

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12348 of 2015

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Vijay Kumar Mathur, Son of Late Anand Bihari Lal Mathur, Resident of A.P. Colony, Near Bank of India, Thana- Rampur, District- Gaya

... .. Petitioner

Versus

1. South Bihar Power Distribution Company Ltd., Patna Bihar through Managing Director.
2. The Deputy General Manager (Human Resources and Administration), South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna
3. The Chairman-cum-Managing Director, Bihar State Power Holding Company Limited, Vidyut Bhawan, Bailey Road, Patna
4. The Joint Secretary, Bihar State Electricity Board General Administration, Patna
5. The Under Secretary, Bihar Electricity Board, Patna

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Vijay Kumar Mathur, Advocate Mr. Rajeev Kumar Singh, Advocate
For the SBPDCL	:	Mr. Anand Kumar Ojha, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
CAV JUDGMENT

Date : 01-05-2023

Heard learned counsel for the petitioner and learned
counsel for the Respondents.

2. The petitioner in the present case is seeking quashing of the office order no. 554 dated 15.05.2014 contained in Memo No. 341 dated 15.04.2014 issued by the Deputy General Manager (DGM) (Human Resources and Administration), South Bihar Power Distribution Company Limited, Patna (hereinafter referred to as the 'SBPDCL') as contained in Annexure '1' to the writ application by which the petitioner has been awarded the following punishment in the disciplinary proceeding conducted against him:-



(i) To completely withheld/deduct pension and gratuity;

(ii) To completely withheld/seize the leave encashment of the petitioner.

The disciplinary authority further directed that nothing will be payable to the petitioner except the subsistence allowance for the period of suspension.

An appeal preferred by the petitioner before the Chairman-cum-Managing Director, Bihar State Power Holding Company Limited, Patna (hereinafter referred to as the 'BSPHCL') was dismissed vide Memo No. 295 dated 20.02.2015, hence the appellate order as contained in Annexure '2' to the writ application is also under challenge.

Brief Facts of the Case

3. The petitioner was posted as Head Clerk, Electricity Division No. 1 at Gaya when a complaint was filed against him on 15.12.2018 by one Rakesh Pandey before the Director of Vigilance, Bihar State Electricity Board's, Cell Vigilance Department, Patna. The complainant alleged that the petitioner was demanding illegal gratification of Rs.13000/- for giving electric connection for running flour mill of 8 HP motor, in addition to the actual fee amount, otherwise the complainant could not be given the electric connection. In view of the complaint received, the Vigilance Department organized a trap wherein on 18.12.2008 at about 13:30 hours, the Vigilance party caught the petitioner while accepting the bribe of Rs.13,000/- from the complainant. The petitioner was arrested, brought to Patna and he was



sent to jail. A First Information Report giving rise to Vigilance Case No. 109 dated 19.12.2008 under Section 7/13 (2) read with 13 (1) (D) of the Prevention of Corruption Act, 1988 has been lodged. The criminal case is still pending trial.

Initiation of Disciplinary Proceeding

4. The petitioner was placed under suspension vide Memo No. 06 dated 06.01.2009. He was served with a memo of charge. An inquiry was constituted. In the inquiry two witnesses, namely, (1) Shri Jitendra Jha, Inspector of Police, Vigilance Department Electricity Board Cell, Patna who was a member of the raiding party and (2) Shri Jyotimay Sarkar, Section Clerk, Electricity Circle of sub Division No. 1 appeared in support of the charge. The petitioner produced Sri Tapan Kumar Banerjee as a defence witness. On perusal of the evidences adduced in course of hearing, the Inquiry Officer observed that 12 witnesses were named in the memo of charge to support the charge but only two witnesses had appeared in support of the charge. The Inquiry Officer took a view that the evidence of Shri Jitendra Jha, Inspector of Police is not able to prove the charges beyond doubt because he has stated that no transaction of money had taken place in his presence. As regards the another witness, Shri Surendra Kumar Sinha, Dy.S.P., it is recorded that the said witness expressed his inability to give evidence because of the pendency of the criminal case in the court. The Inquiry Officer recorded that the complainant and the officers who are involved in verification and investigation have not appeared in support of the



charges and in the light of the principles of natural justice, the charges would be proved only when the complainant, the Investigating Officer and the Verifying Officer give their evidence. With these observations, the Inquiry Officer took a view that the Department had failed to prove the charges beyond doubt.

5. On receipt of the inquiry report dated 19.10.2010, the Disciplinary Authority issued office order no. 307 dated 10.03.2014 by which he expressed his dissent with the inquiry report and called upon the petitioner to show cause within 15 days as to why for the proved charges, he should not be awarded a major punishment in terms of Clause 29B of the Board's Standing Order of the erstwhile Board. It appears from perusal of the show cause dated 10.03.2014 (Annexure '17' to the writ application) that with this notice, the copy of the inquiry report was not enclosed.

6. On receipt of the show cause notice, the petitioner responded vide his letter dated 25.03.2014 (Annexure '18' to the writ application), he took a plea that the copy of the Inquiry report has not been made available to him and the note of the dissent of the Disciplinary Authority is not available, therefore, the second show cause notice dated 10.03.2014 was wholly irrelevant.

7. The petitioner retired from service on 31.03.2014. Till the date to his retirement no decision was taken in the disciplinary proceeding, however, vide Order No. 405 dated 03.04.2014 (Annexure '19' to the writ application), the Disciplinary Authority recorded his



note of dissent and served the same with the copy of the inquiry report to the petitioner calling upon him to show cause.

8. On receipt of the note of dissent and the copy of the inquiry report, the petitioner submitted his reply dated 18.04.2014 (Annexure '20' to the writ application) and requested the Disciplinary Authority to accept the inquiry report and discharge him from the allegations.

