

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.636 of 2021

In
Civil Writ Jurisdiction Case No.17558 of 2018

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Anil Kumar Singh, Son of Late Satya Narayan Singh, Ex-Junior Accounts Clerk-cum-Cashier, Electric Sub-Division, Bankipore, Patna- at present residing at Village- Danaganj, P.O.- Dhobia Kalapur, P.S. Naubatpur, Town and District- Patna.

... .. Appellant/s

Versus

1. South Bihar Power Distribution Co. Ltd. through its Managing Director, Vidyut Bhawan, Bailey Road, Patna- 800021.
2. Chairman-cum-Managing Director of Bihar State Power (Holding) Co. Ltd., Vidyut Bhawan, Bailey Road, Patna- 800021.
3. General Manager (HR and Adm), South Bihar Power Distribution Co. Ltd., Vidyut Bhawan, Bailey Road, Patna- 800021.
4. Sri Suresh Kumar Sharma, Deputy General Manager (HR and Adm), South Bihar Power Distribution Co. Ltd., Vidyut Bhawan, Bailey Road, Patna- 800021.
5. Sri Sahadat Hussain, Land Acquisition-cum-Enquiry Officer, South Bihar Power Distribution Co. Ltd., Vidyut Bhawan, Bailey Road, Patna- 800021.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Umesh Prasad Singh, Sr. Advocate
Mr. Rakesh Kumar, Advocate

For the Respondent/s : Mr. Vinay Kirti Singh, Sr. Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 31-01-2022

Heard learned counsel for the parties.

Being aggrieved by judgement and order dated 08.10.2021 passed in C.W.J.C. No.17558 of 2018 passed by learned Single Judge of this Hon'ble Court, appellant/petitioner has preferred this L.P.A.



Briefly stated, the facts of the case is that appellant/petitioner was initially appointed as a daily wager on 17.12.1978 and was subsequently, appointed on the post of unskilled Khalashi by the General Manager-cum-Chief Engineer in the Bhagalpur Area Board. Appellant/petitioner thereafter passed the departmental examination and was appointed as Bill Clerk with effect from 01.01.1982 at Bhagalpur and subsequently transferred to Patna where he took charge as a Bill Clerk on 30.04.2010 and started working as Revenue Cashier w.e.f. 15.07.2011.

In an internal audit conducted by the Board huge financial irregularities and misappropriation of several lacs of Rupees was detected and appellant/petitioner was held to be primarily responsible for embezzlement of Rs. 43,48,296/- and he was put under suspension by order dated 25.6.2015 and an FIR being Kotwali P.S. Case No.283/2015 was also lodged against him.

By resolution dated 09.06.2016, the disciplinary authority General Manager (HR/Adm.) decided to initiate departmental proceeding against appellant/petitioner and framed four charges against him and appointed Sri Rishi Prasad, Chief Engineer, SBPDCL, Patna as Enquiry Officer, and same was



served upon appellant/petitioner alongwith memo of charge (Prapatra Ka) with statement of imputation of misconduct as well as name of witnesses on basis of which, charge framed by the Disciplinary Authority i.e. General Manager (HR/Adm.) was to be established.

During pendency of departmental proceeding, Enquiry Officer Sri Rishi Prasad, Chief Engineer, SBPDCL, Patna retired on 31.12.2016 and thereafter by order dated 17.01.2017 issued by the General Manager (HR/Adm.) Sadat Hasan Mintu, Land Acquisition Officer, SBPDCL, Patna was appointed as Enquiry Officer. Four witnesses were examined on behalf of department, who were cross-examined by the appellant/petitioner and one document was also exhibited in support of charges and on the basis of materials placed before the Enquiry Officer as well as considering the defence statement and evidences produced on behalf of delinquent employee, the Enquiry Officer found three charges to be proved and one charge not to be proved and submitted his enquiry report dated 14.06.2017.

Second show cause notice dated 21.09.2017 was issued by DGM (HR/Adm.) to the appellant/petitioner alongwith a copy of enquiry report to submit his reply within 15



days with respect to finding recorded by the Enquiry Officer, in which three charges were found to be proved.

Petitioner submitted his detailed reply dated 03.10.2017 against the findings recorded by the Inquiry Officer.

