

**BIHAR HUMAN RIGHTS COMMISSION**  
**9, Bailey Road, Patna – 15**

File No **BHRC/COMP.715/2012**

Case of **BAIDYANATH CHAKRABORTY**

---

Applicant Baidyanath Chakraborty is a former Chief Engineer of the Bihar State Electricity Board (in short 'the Board'). He has approached this Commission seeking its intervention in the matter of reduction of 80% pension "by way of punishment" (as mentioned in the order) vide Board's resolution no.1341/memo no.1342 dated 24.6.2011 in a proceeding which was initiated by way of disciplinary proceeding but continued and concluded under Rule 43(b) of the Bihar Pension Rules.

On first look the complaint would seem to lie in the realm of service matters. Initiation of proceeding and imposition of penalty are incidents of service, and the Commission does not intervene in service matters. However, being of the view that the applicant and members of his family cannot lead a 'quality' life – which is a facet of the right to life under Article 21 of the Constitution of India – with 20% pension, the Commission entertained the complaint and issued notice to the Board to submit report/response within four weeks, vide order dated 27.2.2012. While issuing notice the Commission observed that every employee holding a pensionable post has a legitimate expectation of receiving a certain amount as pension on superannuation from service which would enable him to lead a decent, quality life. 80% reduction would be doing violence to his legitimate expectations and also amount to infringement of his human rights.

The Board submitted a 'factual report' on 27.3.2012. Applicant submitted his response to the said report. The matter was heard in presence of the applicant and the Joint Secretary of the Board Sri Arun Kumar Sinha on 16.8.2012.

At this stage it may be mentioned that the proceeding was initiated on 22.12.2010 – nine days prior to the applicant's impending superannuation on 31.12.2010 – on two-fold charges – firstly, that the applicant was required to submit daily progress report at 9:30 AM and 6:00 PM to the Chairman which he failed to do so on two days. On being asked by the Chairman on 1.12.2010 as to why he failed to submit report, the applicant stated that he did not want any senior official to question his efficiency. It is said that the conduct of the applicant amounted to indiscipline, irresponsible behaviour, dereliction of duty and disobedience; and secondly, earlier on 10.2.2010 and 11.2.2010 he had been

warned to improve his conduct and report for duty on time but he did not improve, which was indicative of wilful and arbitrary behaviour.

The proceeding which was initiated nine days prior to the applicant's superannuation was concluded within a record time of 21 days on 12.1.2011 holding the applicant guilty of both the charges.

It may not be out of place to mention that a disciplinary proceeding ordinarily is co-terminus with superannuation of the employee and in the normal course on his superannuation comes to an end, for, no employee can be awarded any 'penalty' after his superannuation. However by virtue of rule 43(b) of the Bihar Pension Rules the government is empowered to "withhold or withdraw a pension or any part of it, whether permanently or for a specified period", and may also recover from the pension whole or part of any pecuniary loss caused to the government, "if the pensioner is found in departmental or judicial proceeding to have been guilty of grave misconduct or to have caused pecuniary loss to Government". (Bihar Pension Rules are applicable to the employees of the Bihar State Electricity Board). The aforementioned disciplinary proceeding was apparently converted into a proceeding under rule 43(b) of the Bihar Pension Rules and continued/concluded as such.

In its order dated 27.2.2012 (supra) the Commission observed that the Board no doubt had the power to continue the proceeding under rule 43(b) of the Pension Rules, and withhold or reduce whole or part of the pension for a particular period or permanently, but it was clear from a bare reading of the rule that the power is to be exercised only in cases of "grave misconduct" or "pecuniary loss" to the Board. There is no charge or even indication of pecuniary loss to the Board and the same therefore has to be ruled out summarily. As regards the question of grave misconduct, the Commission noted that failure to submit reports on two days was not grave enough to warrant 80% reduction in pension. The Commission further observed, "if such a charge is treated grave – warranting 80% reduction in pension, one is left guessing as to what would be the quantum of reduction in cases of real "grave misconduct". The Commission further observed,

