

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20614 of 2010

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B.K.Sinha S/O Late Siva Nandan Prasad, presently residing in the hosue of Sri S.P. Sinha, New Colony, Near Khankah, P.S. University Thana, Distt.-Darbhanga.

.... Petitioner/s

Versus

1. The Bihar State Financial Corporation, Fraser Road, Patna through Its Managing Director
2. The Board of Director, Bihar State Financial Corporation, Fraser Road, Patna through Its Chairman
3. The Managing Director, Bihar State Financial Corporation, Fraser Road, Patna
4. The Officer on Special Duty, Bihar State Financial Corporation, Fraser Road, Patna
5. The Manager (P&A), Bihar State Financial Corporation, Fraser Road, Patna
6. The Deputy Manager (P&A), Bihar State Financial Corporation, Fraser Road, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manik Ved Sen, Advocate.

For the Corporaton : Mr. Satya Prakash Tripathi, Advocate.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

3 30-06-2015 Mr. Manik Ved Sen, learned counsel for the petitioner, prays for and is allowed to make correction in the prayer portion of the writ application.

2. Heard Mr. Manik Ved Sen, learned counsel for the petitioner and Mr. Satya Prakash Tripathi, learned counsel for the Bihar State Financial Corporation (hereinafter referred to as 'the Corporation').

3. In this writ application, the prayer of the petitioner reads as follows:

"1... for quashing (a) appellate order dated 23.06.2010



communicated to the petitioner vide letter dated 8.7.2010 rejecting petitioner's appeal, (b) order dated 19.10.1991 communicated to the petitioner vide memo no. 2065 dated 8.1.2008 whereby the petitioner has been awarded punishment of Reprimand and withholding of 3 increments, (c) order dated 12.7.1994 issued vide memo no. 1040 whereby during the pendency of the appeal the punishment was enhanced and accordingly the stoppage of 3 increments were made cumulative and (d) order dated 17.9.1996 issued vide memo no. 1592 whereby the petitioner has been unilaterally awarded the punishment of withholding of one more increment with cumulative effect."

4. Learned counsel for the petitioner has explained that when the first order of punishment against the petitioner dated 19.10.1990 was passed reprimanding the petitioner as also withholding three annual increments, that order itself was bad in terms of Regulation 39 of the Bihar State Financial Corporation (Staff.) Regulation, 1965 (hereinafter referred to as 'the Regulation') because such order was passed without holding departmental enquiry. He has further explained that unfortunately, while the petitioner's representation/appeal against the aforementioned order was still pending, the Corporation *suo motu* had reviewed the said order of punishment dated 19.10.1990 by awarding punishment of withholding of three annual increments with cumulative effect.

5. Mr. Ved Sen explains that the second order dated



12.07.1994 was again unfortunately in violation of Regulation 39 but also in violation of principle of natural justice because the order of withholding increment with cumulative effect was passed by revising the earlier order of punishment dated 19.10.1990, which was issued even without giving the petitioner any notice and/or opportunity of hearing. Continuing in the same view, he has also assailed the correctness of the subsequent order of punishment in respect of 17 officers including the petitioner dated 17.09.1996 whereby and whereunder all of them were subjected to withholding one normal annual increment due in the financial year 1995-96 with cumulative effect on account of their failure to achieve their targets.

6. Mr. Vedsen has further submitted that when these orders were subjected to appeal, the Board of Directors of the Corporation had affirmed them without giving any cogent reason.

7. Mr. Satya Prakash Tripathi, learned counsel appearing on behalf of the Corporation, though had made a valiant effort to justify the impugned orders of punishment and the appellate order, but then he could atleast not deny the crucial fact that no departmental proceeding was held against the petitioner before inflicting of any of the three impugned orders of punishment.

8. This Court, on perusal of Clause 39 of the Regulation, will have no option but to hold that an employee/officer of the Corporation, before being subjected to any punishment except reprimand, has to be subjected to a departmental proceeding. Regulation 39 provides as under:

"39. Penalties.-(i) Without prejudice to the proceeding of the Regulations, an employee who commits a breach of the regulations of the Corporation or who displays negligence, inefficiency or indolence or who knowingly does anything detrimental to the interest of the Corporation or in conflict with its instructions or who commits a breach of discipline or is guilty of any other act of misconduct or who is convicted of a criminal offence shall be liable to any or all of the following penalties:-

(a) reprimand.

(b) Withholding or postponement of increment or promotion including stoppage at an efficiency bar, if any,

(c) Reduction to a lower post or grade or to a lower stage in his incremental scale,

(d) Recovery from pay of the whole or part of any pecuniary loss caused to the Corporation by the employee.

(e) Fine,

(f) Suspension,

(g) Dismissal,

(h) Discharge, or

(i) Compulsory retirement.

(ii) No employee shall be subjected to the penalties in clauses (b), (c), (d), (e), (f), (g), (h), or (i) of the sub-regulation (i) except by an order in writing signed by the Managing Director and no such order shall be passed without the charge or charges being formulated in writing and given to the said employee so that he shall have reasonable opportunity to answer them in writing or in person, as he prefers, and in the latter case his defence

shall be taken down in writing and read to him, provided that the requirements of this Regulation may be waived if the facts on the basis of which action is to be taken have been established in a Court of Law or where the employee has absconded or where it is for any other reason impracticable to communicate with him or where there is difficulty in observing them and the requirements can be waived without injustice to the employee. In every case where all or any of the requirements of this Regulation are waived, the reasons for so doing shall be recorded in writing.