Original records of departmental proceedings were summoned by this court and same was produced and perusal of which reveals that a proposal dated 03.11.2017 was prepared by the Section Officer of the department, in which it is noted that decision is to be taken with respect to reply filed by the delinquent with respect to second show cause and the Section Officer himself noted in the file that the reply filed by the delinquent is not satisfactory and send said proposal to the DGM (HR/Adm.), who noted in the file as follows:-

(i) श्री अनिल कुमार सिंह का आचरण एवं कंपनी सेवक के आचरण के अनुकूल नहीं माना जा सकता है। आरोप पूर्णतः प्रमाणित है।

(ii) प्रमाणित आरोपों के लिए CCA Rules के नियम 14 के (vi-xi) तहत दण्ड निर्धारित करना चाहेंगे।

सुरेश कुमार शर्मा

13.11.17

उप महाप्रबंधक (मांस०/प्रशा०)

पृष्ठ 131/टि० से लेकर गत पृष्ठ पर उपस्थापित कार्यालय टिप्पणी एवं प्रस्ताव कृप्या अवलोकन करना चाहेंगे।



प्रस्तुत संचिका में श्री अनिल कुमार सिंह, तदेन विपत्र लिपिक सह-रोकड़पाल, विद्युत आपूर्ति प्रमण्डल, बांकीपुर सम्प्रति निलंबित के विरुद्ध गंभीर वितीय अनियमितता एवं राजस्व के गबन से संबंधित आरोप को लेकर गठित आरोप एवं उसके आधार पर संचालित विभागीय कार्यवाही में समर्पित जाँच प्रतिवेदन तथा उसके आलोक में पूछे गए द्वितीय कारण पृच्छा के पश्चात् अग्रेतर कार्रवाई हेतु विचार किया जा रहा है।

गठित आरोप एवं उसके आधार पर जाँच पदाधिकारी के प्रतिवेदन का उल्लेख पृष्ठ 131-132/टि० के क्रमांक 1 से लेकर 4 पर किया गया है। श्री सिंह के विरुद्ध निम्नलिखित आरोपों में से क्रमांक 4 पर अंकित आरोप को छोड़कर शेष 3 आरोप को जाँच पदाधिकारी द्वारा प्रमाणित पाया गया है, जिसके आधार पर द्वितीय कारण पृच्छा पूछा गया:-

1. राजस्व समाहरण की राशि कंपनी के खाते में कम/नहीं जमा कर श्री सिंह द्वारा रूपये 43,48,296/- राजस्व राशि का स्थायी गबन किया गया।
2. राजस्व समाहरण की राशि कंपनी के खाते में विलम्ब से जमा किए जाने के कारण 14,12,403/- का ब्याज की हानि हुई।
3. नगदी राशि के बदले चेक राशि दिखाये जाने के कारण रूपये 24001/- की हानि हुई।
4. बैंक द्वारा चेकों को अप्रतिष्ठित कर लौटाने के उपरांत उन्हें राजस्व शाखा को उपभोक्ताओं पर भारित करने हेतु प्रस्तुत नहीं किए जाने के कारण रूपये 88,88,666/- की हानि हुई।

द्वितीय कारण पृच्छा में आरोपी द्वारा कोई ऐसा साक्ष्य अथवा कागजात आधारित दावा समर्पित नहीं किया गया, जिसके आधार पर श्री सिंह आरोपमुक्त समझे जा सकते हैं।

उल्लेखनीय है कि श्री सिंह द्वारा अपने निलंबन एवं विभागीय कार्यवाही को लेकन माननीय उच्च न्यायालय में रिट याचिका संख्या 14196/2016



दायर किया गया था, जिसमें दिनांक 18.08.17 को माननीय उच्च न्यायालय द्वारा आदेश पारित किया गया है। माननीय उच्च न्यायालय द्वारा आदेश प्राप्ति की तिथि से 4 माह के अन्दर विभागीय कार्यवाही पूर्ण करने तथा विभागीय कार्यवाही के पूर्ण नहीं होने की स्थिति में निलंबन आदेश को समाप्त करने संबंधी आदेश पारित किया गया है। माननीय उच्च न्यायालय द्वारा पारित आदेश एवं उसके आलोक में श्री अनिल कुमार सिंह द्वारा समर्पित अभ्यावेदन की प्रति 521/प० पर रक्षित है।

कार्यालय द्वारा उपस्थापित टिप्पनी एवं प्रस्ताव के आलोक में गंभीर वित्तीय अनियमितता से संबंधित आरोप प्रमाणित होने के फलस्वरूप श्री सिंह के विरुद्ध निम्नलिखित कार्रवाई हेतु प्रस्ताव उपस्थापित किया जा रहा है :-

1. श्री सिंह को बृहद दण्ड के रूप में वर्तमान धारित पद के निम्नतर कालमान वेतन में करने हेतु आदेश दिया जा सकता है।

2. श्री सिंह को तत्कालिक प्रभाव से निलंबन से मुक्त किया जा सकता है। निलंबन अवधि में श्री सिंह को जीवन यापन भत्ता के अतिरिक्त कुछ भी देय नहीं होगा। निलंबन अवधि की गणना सेवोत्तर लाभ के भुगतान हेतु की जाएगी।

श्री सिंह के विरुद्ध निर्गत आदेश के पश्चात् उन्हें पदस्थापन हेतु प्रस्ताव उपस्थापित करने का आदेश दिया जा सकता है।

विपिन कुमार सिंह

15.11.17

महाप्रबंधक (मा०स०/प्रशा०)

Considering serious nature of financial irregularities which have been established, major punishment of dismissal be awarded.