9. The Disciplinary Authority, however, passed office order no. 554 dated 15.05.2014 (Annexure '1') whereby and whereunder he rejected the second show cause of the petitioner, held the charges proved against him and imposed major punishment of forfeiture of the pension, gratuity and leave encashment. The order has been passed by the Disciplinary Authority under Rule 43 (b) of the Bihar Pension Rules, 1950 (hereinafter referred to as the 'Pension Rules'). Learned counsel for the petitioner admits that the Pension Rules have been made applicable to the employees/ workmen of the erstwhile Board of South Bihar Power Distribution Company Limited (hereinafter referred to as the 'SBPDCL')

**Restructuring of the Bihar State Electricity Board
During Pendency of the disciplinary proceeding**

10. It appears that during pendency of the disciplinary proceeding, the Government of Bihar in exercise of its power conferred by Sections 131, 133 and other applicable provisions of the Electricity Act, 2003 made a scheme namely, "Bihar State Electricity Reforms



Transfer Scheme, 2012 (hereinafter referred to as the 'Scheme of 2012'). The scheme was made to provide for and give effect to the transfer of properties, interests, rights, assets, liabilities, obligations, proceedings and personnel of Bihar State Electricity Board (hereinafter referred to as the 'Board') to the Transferees and for matters incidental and ancillary thereto. By virtue of this scheme which has got statutory flavour the undertakings of the Board were classified as (a) Transmission Undertakings, (b) Generation Undertakings, (c) Distribution Undertakings, (d) Holding Undertakings, on and from the effective date the assets and all interests, rights and liabilities of the Board stood transferred and vested in the State Government for the purpose of further transfers under the scheme. The scheme provides for transfer of undertakings by the State, transfer of personnel of the Board and various other matters. This Court will deal with the relevant provisions of the scheme at appropriate stage.

Submission on behalf of the petitioner

11. Learned counsel for the petitioner submits that in view of the inquiry report dated 19.10.2010, initially the disciplinary authority did not proceed with the same for about three and half years and in fact at one point of time the disciplinary authority thought it just and proper not to proceed with the disciplinary proceeding during the pendency of the criminal case but later on the disciplinary authority reviewed the matter and proceeded to issue second show cause notice without giving the note of dissent and without serving the inquiry report. It is only



when the petitioner replied to the same and pointed out the infirmities in the second show cause notice, the disciplinary authority came out with another second show cause notice vide memo no. 272 dated 03.04.2014. Learned counsel further submits that the disciplinary authority has abdicated his power, did not examine the enquiry report and the second show cause of the petitioner. It is submitted that what was observed and proposed by a Section Officer has been simply endorsed by the Managing Director. It is his submission that the inquiry officer was correct in taking a view that the charges against the petitioner were not proved beyond doubts as neither the complainant nor any competent witness came to support the charges. It is submitted that in the case of **Roop Singh Negi Vs. Punjab National Bank** reported in (2009) 2 SCC 570 the Hon'ble Supreme Court held that the inquiry officer performs a quasi judicial function and the charges levelled against the delinquent officer must be found to have been proved. It is submitted that the Hon'ble Supreme Court further held in the said case that the evidence collected during investigation by the Investigating Officer by itself could not be treated to be evidence in the disciplinary proceeding. In the said case no witness was examined to prove the documents and the management witness merely tendered the documents and did not prove the contents thereof. In such circumstances, the Hon'ble Supreme Court did not approve the decision of the disciplinary authority. It is submitted that in the present case the only material witness who deposed on behalf of the management was Jitendra Jha, the



Police Inspector who claimed that he was a member of the raiding team. In his cross-examination when he was asked as to whether he had personally seen the petitioner receiving the money, he replied in negative. Learned counsel submits that in such circumstance the disciplinary authority has wrongly held the charges proved and punished the petitioner.

12. Learned counsel submits that the appeal preferred by the petitioner was rejected by the Chairman-cum-Managing Director of the BSPHCL without considering any of the grounds raised by the petitioner in appeal. The appellate order is a non-speaking and un-reasoned order. In course of hearing, a question has also arisen as to whether the Chairman-cum-Managing Director of the BSPHCL is dully empowered and competent to hear an appeal against the order of the Managing Director of the SBPDCL.

Submission on behalf of the Respondents

13. The SBPDCL has filed a counter affidavit. It is stated that the disciplinary proceeding has been conducted in accordance with the principles of natural justice and fair procedure has been adopted by the authorities. It is submitted that the petitioner has been rightly awarded the punishment and the same is commensurate with the status of his guilt.

14. Learned counsel for the respondents has submitted that the disciplinary authority has differed with the inquiry report, he made available his note of dissent to the petitioner and on receipt of his reply



the same was duly considered, therefore, no fault may be found with the same. It is further submitted that pendency of a criminal case for an indefinite period cannot be a ground to postpone final decision in a disciplinary proceeding.

15. Learned counsel has made available the copy of the relevant pages of the official file in which the disciplinary matters relating to the disciplinary proceeding has been dealt with.

16. Learned counsel for the respondents has placed before this Court a copy of the resolution of the Board of Directors of the BSPHCL passed on its 24th meeting held on 25.03.2014. By this resolution, the Chairman of the concerned company/ subsidiary has been declared as the appellate authority against the decision of the Managing Director of the subsidiary company awarding punishments in disciplinary proceeding. Learned counsel has placed before this Court a copy of the Board's resolution dated 25.03.2014 and a copy of the notification no. 6 dated 23.03.2013 by which the Board of all the undertakings were constituted and notified. Learned counsel for the respondents submits that in terms of the scheme of 2012, under paragraph 6.8, the Holding Company is entitled to frame regulations governing conditions of the personnel transferred to the subsidiary companies under the scheme. It is stated that presently no regulation in terms of paragraph 6.8 has been framed by the BSPHCL.

17. Learned counsel has produced a copy of the Standing order issued by the erstwhile 'Board' under the Industrial Employment



(Standing Orders) Act 1946 (hereinafter referred to as the 'Act of 1946'). It is submitted that this standing order is still applicable in absence of any other service rule/regulation in terms of paragraph 6.8 of the scheme of transfer.

Considerations

18. Having heard learned counsel for the petitioner and learned counsel for the respondents as also on perusal of the records, this Court finds that in this case the petitioner was proceeded against under Clause 29 B of the erstwhile Board's Standing Order. The provision reads as under:-

"29 B. MISCONDUCT

Subject to the other provisions of this Standing Order the following acts, or omissions by a workman shall be deemed to be misconduct for which he shall be liable to dismissal, discharge, stoppage of promotions for a specified period reduction in rank or transfer without T.A.