(iii) An employee may, before the initiation of any proceeding under sub-regulation (ii) or pending the completion of such proceeding be placed under suspension by the Managing Director. During such suspension he shall receive subsistence allowance equal to two-thirds of his substantive pay plus the dearness allowance, provided that if no penalty under any of the clauses (b), (c), (d), (e), (f), (g), (h), or (i) of sub-regulation (i) is imposed, the employee shall be paid the difference between the subsistence allowance and the emoluments which he would have received but for such suspension for the period while he was under suspension and that, if a penalty is imposed on him under the said clauses, no order shall be passed which shall have the effect of compelling him to refund such subsistence allowance. The period during which an employee is under suspension shall if he is not dismissed from the service be treated as on duty for specific purposes, i.e. as the Managing Director may direct."

(underlining for emphasis)

9. As would be evident, the framers of the Regulation had thought it necessary to give protection to the employees of the Corporation of being given a memo of charge and an opportunity of hearing before being subjected to any order of punishment, be it



even stoppage of increment. In that view of the matter, as the impugned orders of punishment passed on 19.10.1990, 12.07.1994 and 17.09.1996 had admittedly been passed on a mere explanation asked from the petitioner and, in fact, the order dated 12.07.1994 was passed even without asking any explanation, there would be no difficulty for this Court that such orders cannot be sustained in view of the Regulation 39 (ii) of the Regulation of the Corporation.

10. As a matter of fact, this Court has even otherwise found that the impugned orders of punishment are not only cryptic but they did not deal with even the facts or issues raised by the petitioner in his defence by way of explanation. Mere recording of the fact that his explanation was not found to be satisfactory or that the charges were found to be proved cannot be the way of dealing an order of punishment specially when such order is appellable in nature. The disciplinary authority will be definitely required to record the reasons and that is how the word 'consideration' as used in the Regulation will have to be understood in order to save it from becoming arbitrary.

11. Way back, this Court, in the case of **Dr. Rabindra Nath Singh vs. State of Bihar & Ors.** reported in **1983 PLJR 92**, considering a similar order of punishment under Rule 55-A of the

Civil Services (Classification, Control & Appeal) Rules, 1930, had
relied the whole aspect in the following words:

"Learned counsel for the petitioner has also cited authorities in support of his contention that there has been no 'consideration' of the show cause reply. According to him the word 'consideration' in Rule 55-a entitles him to an active application of the mind by the Disciplinary Authority after considering the entire circumstances of the case in order to decide the nature and extent of penalty to be imposed. I find there is much substance in this contention as well.

8. The word 'consider' fell for consideration by the Supreme Court in Barium Chemical Limited and another V. A.J. Rana and others. (A.I.R.) 1972 Supreme Court 591) though it was in different context. H.R. Khanna, J., speaking for the Supreme Court observed as follows:

"8. The words 'considers it necessary' postulate that the authority concerned has thought over the matter deliberately and with care and it has been found necessary as a result of such thinking to pass the order. The dictionary meaning of the word 'consider' is to attentively survey, examine, inspect (arch), to



look attentively, to contemplate mentally, to think over, mediate on, give heed to, take note of, to think deliberately, to think oneself, to reflect, (vide shorter Oxford Dictionary). According to words and phrases permanent Edn. Vol. 8-A to 'consider' means to think with care. It is also mentioned that to 'consider' is to fix the mind upon with a view to careful examination, to ponder, study; mediate upon think or reflect with care."

9. Similar observation has been made by the Supreme Court in the case of the Divisional Personnel Officer, Southern Railway and others v. T.R. Challappan (A.I.R. 1975 Supreme Court 2216) where the Supreme Court was considering Rule 14 of the Railways Services (Disciplinary and Appeal) Rules 1968, Fazi Ali, J., speaking for the Court, observed:

"The rule making authority deliberately used the word 'consider' and not 'determines' because the word 'determine' has a much wider scopes. The word 'consider' merely connotes that there should be active application of the mind by the Disciplinary Authority for considering the entire circumstances of the case in order to decide the nature and extend of the penalty to be imposed on the delinquent employees....."

10. The impugned order manifest that in this case



not only there has been abdication of power to consider in favour of the Vigilance Department, but nothing is decipherable from the impugned order to convince me that there has been at all an application of the mind either by the authority, who has imposed the punishment or on the part of the Vigilance Department. No reasons have been assigned as to why the show cause apply is unsatisfactory. Giving of reasons in support of order which affects a person is also a basic need of the principles of natural justice (See- The Siemens Engineering and Manufacturing Co. of India Ltd. v. The Union of India and another A.I.R. 1976 Supreme Court 1785). The error of law is apparent on the face of the impugned order. There is no scope but to quash the said order as contained in Annexure-1. The petitioner is entitled to the consideration of the show cause by the Disciplinary authority and the application of the mind of the said authority before imposing any punishment under rule 55-A of the Rules. The authority is required further to give reasons to support of the said order."

12. Here, in the present case, there is nothing to show the application of mind which may justify the order of punishment even as a minor punishment though the Regulation requires even inflicting of a minor punishment only after holding a departmental proceeding. Unfortunately, when these issues were raised before the appellate authority and that too under the orders of this Court

in the earlier writ application filed by the petitioner, the appellate authority has also acted in a most arbitrary manner. The appellate authority also did not record any reason either with regard to initiating departmental enquiry or with regard to recording of reasons.

13. Thus, for the reasons indicated above, this writ application must succeed and all the impugned orders dated 19.10.1990, 12.07.1994, 17.09.1996 and the appellate order dated 08.07.2010 are hereby quashed.

(Mihir Kumar Jha, J)

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