

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18165 of 2012

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Gopal Pd. Kustawar S/O Late Dwarika Prasad Resident Of Mohalla Andar
Bairagi, P.O. Gaya, R.S., P.S. Delha, District Gaya.

... .. Petitioner/s

Versus

1. The Bihar State Electricity Board represented through Chairman, Bailey Road, Vidyut Bhawan, Patna.
2. The Chairman, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna.
3. Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna.
4. The Joint Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna.
5. The Electrical Executive Engineer, Electric Supply Division (Urban), Gaya.
6. The Director (Personnel), Board Headquarter, Vidyut Bhawan, Bailey Road, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kumar Ravish, Advocate
For the Respondent/s : Mr. Vinay Kirti Singh, Sr. Advocate
Mr. Nikesh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 23-09-2024

Heard Mr. Kumar Ravish, learned counsel appearing on behalf of the petitioner and Mr. Vinay Kirti Singh, learned Senior counsel along with Mr. Nikesh Kumar, learned counsel appearing on behalf of the respondents appearing on behalf of the State.

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



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

“01) By way of this writ application being filed invoking the extraordinary discretionary writ jurisdiction of this Hon'ble Court, the sole petitioner, most humbly seeks for following reliefs before this Hon'ble Court: -

(i) To quash and set aside by issuing the writ of certiorari the punishment order dated 23.11.2011 contained in Annexure-11 whereby and whereunder the petitioner was imposed with major penalty of censure and withholding of three annual increments with cumulative effect;

(ii) To quash and set aside by issuing the writ of certiorari the order dated 02.03.2012 as contained in Annexure-13/a passed pursuant to appeal dated 16.01.2012 as contained in Annexure-12 whereby and whereunder the order passed by the disciplinary authority was affirmed;

(iii) To quash and set aside the enquiry report dated 19.11.2010 as contained in Annexure-7 whereby and whereunder the enquiry officer recorded that the charge against the petitioner was proved;

(iv) As a consequence of grant of relief (i) and (ii) direct the Respondents-Bihar State Electricity Board to delete the punishment of Censure as also to revive the annual increment (s);

(v) To pay cost of the litigation throughout, and

(vi) Any other relief or reliefs which the petitioner may be found entitled to in the facts and circumstances of the case.”

BRIEF FACTS

3. Brief facts of the case are that on the basis of audit conducted in respect of Financial Years 1999-2000, 2000-2001, 2001-2002, 2002-2003 and 2003-2004, the auditor had objected that during Financial Year 1999-2000, the petitioner had committed misconduct by not carrying forward the electricity bills due to altogether 19 consumers. Based on the



audit report, the petitioner was served with the imputation of charges along with list of evidences, as well as, the witnesses that the petitioner was posted as Accountant Assistant, during the Financial Year 1999-2000 at Cycle No. 19. In support of the said allegation, a communication contained in letter no.1651 dated 26.11.2007 under the signature of Electrical Executive Engineer, Electric Supply Division (Urban), Gaya is supported with the imputation of charges. The petitioner has contradicted the same on the basis of the fact that the petitioner was never made in-charge of Cycle No.19 during the said period, however, on his demand, information was given to the petitioner contained in Memo No.339 dated 05.02.2009 by the Joint Secretary that the petitioner has been held liable for loss of sum of Rs.1,30,484.60/- for not carrying forward the amount of dues in respect of altogether 19 consumers while he was posted at Cycle No.19 from March 1999 to April 1999. On the basis of the charge memo, the enquiry officer submitted enquiry report in which all the charges have been found to be proved against the petitioner and the Disciplinary Authority had imposed penalty order dated 23.11.2011 contained in Memo no. 2998 (Annexure -11 to the writ petition) imposing major penalty of censure along with holding of three increments with cumulative



effect. Thereafter, the petitioner had preferred appeal, by which, the penalty order dated 23.11.2011 was affirmed and the appeal was rejected vide order dated 02.03.2012 as contained in Annexure-13 to the writ petition. Aggrieved by the order of penalty, the petitioner has preferred the present writ petition.