- (a) Wilful insubordination or disobedience, whether alone or in combination with others, of any lawful or reasonable order of a superior authority.
- (b) Striking work either singly or in combination with other or inviting others to strike work in contravention of the provision of any law or rule having the force of law.
- (c) Theft, fraud or dishonestly in connection with the Board's property or business.
- (d) Taking, abetting or giving bribes or any illegal gratification whatsoever.
- (e) Habitual late attendance, absence without leave or without sufficient cause or overstaying after the expiry of leave without sanction or in anticipation of approval.
- (f) Carrying on private moneylending, or any other private business.
- (g) Fighting and riotous or disorderly or indecent behaviour or conduct.



- (h) Habitual drunkenness.
- (i) Habitual slackness or habitual negligence or gross negligence in the performance of duty.
- (j) Habitual indiscipline
- (k) Smoking while on duty in places where it is prohibited in writing.
- (l) Causing damage to any property of the Board wilfully or through negligence.
- (m) Refusal to work on another job which does not affect emoluments and status adversely.
- (n) Gambling.
- (o) Acceptance of gifts from subordinate employees.
- (p) Giving intentionally false information regarding his name, age, father's name, qualification or previous service or any other related matter.
- (q) Conviction in any Court for any offence of moral turpitude.
- (r) Leaving work without permission.
- (s) Habitual breach of rules of the Standing orders and repeated acts of misdemeanours.
- (t) Resorting to habitual go-slow tactics or habitual delaying of production.
- (u) Refusal to go on transfer or failing to comply with transfer orders.
- (v) Submission of application for employment elsewhere directly.
- (w) Holding lottery for the disposal of his property.
- (x) Biddings on the occasion of disposal of Board's property.
- (y) Maligning superior officer.
- (z) A workman found to be in possession of pecuniary resources or property disproportionate to his known sources of income, for which he cannot satisfactorily account unless the contrary is proved, be presumed to have been guilty of misconduct in the discharge of official duty and shall be dealt with accordingly."

19. There is no submission on behalf of the petitioner that the Standing Order of the erstwhile Board would not be applicable to him, therefore, this Court proceeds to rely upon the Standing Order copy of which has been placed before this Court.



20. Clause 29 B of the Board's Standing Order defines misconduct for which the punishment of dismissal, discharge, stoppage of promotions for specified period, reduction in rank or transfer without T.A. may be imposed. Sub-Clause (d) includes taking, abetting or giving bribes or any illegal gratification whatsoever within the meaning of word "misconduct". Thus, in a case allegedly involving taking bribe or illegal gratification, the concerned employee/workmen shall be proceeded against with disciplinary action as per Clause 30 of the Board's Standing Order. Clause 37 of the Board's Standing Order provides that all workman shall have the right to appeal against any order of any authority to the next superior officer.

21. When this Court goes through the transfer scheme, it is found that paragraph '6' and its various sub-paragraphs dealt with the transfer of personnel and other related issues. This Court, therefore, deems it just and proper to re-produce paragraph '6' and its sub-paragraphs as under:-

"6. Transfer of Personnel. - 6.1 The transfer of personnel shall be subject to the terms and conditions contained in section 133 and other applicable provisions of the Act.

6.2 The personnel of the Board, involved in Distribution, Generation, Transmission and Common Services including at the Head Office, on the effective date, will stand transferred to the holding company.

6.3 Subject to sub-clause 6.2, the personnel on the effective date shall stand further transferred from Holding Company as under: -

(i) All the personnel working with the Transmission function and activities of the Board shall be deemed



to be transferred to Bihar State Power Transmission Company Limited.

(ii) All the personnel working with the Generation function and activities of the Board shall be deemed to be transferred to Bihar State Power Generation Company Limited.

(iii) All the personnel working with the Distribution function and activities of the Board shall be deemed to be transferred to South Bihar Power Distribution Company Limited and North Bihar Power Distribution Company Limited.

6.4 The detailed scheme and terms and conditions for transfer of group of employees in Transmission, Generation, Distribution and common services is given in Schedule-F.

6.5 On such transfer and subject to the provisions of the Act and other provisions of this Scheme the personnel shall form a part of the services of the Transmission, Generation and Distribution companies, as the case may be, but their rank, scale of pay and inter-se seniority as existing in the Board on the effective date shall be maintained in the holding company and the retirement benefits and other facilities shall in no way be reduced than the one existing in the Board on the effective date.

6.6 Notwithstanding the provisional nature of transfer of personnel to Holding Company and further transfer to Transmission, Generation and Distribution companies, as per para 6.2 and 6.3 above, the personnel shall discharge the duties and functions as may be assigned to them from time to time by Transmission, Generation and Distribution companies, as the case may be and the Transmission, Generation and Distribution companies shall have the power to exercise all administrative and disciplinary control over such personnel transferred to them as per this Scheme.

6.7 The transfer of personnel shall be subject to the following conditions, namely, -

(a) That the personnel shall be governed by the Rules and Regulations framed by the Board existing on the effective date.

(b) The terms and conditions of the services applicable to personnel on the effective date shall not in anyway be less favourable than those applicable to



them immediately before the said effective date. Accordingly the salary, allowances and other pecuniary benefits including terminal benefits applicable on the effective date shall be protected and shall not be adversely changed;

(c) All such personnel shall have continuity of service in all respects;

(d) All benefits of service accrued before the said effective date shall be fully recognised and taken into account for all purposes including the payment of terminal benefits;

(e) To any orders that may be passed by the Courts in the proceedings pending on the said effective date in regard to seniority or other matters concerning the service conditions of the Personnel;

(f) Subject to this Scheme, the personnel shall cease to be in the service of the Board and shall not assert or claim any benefit of service not covered in the scheme.

6.8 Subject to the Act and this Scheme, the Holding Company shall be entitled to frame regulations governing the conditions of personnel transferred to the subsidiary companies under this Scheme and till such time the existing/ (as suggested for modification) service rules/regulations of the Board shall apply mutatis-mutandis.

6.9 Subject to para 6.7, in respect of all statutory and other schemes and employment related matters including the provident fund, gratuity fund, pension, leave encashment and any other Superannuation fund or any other special fund created or existing for the benefit of the personnel, the Holding Company shall stand substituted for the Board for all purposes and all the rights, powers and obligations of the Board in relation to any and all such matters shall become those of the Holding Company and the services of the personnel shall be treated as having been continuous for the purpose of the application of this sub- clause.