Also check status of recovery of defaultated amount



and take necessary action.

R. Laxman
6.12.17
Managing Director

प्रशाखा पदाधिकारी

प्रबंधनिदेशक महोदय द्वारा लिए गए निर्णय के आलोक में एक प्रारूप
अनुमोदनार्थ पत्राचार मागवा उपस्थापित
कृप्या।

On basis of said order dated 6.12.2017 passed by the
Managing Director, impugned order dated 18.12.2017
(Annexure P 8 of writ petition) dismissing appellant/petitioner
from service was issued by the DGM (HR/Adm.).

Such type of practice adopted by a quasi judicial
authorities has been deprecated and condemned by this Court
on several occasions. This Court in case of C.W.J.C. Nos.
13393, 14031, 13566, 13876, 13584, 14093 of 2008 (Abdul
Rauf @ Sri Md. Abdul Rauf & Ors Vs. The State of Bihar &
Anr.) since reported in 2009(2)PLJR 784 relying upon several
previous orders of this Court has held as follows:-

“2. At the first instance, this Court felt that it
was the matter that the petitioners who ought to have
been adjudicated in appeal, an appeal lay from such an
order. But, Mr. N.K. Agarwal, learned Senior Counsel
appearing in support of the writ petitions drew my
attention to a complete order sheet of the case, which is
contained in Annexure-5. Now, perused the order sheet, I
am afraid, it depicts a very sorry state of affairs, it is too
late in the day to urge that the power being exercised by
the Sub-Divisional Officer, as the Licensing Authority is



not a quasi-judicial power. If it is a quasi-judicial power then it is well established that it is he, who has to initiate the proceedings and consider the matter and it is he, who has passed orders, a quasi-judicial order or quasi-judicial proceeding cannot be carried out as a regular office proceedings. It is an exercise of statutory powers having severe civil consequences. The order sheet depicts that first the Office of the Sub-Divisional Officer receives the enquiry report and recommends initiation of proceedings by issuance of show cause. This is placed before the Sub-Divisional Officer, who agrees with the Office notings and orders for issuance of show cause. The draft of which the Office is to prepare then gets the draft and orders the same to be issued when he receives a recommendation from the Office to suspend the licence. He approves the stand and order of suspension. Then, after show cause is received again Office processes the same. There is a lengthy endorsement of the Office staff ending with a finding that the dealer is guilty and thus the matter is placed for orders before the Sub-Divisional Officer. The Sub-Divisional Officer merely endorses the Office notings that the licence may be cancelled. Regrettably, this is not the end. The cancellation order then is drawn up by the Office and the draft is then approved by the Sub-Divisional Officer and that is what is communicated to the petitioner looking to be an order of Sub-Divisional Officer.

3. Learned counsel for the State submits that even while accepting the proposal of the Office, the Sub-Divisional Officer has to apply his mind and as such there is application of mind. In my view, the submission is noted only to be rejected. Such a procedure as noted above is impermissible in a quasi-judicial proceeding.

4. In my view, this entire procedure is destructive of how a quasi-judicial proceeding the Officer has to conduct the proceedings himself. He has to apply his own mind to all aspects of the matter. Here, he has done nothing but approve the recommendations and the orders as drawn up by the Office. Here, I may notice that this is not the first time such an action is taken by a Licensing Authority in this State. Reference may be made to the case of *Bishwanath Kejriwal vs. State of Bihar & Another*, 1988 BRLJ 135 : 1988 PLJR 1100, wherein, under similar circumstances Justice S.B. Sinha (as he then was) held that such procedure was not permissible.



There on Office notings prepared by the Office, the Sub-Divisional Officer had appended the note "Yatha Prasthawit" meaning thereby 'as proposed'. Similar views have been taken by this Court in CWJC No. 6475 of 1994 disposed of on 30.8.1994, a judgment of Division Bench presided by Justice B.N. Agrawal (as he then was).

5. In that view of the matter, the order in question cannot be sustained and is quashed accordingly. The writ petitions are allowed.”

From the records of the case, it appears that the General Manager (HR/Adm.) disciplinary authority/punishing authority did not apply his mind and simply agreed with the note sheet forwarded by his subordinate and also abdicated his authority to the Managing Director, which is not permissible. It is the Disciplinary authority, who has to pass final order on the basis of Enquiry report and reply of the delinquent to the said enquiry report and after considering and appreciating the materials available on record. He has either to exonerate the delinquent or punish him and quantum of punishment is also to be decided by the Disciplinary Authority.

