BHEL Conduct, Discipline and Appeal (CDA) Rules, 1975 . Hence, I.A. No.1 of 2025 is disposed off.

16. It is made clear that order dated 19.12.2024, under Rule 20 of the BHEL Rules, 1975 as well as the final order dated 28.01.2025, both are appealable. Hence, liberty has been granted to the petitioner to challenge the final order before the appellate forum within 30 days in the light of Rule 32 of the BHEL Conduct, Discipline and Appeal (CDA) Rules, 1975.



17. Upon perusal of the final order dated 28.01.2025, this Court finds that the petitioner ought to take shelter of the statutory remedy to prefer appeal and not the remedy as indicated in the judgment of **Whirlpool Corporation** (supra) and **Harbanslal Sahnia** (supra) as the case of the petitioner has been decided completely on merit and upon consideration of every aspect of the matter, it is necessary to be decided only by the appellate court.

18. With the aforesaid directions and observations, I.A. No.2 of 2026 filed by the respondents, is hereby allowed and the present writ application stands dismissed with observation that if there is any delay in filing the statutory appeal, the appellate authority shall condone the delay and decide the appeal on merit.

(Dr. Anshuman, J)

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