6.10 The Holding Company shall, in consultation with the Bihar State Power (Holding) Company Limited, Bihar State Power Generation Company Limited, Bihar State Power Transmission Company Limited, South Bihar Power Distribution Company Limited and North Bihar Power Distribution



Company Limited, finalize the transfer to and permanent absorption of the Personnel in the subsidiary companies taking into account the suitability, ability and experience of the personnel, number and nature of the vacancies and other relevant factors and issue appropriate orders for such permanent absorption within the provisional period of transfer of the Undertakings specified in Clause 9 of this Scheme.

6.11 For the purpose of sub-clause 6.10 above the Holding Company may constitute a Committee as specified in Schedule-F of this scheme to (a) receive representations from the Personnel who may raise grievances in regard to their transfer and absorption in the subsidiary companies in terms of Schedule-F and (b) to make recommendation on such transfer and absorption, within such time as State Government may specify for the purpose.

6.12 The Holding Company shall take a decision on the transfer and permanent absorption of the Personnel in the subsidiary companies after considering the recommendation of the Committee appointed for the purpose and shall issue orders for such transfer and permanent absorption of the Personnel.

6.13 Upon the finalization and issue of orders in terms of the sub-clause 6.10 above, the personnel shall form part of the services of the subsidiary company concerned, in the post, scale of pay or seniority in accordance with the orders that may be issued for this purpose, without any further act, deed or thing to be done by the State Government or the Holding Company or the subsidiary company or the Personnel or any other person.

6.14 The liability in respect of existing pensioners of the Board (based on actuarial valuation as on 31.03.2011) shall be the liability of the State Government. Further the liability, as assessed on actuarial valuation, in respect of the retiral dues of the existing employees, as on the effective date, to the extent they are unfunded shall also be the liability of the State Govt. As per actuarial valuation carried out by registered actuary, the net present value of the total terminal benefit liabilities is Rs.4613 Crores (discounted at 8% per annum) out of which total



unfunded liability is approximately Rs. 4438 Crores as on 31.03.2011.

6.15 The unfunded liabilities accumulated in respect of terminal benefits of the employees, covered under State Govt.'s policies and directions, will be borne by the State Govt. The unfunded liability upto the cut off date will be treated as covered under State Govt. policies and directions. The energy department will obtain the detailed statement in respect thereof from the Board/holding Company and will submit after due analysis for decision of the State Govt. and thereafter on this point the transfer scheme will be considered final. The above unfunded terminal benefit liability will be determined on yearly basis by the actuary considering the impact of inflation, pay revisions etc. After the effective date, the liability on account of service in the subsequent periods shall be borne by the respective successor companies. The disbursement of terminal benefits will be through a master trust administered by the holding company. The contribution from the State Govt. will be paid in advance in two installments every year i.e. by 31st May and 30th November and the successor companies will be contributing on monthly basis by 7th of the following month. The State Govt. and the transferees shall be jointly and severally liable for payments arising thereon till such notification, establishment of master trust and proper funding.

6.16 For the purpose of this clause 6, the term:-

(i) "*Existing Pensioner*" means all the personnel eligible for the pension as on the effective date of the transfer from the Board and shall include family members of the personnel as per the applicable scheme, and

(ii) "*Terminal Benefits*" means the gratuity, pension, dearness allowance and other applicable relief, medical benefit, and other applicable benefits including the right to have the appropriate revisions in the above benefits consistent with the practice that were prevalent in the Board.

6.17 All proceedings including disciplinary proceedings pending against the personnel prior to the effective date of the transfer of the personnel from the Board to the Transferee or from such Transferee to another Transferee, as the case may be,



or which may relate to misconduct, lapses or acts of commission or omission committed before the effective date of the transfer, shall not abate and may be continued by the relevant Transferee consistent with the applicable service rules.

6.18 The personnel transferred to the Transferees, shall be deemed to have entered into an agreement with the Transferee concerned to repay loans, advances and other sums due and perform obligations undertaken by them to the Board which remain outstanding as on the effective date of the transfer for the benefit of the Transferee in the same manner on the same terms and conditions as contained in the arrangement with the Board.

6.19 Nothing contained in this Scheme shall apply to personnel of the State Government or other organisation on deputation to Board as on the effective date but such personnel shall continue on deputation to the concerned Transferee(s) to whose services they are assigned on "*as-is-where-is*" basis till further orders of the Transferee.

6.20 The officers and the employees of the board after the restructuring shall have continuity of service. Their service conditions will not be inferior to the present service conditions and in case the transferee companies do not fulfill any service condition, the State Govt. guarantees and shall ensure through holding company continuance of those benefits. However these provisions will not be applicable to the new employees appointed in the transferee companies after the effective date of restructuring.”

22. Referring to paragraph 6.8, Mr. Ojha learned counsel for the respondents has submitted that subject to the Act and the Scheme, the Holding Company shall be entitled to frame regulations governing the conditions of personnel transferred to the subsidiary companies under the scheme but it is admitted at the Bar that till date the Holding Company has not framed any regulations governing the conditions of



the personnel transferred to the SBPDCL. No other service rule/regulation has been placed before this Court. In such circumstance learned counsel has submitted that as per paragraph 6.8, till such time the regulations are not framed, the existing service rule/regulations of the Board shall apply *mutatis-mutandis*. It is, therefore, his submission that the Standing Order which was applicable to the workman of the erstwhile Board prior to coming into force of the transfer scheme shall still be applicable. Simultaneously, it is his submission that the Holding Company has come out with a resolution in its 24th meeting wherein an appeal against the order of the Managing Director of the subsidiary company is to be heard by the Chairman of the said Company. In this case, it has been submitted that vide notification No. 06 dated 23.03.2013 the Board of SBPDCL has been constituted whereunder the Chairman-cum-Managing Director of BSPHCL has been designated as Chairman.