SUBMISSION ON BEHALF OF THE PETITIONER

4. Mr. Kumar Ravish, learned counsel appearing on behalf of the petitioner submitted that the petitioner in course of quasi judicial inquiry had submitted that the petitioner is not liable for footing the erstwhile Bihar State Electricity Board at loss of Rs.1,30,484.18/-, while, he was posted at Cycle no.19 as per the audit report. Learned counsel in support of his argument has submitted that the petitioner had emphatically submitted before the Enquiry Officer that in so far as, the communication contained in letter no.1651 dated 26.11.2005 that the petitioner was posted at Cycle No.19 during the period, particularly, April, 1999 to April, 2000 is not sustainable, even considering the fact that the petitioner was posted at Cycle No.19 from April, 1999 to April, 2000 is contradictory, as would appear from the Memo No.1079 dated 07.06.1999 on the said office order issued in respect of revenue section by revising the posting of altogether 14 Bill Clerk and Account Assistants, shows that the petitioner



namely Gopal Prasad Kustawar was posted at Cycle No.19(A) and 19(B) from 17.09.1999 till December, 1999 and, as such, the information, which has been given to the petitioner, contained in Memo No.339 dated 05.02.2009 subsequent to the serving of charge memo showing that the petitioner was posted at Cycle No.19 during the period March, 1999 to April, 1999 can not be sustained, in view of the fact that the respondents have shown the petitioner to be continuously posted at Cycle No.19 from March, 1999 to April, 1999 and their own document shows that the petitioner in between during the said period was also transferred in the month of June at Cycle No.19(A) and 19(B) as would appear from Memo No.1069 dated 07.06.1999, which has been issued by Electrical Executive Engineer, Gaya (Urban). Learned counsel submitted that in course of enquiry, the petitioner was given opportunity to cross examine the witnesses and Senior Auditor Mr. Krishna Dev Pandit had accepted that the Board has not been put at any loss and subsequently, the amount of loss has already been realised from the consumers. On these grounds, learned counsel submitted that the charge memo doesn't constitute any misconduct and the petitioner having been made to face departmental enquiry based on the audit report and taking penal



action against the petitioner, who has now retired, aged about 70 years, has been subjected to penal action on no evidence. On these grounds, learned counsel submitted that the penalty order dated 23.11.2011 contained in Annexure-11 to the writ petition and Appellate Order dated 02.03.2012 contained in Annexure-13 to the writ petition affirming the same is not sustainable in the eye of law.

SUBMISSION ON BEHALF OF THE RESPONDENTS

5. *Per contra*, Mr. Vinay Kirti Singh, learned Senior Counsel, along with Mr. Nikesh Kumar, learned counsel appearing on behalf of the State submitted that the petitioner has admitted that he was posted at Cycle No.19 in month of September, 1999 and to contradict the very fact that the petitioner was not posted during the period of March, 1999 to April, 1999 and continue to be posted at Cycle, 19 till June, 2000, has not been specifically denied by the petitioner. The petitioner has not brought on record that he was not posted at Cycle No.19 till April, 2000 and in absence of any evidence, the Enquiry Officer has held that as the petitioner has not produced any evidence in support of his submission made before the Enquiry Officer and had replied to second show cause to the effect that he was never posted continuously at Cycle No.19



during April, 1999 to April, 2000. He however admits that though no such denial has been made in counter affidavit or any information in this regard has been brought on record by the respondents. Learned Senior Counsel further submitted that the evidences, which have been adduced alongwith imputation of charges in subsequent to the same, were served to the petitioner, the petitioner had demanded supporting documents in respect of the alleged charge against him relates to period March, 1999 to April, 1999 and the same was provided to the petitioner vide memo no.339 dated 05.02.2009 also confirms the fact that during the period of March, 1999 to April, 1999 the petitioner, who was posted at Cycle No.19 had committed misconduct in not carrying forward the arrears altogether 19 consumers and detail of the same was provided to the petitioner. Learned Senior Counsel submitted that the petitioner has not been able to make out a case to interfere with the penalty order, which has been passed after giving due opportunity of hearing to the petitioner and as such, the petitioner has been committed gross misconduct, penalty has been imposed in terms of the Rule 29(B) of the Modified Certified Standing order, 1995.

