

(2014) 04 JH CK 0050
In the Jharkhand High Court
Case No : W.P. (S) No. 707 of 2005

Jay Prakash Pandey

APPELLANT

Vs

The Jharkhand State Electricity Board and Others

RESPONDENT

Date of Decision : 25-04-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 04 JH CK 0050

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Sunil Kumar, Advocate for the Appellant; R. Krishna, Advocate for the Respondent

Final Decision : Allowed

Judgement

Aparesh Kumar Singh, J.—By Court Heard learned counsel for the parties.

2. The petitioner, herein, has challenged the order of punishment contained in Memo No. 1273 dated 2nd March, 2000, passed by the Disciplinary Authority imposing punishments:

- (i) stoppage of two annual increments with cumulative effect;
- (ii) debarment from promotion to the next higher post for one year from the date it falls due;
- (iii) he would not be entitled to anything other than subsistence allowance already drawn during the period of suspension and shall also not earn increments during the said period;
- (iv) An entry of censure shall be made in his A.C.R. for the years 1994-95.

3. The facts of the instant case reveal that they are identical to the facts of the writ petition being CWJC No. 4092 of 2000 (P) in the case of Birendra Prasad and another -Vs.- The Bihar State Electricity Board, which was decided by this Court

on 21st March, 2013.

4. The petitioners in the said case, namely, Birendra Prasad and Leela Raman Jha were also working as Operators in Group-B Shift at the relevant point of time along with the present petitioner, who was Assistant Controller in Group-B Shift. On 23rd February, 1995 in the night at Patratu Thermal Power Project under the Respondent-Board an incident occurred in Boiler Drum Unit No. 9, which caused loss of generation and consequent financial loss to the tune of Rs. 1 Crore to the Board because of closing down of the Unit for several months. The present petitioner like the other two persons were jointly proceeded in a departmental proceeding, the report of which was submitted on 1st September, 1997, Annexure-6. The Enquiry Officer exonerated the present petitioner as also the other two persons stating as follows:

According to the statement of prosecution witness and cross-examination placed in file at C/57 to C/85 related to enquiry against workmen of Group "B" all the four suspended workmen of Group-"B" performed their duties satisfactorily. None of the main allegation levelled against Sri Jay Prakash Pandey, Assistant Controller, Sri Leela Raman Jha, Operator, Sri Birendra Prasad, Operator, Sri Anil Kumar Jha, Operator all of Group-"B" could be established.

5. Thereafter, second show cause notice was issued on 6th February, 1999 to the petitioner as well as the said persons proposing major punishment of withholding of four annual increments with cumulative effect, debarring from promotion to higher post for next five years as well as censure to be recorded in their ACR for the years 1994-95. The present petitioner also submitted his reply to the second show cause notice like the other two persons. However, the Disciplinary Authority chose to impose the same punishment to the present petitioner as also the other two persons by order of punishment which is of the same date i.e. 2nd March, 2000 bearing Memo Nos. 1267 and 1274.

6. In the instant case, also a plea has been taken by the petitioner that the Disciplinary Authority in the second show cause notice did not show any reason for differing with the Enquiry Officer, who had exonerated the petitioner. However, ground for challenging the impugned order on behalf of present petitioner is that the impugned order of punishment does not show any application of mind or consideration of the reply to the second show cause. In similar circumstances, this Court by the judgment passed on 21st March, 2013 in CWJC No. 4092 of 2000 (P) quashed the impugned order of punishment, inter alia, holding as follows:

6. I have heard learned counsel for the parties and have gone through the relevant materials on records including enquiry report, second show cause notice as also the impugned orders of punishment. From perusal of the findings of the Enquiry Officer, it is apparent that he has exonerated the present petitioners including two others from the charges under which they were proceeded against and in fact has held that they were found to have performed their duties

satisfactorily. The findings of the Enquiry Officer in fact on the contrary pointed out that other two persons namely Santosh Kumar and Jitendra Upadhyay of Group-A had left the shift treating it to be normal in the state of hurry. In any case, the Enquiry Officer exonerated the petitioners. Perusal of the second show cause, however shows that the disciplinary authority has only observed that he has differed with the findings of the Enquiry Officer by stating that it has been established that the proceededes being operator of Boiler Drum, (Group-B) in the night shift on 23.2.1995, Unit No. 9, did not take charge of boiler in time and also did not report to his superior regarding the abnormal condition of the boiler and water well starvation causing financial loss to the Board as well as loss of generation. The perusal of the aforesaid observation, itself gives a picture that the disciplinary authority has come to a conclusion regarding the establishment of guilt of the petitioners without actually recording any reason for differing from the report of the Enquiry Officer and based upon any materials which were quoted and adduced during the course of departmental proceeding in which they were admittedly exonerated. In these circumstances, it appears that the requirement of law has not been met with. In a circumstance when Enquiry Officer exonerated the delinquent from the charges, the disciplinary authority has to record his reasons for differing from the enquiry report at the time of furnishing of show cause to enable the delinquent to defend himself from the different reasons and opinions arrived at by the disciplinary authority before a punishment can be imposed upon them. In these circumstances, the impugned orders, which have been passed on the basis of such show cause and which also do not appear to reflect the explanation of the petitioners while dealing with their ground of defence, are vitiated in law and the whole decisions making process suffered on that count. In that view of the matter, since the impugned orders and the manner in which those orders have been passed, shows that the decision making process has been affected because of non-furnishing of reasons for differing with the enquiry report and passing the orders imposing major punishment, the impugned orders are required to be interfered in exercise of power under Article 226 of the Constitution of India. Accordingly, the impugned orders are quashed.

7. Upon hearing the learned counsel for the petitioner as well as Respondent-Board and after going through the relevant materials on record including the counter affidavit filed by the respondents, this Court finds that there are no distinguishing features in the case of the present petitioner to that of the other two persons, namely, Birendra Prasad and Leela Raman Jha, who were also working in the Group-B Shift in the night on the same date i.e. on 23rd February, 1995 when the alleged incidence took place in Boiler Drum Unit No. 9.

8. It is also informed by the learned counsel for the petitioner that the petitioner has since superannuated during the pendency of the writ application.

9. In that view of the matter, the ratio of the aforesaid judgment shall govern the case of the present petitioner as well. The petitioner had also reportedly

preferred an appeal which has also been rejected communicated through Memo No. 1239 dated 19th April, 2004, Annexure-12 to the writ application. The case of the present petitioner being identical to the other two persons, the impugned order of punishment dated 2nd March, 2000, Annexure-9 and the appellate order dated 19th April, 2004 Annexures-12, are accordingly quashed.

10. Since the petitioner has already superannuated, it will be a futile exercise to proceed against him.

11. Accordingly, the writ petition is allowed in the aforesaid term.