23. This Court has carefully perused the notification No. 06 dated 22.03.2013 and finds that the Board of SBPDCL has been constituted in the following manner:-

“बिहार सरकार

ऊर्जा विभाग

सं०-प्र-२/बोर्ड पुर्न० सं०-३१/२००८ ०६
दिनांक- २२/३/१३

पटना,

अधिसूचना

विद्युत अधिनियम २००३ के प्रावधानों के आलोक में, बिहार राज्य विद्युत बोर्ड के पुर्नगठन के लिए, बिहार सरकार ने अपनी संकल्प संख्या ९९९ दिनांक ०६.०३.२०१२ द्वारा निम्नलिखित पांच (५) नई कम्पनियों का पंजीकरण कम्पनी अधिनियम, १९५६ के अन्तर्गत किया है -



- i. बिहार स्टेट पावर (होलिडिंग) कम्पनी लि०, पटना— एक नियंत्रक कंपनी होगी जिसके पास अन्य चार सहायक कंपनियों के समता पूंजी का स्वामित्व होगा एवं सहायक कंपनियों के लिए एक नियंत्री कम्पनी की तरह कार्य करेगी।
- ii. बिहार स्टेट पावर ट्रांसमिशन कम्पनी लि०, पटना— संचरण कंपनी।
- iii. बिहार स्टेट पावर जेनरेशन कम्पनी लि०, पटना—उत्पादन कंपनी।
- iv. साऊथ बिहार पावर डिस्ट्रीब्यूशन कम्पनी लि०, पटना— दक्षिण बिहार के लिए वितरण कंपनी।
- v. नार्थ बिहार पावर डिस्ट्रीब्यूशन कम्पनी लि०, पटना— उत्तर बिहार के लिए वितरण कंपनी।

2. राज्य सरकार ने अधिसूचना संख्या— 1436 दिनांक 29.03.2012 द्वारा विद्युत अधिनियम, 2003 के अन्तर्गत पुर्नगठित बिहार राज्य विद्युत बोर्ड के उत्तराधिकारी नई कम्पनियों के प्रथम निदेशक मंडल का गठन किया है। उत्तराधिकारी कंपनियों का संचालन वाणिज्यिक रूप से करने हेतु निदेशक मंडल की संरचना का विस्तार करते हुए इन कम्पनियों में अन्य पूर्णकालिक निदेशक की नियुक्ति किया जाना है। पूर्णकालिक निदेशकों की नियुक्ति हेतु पात्रता, कार्य अनुभव, कार्य—विवरण, चयन/खोज समिति का गठन एवं चयन की प्रक्रिया से संबंधित नियमावली निम्न प्रकार अधिसूचित की जाती है :-

3. नई कंपनी के निदेशक मंडल की संरचना :-

बिहार स्टेट पावर (होलिडिंग) कंपनी लि० एवं अन्य चार सहायक कंपनी के निदेशक मंडल की संरचना इस प्रकार होगी :-

(क) बिहार स्टेट पावर (होलिडिंग) कम्पनी लि०

क्र०	निदेशक मंडल एवं नए निदेशकों की आवश्यकता	पदनाम
1	प्रधान सचिव/सचिव (वित्त विभाग), बिहार सरकार (वित्त विभाग द्वारा नामित)	निदेशक (अंशकालिक)
2	प्रधान सचिव / सचिव (ऊर्जा विभाग), बिहार सरकार	निदेशक (अंशकालिक)
3	अध्यक्ष—सह—प्रबन्ध निदेशक (नई नियुक्ति)	अध्यक्ष—सह—प्रबंध निदेशक
4	प्रबन्ध निदेशक, बिहार स्टेट पावर जेनरेशन कम्पनी लि०	निदेशक (अंशकालिक)
5	प्रबन्ध निदेशक, बिहार स्टेट पावर ट्रांसमिशन कम्पनी लि०	निदेशक (अंशकालिक)
6	प्रबन्ध निदेशक, साऊथ बिहार पावर डिस्ट्रीब्यूशन कम्पनी लि०	निदेशक (अंशकालिक)
7	प्रबन्ध निदेशक, नार्थ बिहार पावर डिस्ट्रीब्यूशन कम्पनी लि०	निदेशक (अंशकालिक)
8	नई नियुक्ति	निदेशक (वित्त)
9	नई नियुक्ति	निदेशक (मानव संसाधन)

(ख) बिहार स्टेट पावर जेनरेशन कम्पनी लि०

क्र०	निदेशक मंडल एवं नए निदेशकों की आवश्यकता	पदनाम
1	प्रधान सचिव / सचिव (ऊर्जा विभाग), बिहार सरकार	निदेशक (अंशकालिक)
2	अध्यक्ष—सह—प्रबन्ध निदेशक, बिहार स्टेट पावर (होलिडिंग) कंपनी लि०	अध्यक्ष
3	प्रबन्ध निदेशक, (नई नियुक्ति)	प्रबन्ध निदेशक
4	प्रबन्ध निदेशक, बिहार स्टेट पावर ट्रांसमिशन कम्पनी लि०	निदेशक (अंशकालिक)
5	प्रबन्ध निदेशक, साऊथ बिहार पावर डिस्ट्रीब्यूशन कम्पनी लि०	निदेशक (अंशकालिक)
6	प्रबन्ध निदेशक, नार्थ बिहार पावर डिस्ट्रीब्यूशन कम्पनी लि०	निदेशक (अंशकालिक)
7	वित्त विभाग, बिहार सरकार के प्रतिनिधि (संयुक्त सचिव से अन्यून)	निदेशक (अंशकालिक)
8	नई नियुक्ति	निदेशक (वित्त)
9	नई नियुक्ति	निदेशक (तकनीकी)

(ग) बिहार स्टेट पावर ट्रांसमिशन कम्पनी लि०

क्र०	निदेशक मंडल एवं नए निदेशकों की आवश्यकता	पदनाम
1	प्रधान सचिव / सचिव (ऊर्जा विभाग), बिहार सरकार	निदेशक (अंशकालिक)



2	अध्यक्ष-सह-प्रबन्ध निदेशक, बिहार स्टेट पावर (होलिडिंग) कंपनी लि०	अध्यक्ष
3	प्रबन्ध निदेशक, (नई नियुक्ति)	प्रबन्ध निदेशक
4	प्रबन्ध निदेशक, बिहार स्टेट पावर जेनरेशन कम्पनी लि०	निदेशक (अंशकालिक)
5	प्रबन्ध निदेशक, साऊथ बिहार पावर डिस्ट्रीब्यूशन कम्पनी लि०	निदेशक (अंशकालिक)
6	प्रबन्ध निदेशक, नार्थ बिहार पावर डिस्ट्रीब्यूशन कम्पनी लि०	निदेशक (अंशकालिक)
7	वित्त विभाग, बिहार सरकार के प्रतिनिधि (संयुक्त सचिव से अन्यून)	निदेशक (अल्पकालीन)
8	नई नियुक्ति	निदेशक (वित्त)
9	नई नियुक्ति	निदेशक, (परियोजना)
10	नई नियुक्ति	निदेशक, (संचालन)