This Court in case of Vinod Kumar Singh Vs. State of Bihar since reported in 2008(1)PLJR 547 has held that if any statutory authority has abdicated his statutory power and acted on the direction and behest of an external authority and such orders not being passed by the statutory authority on his own volition on independent application of mind has been held to be ultra vires. The relevant paragraph nos. 5, 6 and 7 are



reproduced below:-

5. On a bare perusal of the recitals in Annexure-2, it is apparent that there has been abdication of powers by the statutory authority and who has acted at the dictates of one who had no jurisdiction in the matter. The order reflects no satisfaction or application of mind by the statutory authority.

6. It stands well settled in law that an order by the statutory authority without application of mind by him, but, at the dictates of another, amounts to complete abdication of jurisdiction by the statutory authority. The order, therefore, becomes arbitrary and ultra vires.

7. The Apex Court elucidating the legal position has held at paragraph 26 in (2004)2 SCC 65 (Bahadursinh Lakhubhai Gohil vs. Jagdishbhai M. Kamalia & Ors.) that:

"26. It is also well settled that if any decision is taken by a statutory authority at the behest or on the suggestion of a person who has no statutory role to play, the same would be ultra vires."

Appeal dated 22.12.2017 was preferred by the appellant/petitioner before the Chairman-cum-Managing Director of the Company which was heard and dismissed by the appellate authority by order dated 02.06.2018.

It is an admitted fact that the decision to initiate departmental proceeding against the petitioner and others as well as framing and issuance of memo of charge and appointment of enquiry officer was done by General Manager (HR/Adm.) who is the appointing/punishing/disciplinary authority of appellant/petitioner and this Court does not find any



procedural infirmity with respect to framing of charge, appointment of Enquiry Officer as well as Inquiry report prepared by the Inquiry Officer in which he has dealt and considered all evidence adduced by the department as well as delinquent and has properly appreciated the evidence on record and has come to a conclusive finding with respect to charge nos. 1 to 3 to be proved and charge no. 4 not to be proved. However, procedure adopted by the statutory authorities after issuance of second show cause notice stands vitiated on account of procedural irregularities and statutory authorities have failed to discharge their statutory function as a quasi judicial authority.

It is true that the Managing Director of the Company is above in hierarchy than the General Manager (HR/Adm.) who is the disciplinary authority and Managing Director can act as a disciplinary authority and can pass an order of punishment but in present case whole departmental proceeding has been initiated by the Disciplinary Authority i.e. General Manager (HR/Adm.) and he was to pass the final order of punishment while discharging his statutory function as a quasi judicial authority but instead placed the file with proposed punishment before the Managing Director of the Company, who did not accept the proposed punishment suggested by the Disciplinary



Authority and passed order of dismissal against the delinquent appellant/petitioner which is neither sustainable in law nor on fact, and as such, the order dated 18.12.2017 (Annexure-P8) is set aside as a consequence of which, order dated 13.07.2018 (Annexure-P/9) passed by the appellate authority is also set aside and the matter is remitted to the disciplinary authority i.e. General Manager (HR/Adm.) to continue proceeding from the stage of filing of reply by the appellant/petitioner to the second show cause notice and pass a fresh order on the basis of materials available on record.

In a case of Director (Mkt.), Indian Oil Corp. Ltd. Versus Santosh Kumar (Civil Appeal No.6979 of 2004) since reported in 2006 (11) SCC 147, the Apex Court has disposed of the case remitting it to the disciplinary authority and para 11 of said judgment is reproduced below:-

“11. A perusal of the order passed by the appellate authority would only reveal the total non application of mind by the appellate authority. We, therefore, have no other option except to set aside the order passed by the disciplinary authority and the appellate authority and remit the matter for fresh disposal to the disciplinary authority. The disciplinary authority shall consider the detailed representation made by the respondent and also consider the detailed report of the inquiry officer and the records placed before him in its proper perspective and decide the matter afresh on merits.



The disciplinary authority is directed to consider the entire case only on the basis of records already on record. The respondent is not permitted to place any further material or record before the disciplinary authority. The order passed by the High Court is set aside for the above reason. We also set aside the direction issued by the High Court ordering reinstatement into service with continuity in service and all consequential benefits. The disciplinary authority is also directed to disposed of the matter, within three months from the date of receipt of this order, after affording an opportunity to both the parties. The civil appeal is disposed of accordingly. No order as to costs.”

For the reasons, as stated above, the order dated 08.10.2021 passed in C.W.J.C. No.17558 of 2018 is set aside and the LPA is allowed to the extent as indicated above. No order as to costs.

The original records produced by the department is directed to be returned to the department through its counsel.

(Sanjay Karol, CJ)

(S. Kumar, J)

veena/rajiv-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