ANALYSIS AND CONCLUSION

6. Heard the parties.



7. Having considered rival submissions made on behalf of the parties and having given thoughtful consideration to the charges, as contained in the imputation of charge and evidences adduced thereto, I find that the main question which falls for consideration before the Court as to whether the allegation, which has been levelled against the petitioner constitute misconduct.

8. The word misconduct has been defined in Stroud's Judicial Dictionary, which runs as under:

"Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct".

9. It is admitted case that the petitioner was posted as Assistant Accountant and he was in-charge of Electricity Bills and to maintain records relating to different consumers in respect of circle where he was deputed/posted from time to time. The audit had reported that during the period 1999 to April, 2000, in respect of Cycle no.19 as a result of not carrying forward the arrears of dues of altogether 19 consumers, the Board has been put to estimated loss of Rs.130484.18/-. The Disciplinary Authority based on the said audit report served imputation of charges to the petitioner contained in memo no.2845 dated 17.11.2008, along with list of documents and



witnesses. In support of allegation, communication contained in letter no.1651 dated 26.11.2005 has been brought on record that during the period 1999 to March, 2004 for which the audit was conducted, the list of all the Assistant Accountants, who were in-charge at different cycles were provided to the petitioner, which shows that the petitioner was in-charge of Cycle No.19 during the period April, 1999 to April, 2000. The petitioner had participated in the Departmental Enquiry and had submitted before the Enquiry Officer by producing list of documents on his part in support of his contention denying the charges that the information as contained in letter no.1651 dated 26.11.2005 in so far as in respect of petitioner is concerned that he was posted at Cycle No.19 from April, 1999 to April, 2000, the petitioner has relied on office order no.365 dated 07.06.1999 contained in memo no.1079 dated 07.06.1999. In respect of office order supercession of the order issued previously in this connection, in the ledger distribution chart of Revenue Section, the petitioner's name is at Serial No. 13 and it shows that petitioner was in-charge at Cycle No. 19A and 19B with effect from 17.09.1999. Petitioner has contradicted the said fact and, in this regard, specific statement has been made in paragraph no. 9 of the writ petition that the information cannot be relief upon and



the same is absolutely wrong and false and before the Enquiry Officer also, the petitioner had taken the said stand that the petitioner was made in-charge of Cycle No. 19A and 19B only with effect from 17.09.1999 and prior to that he was rendering his services at Cycle No. 11, where he worked till 20.09.1999 and was relieved vide Office Order No. 8 dated 15.12.1999 of the General Manager cum Chief Engineer, Magadh Regional Board, Gaya and joined in Magadh Regional Board as such, the petitioner remained in-charge of Cycle No. 19 from September, 1999 to 17th December, 1999 only.

10. The Apex court in the case of ***United Bank of India v. Biswanath Bhattacharjee***, reported in (2022) 13 SCC 329 has held, *inter alia*, as follows:

19. Other decisions have ruled that being a proceeding before a domestic tribunal, strict rules of evidence, or adherence to the provisions of the Evidence Act, 1872 are inessential. However, the procedure has to be fair and reasonable, and the charged employee has to be given reasonable opportunity to defend himself (ref : Bank of India v. Degala Suryanarayana [Bank of India v. Degala Suryanarayana, (1999) 5 SCC 762 : 1999 SCC (L&S) 1036] a decision followed later in Punjab & Sind Bank v. Daya Singh [Punjab & Sind Bank v. Daya Singh, (2010) 11 SCC 233 : (2010) 2 SCC (L&S) 758]). In Moni Shankar v. Union of India [Moni Shankar v. Union of India, (2008) 3 SCC 484 : (2008) 1 SCC (L&S) 819] this Court outlined what judicial review entails in respect of orders made by the disciplinary authorities : (Moni Shankar case [Moni Shankar v. Union of India, (2008) 3 SCC 484 : (2008) 1 SCC (L&S) 819] , SCC p. 492, para 17)