(घ) नार्थ बिहार पावर डिस्ट्रीब्यूशन कम्पनी लि०

क्र०	निदेशक मंडल एवं नए निदेशकों की आवश्यकता	पदनाम
1	प्रधान सचिव / सचिव (ऊर्जा विभाग), बिहार सरकार	निदेशक (अंशकालिक)
2	अध्यक्ष-सह-प्रबन्ध निदेशक, बिहार स्टेट पावर (होलिडिंग) कंपनी लि०	अध्यक्ष
3	प्रबन्ध निदेशक, (नई नियुक्ति)	प्रबन्ध निदेशक
4	प्रबन्ध निदेशक, बिहार स्टेट पावर जेनरेशन कम्पनी लि०	निदेशक (अंशकालिक)
5	प्रबन्ध निदेशक, साऊथ बिहार पावर डिस्ट्रीब्यूशन कम्पनी लि०	निदेशक (अंशकालिक)
6	प्रबन्ध निदेशक, बिहार स्टेट पावर ट्रांसमिशन कम्पनी लि०	निदेशक (अंशकालिक)
7	वित्त विभाग, बिहार सरकार के प्रतिनिधि (संयुक्त सचिव से अन्यून)	निदेशक (अल्पकालीन)
8	नई नियुक्ति	निदेशक (वित्त)
9	नई नियुक्ति	निदेशक, (परियोजना)
10	नई नियुक्ति	निदेशक, (संचालन)

(घ) साऊथ बिहार पावर डिस्ट्रीब्यूशन कम्पनी लि०

क्र०	निदेशक मंडल एवं नए निदेशकों की आवश्यकता	पदनाम
1	प्रधान सचिव / सचिव (ऊर्जा विभाग), बिहार सरकार	निदेशक (अंशकालिक)
2	अध्यक्ष-सह-प्रबन्ध निदेशक, बिहार स्टेट पावर (होलिडिंग) कंपनी लि०	अध्यक्ष
3	प्रबन्ध निदेशक, (नई नियुक्ति)	प्रबन्ध निदेशक
4	प्रबन्ध निदेशक, बिहार स्टेट पावर जेनरेशन कम्पनी लि०	निदेशक (अंशकालिक)
5	प्रबन्ध निदेशक, बिहार स्टेट पावर ट्रांसमिशन कम्पनी लि०	निदेशक (अंशकालिक)
6	प्रबन्ध निदेशक, नार्थ बिहार पावर डिस्ट्रीब्यूशन कम्पनी लि०	निदेशक (अंशकालिक)
7	वित्त विभाग, बिहार सरकार के प्रतिनिधि (संयुक्त सचिव से अन्यून)	निदेशक (अल्पकालीन)
8	नई नियुक्ति	निदेशक (वित्त)
9	नई नियुक्ति	निदेशक, (परियोजना)
10	नई नियुक्ति	निदेशक, (संचालन)



24. The transfer scheme prescribes the role of the Chairman-cum-Managing Director and the Managing Director which are being reproduced hereunder for a ready reference:-

“(क) अध्यक्ष-सह-प्रबन्ध निदेशक (सी0 एम0 डी0) कार्य विवरण

अध्यक्ष-सह-प्रबन्ध निदेशक की भूमिका इस बात की है कि वे निगम की हित की देख-भाल कर यह सुनिश्चित करें की निगम राज्य के विद्युत क्षेत्र का जीवन्त विकास ठोस वाणिज्यिक सिद्धांतों के आधार पर एवं उन उद्देश्यों के लिए करें जिसके लिए इनका सृजन किया गया है पूर्णकालिक कार्यात्मक निदेशकों का कुशल समर्थन उन्हें प्राप्त रहेगा अध्यक्ष-सह-प्रबन्धक निदेशक की भूमिका इस प्रकार है :-

- i. कारोबार के लिए सामरिक दृष्टिकोण का सृजन करना जो संगठन की शक्तियों से उत्सर्जित हो एवं इसके प्रतियोगी लाभ पर आधारित हो।
- ii. निदेशक मंडल के साथ कार्य सृजन एवं कार्य सम्पादित करना, जो उन्हें संगठन के समस्त निर्देशन एवं अभिशासन में मददगार और समर्थ है।
- iii. मौलिक प्राथमिकता, नीति विषयक मूल्य, सिद्धान्त और विचारों की स्थापना करना जिससे संगठन का समग्र परिवर्तन हो एवं आवर्ती संस्कृति से सीखने की संस्कृति विकसित हो, निजी सहभागिता एवं सम्पूर्ण संगठन में सामरिक दृष्टिकोण के प्रति वचनबद्धता की भावना का विकास हो।
- iv. स्पष्ट शासनादेश के साथ कार्य करना ताकि निगम के अपेक्षित एवं निर्धारित मापदण्ड जो कार्य चालन, वित्तीय और प्रशासनिक कार्यान्वयन से संबंधित हैं उन्हें हासिल किया जा सकें
- v. सम्बद्ध पूर्णकालिक निदेशकों की मदद से, उपभोक्ता की सेवाओं उत्पादन गुणवत्ता, तकनीकी नेतृत्व, बाजार भागीदारी और वित्तीय उपाय जैसी कसौटियों के कार्यान्वयन से संबंधित मापदण्ड को बनाये रखना ताकि निदेशकों, उपभोक्ताओं और सभी अन्य दावेदारियों की उम्मीदों को पूरा किया जा सके।
- vi. सभी दावेदारों से, विशेषकर सरकारी स्तरों पर, जनसम्पर्क स्थापित करना।
- vii. निगम का नेतृत्व करना ताकि उपभोक्ताओं की सेवा करने एवं निवेश आकृष्ट के लिए निगम को उपयुक्त मंच में परिवर्तित किया जा सके।
- viii. निगम के निदेशक मंडल की बैठक एवं अंशधारकों की आम सभा की अध्यक्षता करना।
- ix. निगम के कारोबार को प्रभावशाली ढंग से व्यवस्थित करना एवं उपभोक्ता की संतुष्टि एवं वाणिज्यिक लाभ की वृद्धि के लिए संगठन को समर्थ बनाने में उन्नत सम्पादन के साथ निरन्तर एवं स्थायी अभिवृद्धि सुनिश्चित करना सी0 एम0 डी0 की पूर्ण जबाबदेही है।”