"It is a settled principle of law that penalty should be proportionate to the charge and where it is found to be disproportionate, it is liable to be struck down as being arbitrary, unreasonable and whimsical"

In response to the observations of the Commission Sri Arun Kumar Sinha submitted that the applicant being a very senior officer in the hierarchy in the rank of Chief Engineer, it was considered proper to reduce pension by 80% in order to send the message down the line. The plea suggests that for

similar 'misconduct' committed by some junior official, 'the penalty' would have been modest or less severe. If it was so, it is clear that what weighed with the Board in reducing the pension by 80% was not the gravity of the 'misconduct' but the status of the applicant. Awarding a severe penalty to senior official on the basis of his seniority for the same misconduct would be violative of not only the Article 14(1) of the Constitution but also rule 43(b) of the Pension Rules which mandates that the 'gravity' of misconduct shall be determinative of reduction of pension.

The Commission does not want to find loopholes in the enquiry report; it can not make a judicial review within the framework of its jurisdiction under the Protection of Human Rights Act. But it is clear that the proceeding was conducted and concluded in hot haste. And further, the finding was arrived at without any evidence on record. The Inquiry Officer, Sri Lalan Prasad – a member of the Board – in his report has mentioned at more than one place that there was no witness or evidence except the table of evidence (sakshya talika) which was part of the charge sheet. The applicant had given a prima facie plausible explanation and expressed regrets if his words had hurt the feelings of the Chairman – but all this was not taken into consideration and on the basis of the facts stated in the table of evidence annexed to the charge sheet, the Inquiry Officer held that applicant was guilty of both the charges.

It is to mentioned here that departmental proceedings are in the nature of quasi-judicial proceedings which are decided on evidence. The present case would thus appear to be a case of 'no evidence'

Having said thus far, the Commission would not go further. As observed in the order dated 27.2.2012, the applicant may challenge the findings of the Inquiry Officer and the manner in which the enquiry was concluded in an appropriate proceeding before another forum, the Commission would confine itself to the human rights issues alone.

Violation of human rights is writ large on the face of the order. The Commission is satisfied that with 20% pension the applicant cannot lead a 'quality life'. Indeed, the Commission is not able to appreciate that the charges – even if true – should entail any reduction in pension at all. Failure to submit reports or report for duty on time in the case of a serving employee may be a minor offence/misconduct and as the government has the latitude of choosing the penalty, it may end up in warning or a minor penalty such as censure but in the case of a retired employee where the choice of the government/Board is limited to reduction of pension or recovery of the amount of pecuniary loss, it may not be appropriate to take such action for such (misconduct). To justify such action

misconduct should be really of grave nature. And that is why it is so provided in the rule. Reduction or recovery being a harsh measure – considering that the employee has reached the twilight of his career – the power should be exercised sparingly. In the instant case, the Commission is constrained to observe, the decision is not only harsh, but also whimsical, unreasonable and capricious, and prima facie actuated by bias. It also seems to be in conflict with the circulars which provide for up to 90% pension even though the employee is facing some criminal charge. Even the Board has allowed 90% pension in such cases. It is strange that a person facing really grave charges including criminal charge should get 90% pension while another person who simply did not submit daily reports on two days or came late twice should get only 20% pension.

It is not clear as to whether the impugned decision regarding reduction of pension was taken by the Full Board or by the Chairman alone. Be that as it may, even if it was decided by the Full Board, the Commission is of the view that it would be in the ends of justice, equity and fair-play that the matter is reconsidered and appropriate decision is taken keeping in view the observations of this Commission after proper deliberations – and not by circulation – by the Full Board except Sri Lalan Prasad who acted as the Inquiry Officer. This should be done preferably within two months of receipt of a copy of this decision.

Put up in the last week of October 2012 awaiting compliance report.

A copy each of this decision be sent to the Chairman, Bihar State Electricity Board and the applicant.

Date: 21.08.2012

Justice S.N. Jha  
Chairperson