“17. The departmental proceeding is a quasi-judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The courts exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the Department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely, preponderance of probability. If on such evidence, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere.”

20. This Court struck a similar note, in State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya [State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya, (2011) 4 SCC 584 : (2011) 1 SCC (L&S) 721] , where it was observed that : (SCC p. 587, para 7)

“7. ... If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record.”

11. I am of the opinion that in view of the admitted facts and law laid down by the Apex Court, the order of punishment passed by the Disciplinary Authority calls for interference of this Court. The finding of the respondents in



respect of the petitioner that he was made in-charge of Cycle No. 19 during the period March 1999 till April, 2000, during which period the Board has alleged the revenue loss committed by him in view of Office Order No. 365 dated 07.06.1999 is not supported by any evidence whereas, the petitioner has brought on record that vide Office Order No. 365 dated 07.06.1999, one Uday Shankar Verma was made in-charge of Cycle No. 11 with effect from 07.06.1999 and petitioner has been able to give information that before 07.06.1999, petitioner was in-charge of Cycle No. 11 during the said period and was made in-charge at Cycle No. 19. The said fact is also supported by Charge report of Cycle No. 11 dated 21.09.1999 (a copy of which is at page no. 51 along with the written statement of the petitioner before the Enquiry Officer dated 04th October, 2010) that petitioner had handed over the charge to one Uday Shankar Verma on 21.09.1999. At the same time, I find that the petitioner also has not produced any document in respect of his claim, as to, on which date, the petitioner had joined Cycle No. 19 to ascertain, the period, during which the petitioner has been imposed punishment for alleged misconduct.

12. The finding of the Disciplinary Authority that the petitioner was continuously working from the period April,



1999 to April, 2000 at Cycle No. 19, in this regard, the Enquiry Officer has not dealt with nor has supported any evidences in respect of the Office Order contained in Memo No. 1079 dated 07.06.1999.

13. Based on the recorded evidence, I find that the Disciplinary Authority failed to take into considering the Office Order No. 365 dated 07.06.1999 contained in Memo No. 1067 dated 07.06.1999 having not supported by any evidence. At the same time, the respondents have not denied that the said office order was not issued in respect of the petitioner along with other Accountant Assistants, which shows that in absence of any period prior to 07.06.1999 in respect of the posting of the petitioner, who, in course of enquiry had stated that he had handed over the charge to one Uday Shankar Verma, from Cycle No. 11 and joined Cycle No. 19 in view of Office Order No. 365 dated 07.06.1999 contained in Memo No. 1067, against whom also, the Disciplinary Action was taken on 21.09.1999. In view of the above illegality committed by the Disciplinary Authority, the penalty order dated 23.11.2011 and the Appellate Order dated 16.01.2012 contained in Annexure-11 and Annexure-13 to the writ petition respectively are hereby set aside and quashed.

14. In the light of the recorded evidence and the law



laid down by the Apex Court in the case of *B.C. Chaturvedi vs. Union of India & Ors.* reported in (1995) 6 SCC 749 and the judgment passed by Karnataka High Court in the case of *MMG Constructions LLP (supra)*, the matter is remitted back to the Disciplinary Authority to proceed afresh by giving the petitioner reasonable opportunity in accordance with the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 by putting petitioner first under suspension.

15. Accordingly, the present writ petition is disposed of.

(Purnendu Singh, J.)

Niraj/-
Ashishsingh/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	27.09.2024
Transmission Date	N/A