ख) प्रबन्ध निदेशक

कार्य विवरण

प्रबन्ध निदेशक की भूमिका यह है कि वह सम्बन्धित सहायक कम्पनियों के हितों की देखभाल सुनिश्चित करे ताकि कम्पनी राज्य के विद्युत् क्षेत्र का निरन्तर विकास सार्थक वाणिज्यिक सिद्धांतों के आधार पर कर सके और जिन उद्देश्यों के लिए इनका सृजन किया गया है उसे हासिल किया जा सके। उन्हें पूर्णकालिक कार्यात्मक निदेशकों का कुशल समर्थन प्राप्त रहेगा। प्रबन्ध निदेशक की भूमिका इस प्रकार है :

- i. निदेशक मंडल के नियंत्रण एवं पर्यवेक्षण में कम्पनी के दिन-प्रतिदिन कार्यों के लिए जिम्मेदार होना।
- ii. संगठन के समग्र निर्देशन एवं शासन में निदेशक मंडल के अधीन कार्य करना।
- iii. विद्युत् उत्पादन, संचरण और वितरण पर कार्य चालन, निष्पादन एवं कार्य अनुरक्षण के बारे में संचालन और नियंत्रण, मोनिटर, निरीक्षण के लिए विभिन्न कार्यात्मक प्रधानों के साथ इन्टरएक्ट करना। कम्पनी के सभी तकनीकी विषयों जो योजना, डिजाईन, तकनीकी



- विनिर्देशन, परियोजना प्रतिवेदन, प्लांट और मशीनरी के रख-रखाव से संबंधित हो, को हाथ में लेना और सुझाव देना।
- iv. विद्युत् उत्पादन / संचरण / वितरण (जो स्थिति हो) में योजना बनाने एवं डिजाईन कार्यवाही सम्बन्धी व्यवस्था सहित परियोजना निष्पादन में मार्गदर्शन करना।
 - v. अन्य निदेशकों के साथ विस्तार से विचार-विमर्श कर सभी तकनीकी निर्णय के बारे में प्रभावित करना एवं संचालित करना तथा अनुमोदन के लिए उसे बोर्ड के समक्ष पेश करने के लिए तकनीकी प्रस्तावों पर एजेंडा नोट भी तैयार करना।
 - vi. निगम सीमा के बाहर व्यक्ति / संगठन / संस्थान के साथ तकनीकी विषय में प्रभावित करने के लिए जिम्मेदार होना और निगम की तकनीकी किया-कलापों पर सार्वजनिक बोध कार्यक्रम बनाना। निगम की ओर से सम्बद्ध प्रतिस्थानी या प्राधिकारी के साथ तकनीकी निर्णय पर विमर्श करना और संसूचित करना।
 - vii. राज्य विद्युत विनियामक आयोग की आवश्यकताओं को पूरा करने के लिए एम0 आई0 एस0 (M.I.S.) संगठित करना।
 - viii. निदेशक (वित्त) के साथ विचार-विमर्श कर कम्पनी के वित्तीय मामलों पर निर्णय लेना।
 - ix. अध्यक्ष बोर्ड द्वारा सौंपे गये अन्य कार्यों का निष्पादन करना।
अनुषंगी कम्पनी के कारोबार को प्रभांवकारी एवं पूर्णता से व्यवस्थित करना प्रबंध निदेशक की समग्र जवाबदेही है और उपभोक्ता की संतुष्टि एवं वाणिज्यिक व्यवहार्य की वृद्धि के लिए संगठन को सामर्थ्य बनाने में विकसित कार्यान्वयन के साथ निरन्तर एवं स्थायी अभिवृद्धि सुनिश्चित करना।”

25. On perusal of the entire scheme and the notification dated 22.03.2013, it would appear that a Chairman-cum-Managing Director is only on the Board of the BSPHCL. In all other undertakings including ‘SBPDCL’, the Chairman-cum-Managing Director of the BSPHCL has been made a member of the Board of Directors with a designation “Chairman”. The Energy Secretary/ Principal Secretary and Managing Directors of other undertakings as also a nominee from Finance Department and Director (Finance), Director (Project) and Director (Operation) are the other members on the Board of SBPDCL.

26. Functions and powers of the Chairman on the Board of all subsidiary company such as SBPDCL has not been separately prescribed either in the scheme or in the notification. Under the Notification dated 22.03.2013, a Managing Director acts under the control and supervision of the Board of Directors and is responsible for the day to day affairs of the Company. Neither the scheme nor the



notification anywhere make him subordinate to the Chairman of the Board, though he has to beside other works, dispose of the works assigned to him by the Chairman of the Board.

27. In the given facts and circumstances, a question which arises on the face of Clause '37' of the Board's Standing Order as to whether the Chairman on the Board of 'SBPDCL' is the next superior officer and an appeal would lie before him against any order of Managing Director of the 'SBPDCL'. Clause 37 of the Board's Standing Order clearly states that the appeal shall lie against any order of any authority to the next superior officer.

28. This Court has been made available a resolution of the Board of Directors of the SBPDCL passed in its 8th Meeting held on 15.06.2013 whereunder the Board of Directors has accorded approval of certain amendments in the existing delegation of power of the Company. As regards the suspension and awarding major punishment to Field cadre and officers in the rank of JEE or equivalent, power has been conferred upon MD/ED (HR) and in the remarks column it is mentioned that "as per Rules and Regulations of the Company". For the purpose of awarding major and minor punishment to AEE or EEE and equivalent again the power has been delegated to MD/ED (HR). Though the remarks column mentions "As per Rules and Regulations of the Company", learned counsel for the respondent company has not produced any Rules and Regulations save and except the Standing Order which is said to be applicable in the case of the petitioner.



29. This Court for the present, therefore, is not going into the any issue with regard to any other Rules and Regulations of the respondent Company *vis a vis* the legality and validity of the resolution of the Board of SBPDCL passed in its meeting held on 15.06.2013. Since the competence of the Managing Director has not been questioned by learned counsel for the petitioner, this Court proceeds from the stage that the Managing Director of the 'SBPDCL' had the full power to award major punishment to the petitioner.

30. This Court has, however, difficulty in accepting the submission of learned counsel for the respondent Company that by virtue of the resolution of the Board of Directors of the 'BSPHCL', the power of appeal would be vested in the Chairman of the subsidiary company. No such resolution of the 'SBPDCL' has been placed before this Court. There are two reasons for the same. The first reason is that neither in the scheme nor under the notification dated 22.03.2013 there is any concept of the Chairman on the Board of an undertaking/subsidiary Company as a superior authority to the Managing Director of the subsidiary company. The second reason is that Clause 37 of the Board's Standing order makes it crystal clear that the appeal would lie before the superior authority. No doubt, the Chairman-cum-Managing Director of the BSPHCL has been taken on the Board of the subsidiary company as Chairman but that would be a different thing. The Chairman on the Board of a company would not on his own become the controlling and supervisory authority of the



Managing Director of the Company. In the Companies Act 1956 which was in existence on the date of issuance of the Notification dated 22.03.2013, Section 175 provides for Chairman of meeting. Section 175 reads as under:-

“175. CHAIRMAN OF MEETING -- (1) Unless the articles of the company otherwise provide, the members personally present at the meeting shall elect one of themselves to be the chairman thereof on a show of hands.

(2) If a poll is demanded on the election of the chairman, it shall be taken forthwith in accordance with the provisions of this Act, the chairman elected on a show of hands exercising all the powers of the chairman under the said provisions.

(3) If some other person is elected chairman as a result of the poll, he shall be chairman for the rest of the meeting.”

31. Thus, the Chairman-cum-Managing Director of BSPHCL coming on the Board of the subsidiary company as Chairman is entitled to act as Chairman of the meeting but he cannot take place of the Board of Directors under whose Control and Supervision the Managing Director acts. It would be misnomer to address him, in absence of any statutory sanction as the Chairman of the subsidiary company and superior authority to the Managing Director of the subsidiary company.

32. To this Court, it is crystal clear that by virtue of paragraph 6.8 of the scheme of Transfer, it is the Holding Company which shall be entitled to frame regulations governing the conditions of personnel transferred to subsidiary companies under the Scheme but



such regulations are to be subject to the Electricity Act 2003 and any subsequent amendment thereto and the Transfer Scheme. Such Rules and Regulations which may be framed by the Holding Company must have the approval of the Company. In the present case admittedly no Regulations has been framed by the Holding Company and the Standing Order is still applicable, an appeal against the order of the Managing Director of the subsidiary company would, therefore, lie before the Board of Directors of the subsidiary company.

Order passed by the M.D., SBPDCL

33. In the present case, the records placed before this Court in form of the copies of the official records reveal that the Section Officer of the SBPDCL dealt with the second show cause of the petitioner and recorded a finding that from the facts, the charges are completely proved against the petitioner. The Section Officer proposed the punishment under Rule 43 (a) and (b) of the Bihar Pension Rules. He proposed for forfeiture of 100 % Pension, Gratuity and Leave Encashment of the petitioner and that he would not be entitled for any payment except the subsistence allowance for the period of suspension. The file moved through the Administrative Officer to DGM (HR). The DGM (HR) Admin dealt the matter and recommended the file to the General Manager (HR and Administration) with his suggestion to impose the punishment as recommended by the Section Officer. The Deputy General Manager (HR), however, has suggested the General Manager (HR) that necessary order on imposing punishment upon the



petitioner may be obtained from the Managing Director of the Company. The General Manager (HR and Admin) thereafter, placed a note to the Managing Director as under:-

“80/.. से लगातार कार्यालय टिप्पणी अवलोकनीय ।
श्री माथुर को ट्रेप केस में पकड़ा गया था । उनके मामले
की पूर्ण समीक्षा पूर्व पृष्ठ टिप्पणी में की गयी है । उन्हें अंश ‘क’ पर
प्रस्तावित दण्ड की स्वीकृति की जा सकती है ।”

34. Thereafter, the Managing Director simply put his/her a short signature and the same has been taken as approval of the punishment proposed against the petitioner. It is evident on perusal of the records that at no point of time the Managing Director being the disciplinary authority applied his/her independent mind to the materials available on the record. What was suggested by a Section Officer got approval by the Managing Director by simply putting a short signature in the official file. This is wholly illegal, in violation of principles of natural justice and a jurisdictional error committed by the disciplinary authority.

Order Passed in Appeal

35. When the appeal preferred by the petitioner went to the Chairman-cum-Managing Director of the BSPHCL, again the file moved through the same channel. The appeal was fixed for hearing on 07.02.2015. There is no ordersheet of 0702.2015 but in one of the ordersheets it is recorded that the matter has been heard by CMD on 07.02.2015 and the records are placed for orders. The order of the appellate authority as communicated to the petitioner vide memo no.



295 dated 20.02.2015 (Annexure '2') would show that the appellate authority has done only an empty formality by rejecting the appeal without recording any reason. The appellate order simply takes note of the beginning and end of the disciplinary proceeding, the kind of punishment awarded by the disciplinary authority and finally concludes in the following words:-

“श्री माथुर द्वारा समर्पित अभ्यावेदन पर अपील्य प्राधिकर द्वारा समीक्षोपरांत पाया गया कि कम्पनी के कार्यालय ओदश सं०-554 दिनांक 15.05.14 के द्वारा निर्गत दण्डादेश यथोचित है।

अतः श्री माथुर के अभ्यावेदन को अस्वीकृत किया जाता है।”

36. The appellate order does not contain either any consideration of the grounds raised by the petitioner nor to the submissions of the petitioner. The appellate order is a totally un-reasoned and non-speaking order.

37. This Court finds that while the disciplinary authority completely abdicated his/her power and discharged his/her responsibility of the disciplinary authority by simply putting a short signature below the notes suggesting the kind of punishment to be imposed against the petitioner, the appellate authority has not at all considered the appeal of the petitioner. For these reasons, the impugned orders as contained in Annexure '1' and '2' respectively to the writ application are liable to be set-aside and those are accordingly, set-aside.

38. The matter is remitted to the Managing Director, SBPDCL for a fresh consideration and passing of an appropriate order which must be based on an independent consideration on the basis of



the materials available on the record. Let such decision be taken within a period of four months from the date of receipt/production of a copy of this order.

39. This writ application is allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

avin/-

AFR/NAFR	AFR
CAV DATE	28.04.2023
Uploading Date	01.05.2023
Transmission Date	

