

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22534 of 2014

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Ghanshyam Jha, aged about 46 years, son of late Dr. Kapileshwar Jha, resident of Mohalla 20/N Professor Colony, P.S. Patrakar Nagar in the District of Patna, Ex. Incharge Assistant Director, Mines and Geology, Koshi Circle, Saharsa.

.... Petitioner/s

Versus

1. The State of Bihar
2. Principal Secretary, Department of Mines and Geology, Government of Bihar
3. Additional Secretary, Department of Mines and Geology, Government of Bihar, Patna.
4. Joint Secretary Department of Mines and Geology, Government of Bihar, Patna
5. Deputy Secretary, Department of Mines and Geology, Government of Bihar, Patna
6. Director, Department of Mines and Geology, Government of Bihar, Patna
7. Section Officer, Department of Mines and Geology, Government of Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s :	Ms. Nivedita Nirvikar, Adv.
	Mr. Rajesh Kumar Singh, Adv.
For the Respondent/s :	Mr. D.K. Sinha, Sr. Adv.
	Mr. Rajendra Prasad, Adv.
	Mr. Niraj Kumar Sinha, A.C. to PAAG- 2

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

C.A.V. JUDGMENT

Date: 16-03-2017

The petitioner has inter alia prayed for the following reliefs:

- (a) Issuance of a writ in the nature of certiorari for quashing the order bearing memo no. 4224 dated 25.11.2014 issued by the Additional Secretary, Department of Mines and Geology, Government of Bihar whereby the petitioner has been awarded the punishment of dismissal from service.
- (b) Issuance of a writ in the nature of certiorari for quashing the order bearing memo No. 230 dated 30.1.2008 whereby



charges against the petitioner have been framed in Form (क);
and

(c) For issuance of a writ in the nature of certiorari for quashing the letter No.1268 dated 21.3.2014 of the Officer- On - Special Duty, Department of Mines and Geology, Government of Bihar, Patna whereby show cause notice has been issued on disagreement note.

The facts of the case briefly stated is that petitioner was appointed as an Assistant Geologist in the Directorate of Geology, Department of Mines and Geology, Government of Bihar in 1999. On the merger of the Directorate of Mines with the Directorate of Geology, the petitioner was designated as Assistant Mining Officer/Mineral Development Officer. He was posted in such capacity in the district of Sheikhpura on 20.2.2006 and remained there until his transfer on administrative grounds vide memo No.2070 dated 10.9.2007. According to the petitioner, he had performed his duties to the satisfaction of all seniors and no complaint was made against him. It is his case that during his tenure the revenue collection in the district of Sheikhpura increased manifold during financial year 2006-07 and was 130 % of the annual target. It is the case of the petitioner that he generated royalty up-to 10 times than his predecessors. It is further his case that the revenue collection in the first and second



quarter in the financial year 2007-08 was enhanced to 393 lacs and for which he got letter of appreciation on 19.4.2007 from the Commissioner-cum-Secretary, a copy of which is enclosed at Annexure-1. It is his case that within two months of receiving such appreciation that he was served with the show cause notice by the District Magistrate, Sheikhpura bearing letter No. 1238 dated 20.6.2007 asking him to explain why no criminal case was filed against the owners of illegal crushers and other violaters. A copy of the show cause notice is placed at Annexure-3. The petitioner filed his reply on the same date i.e. 20.6.2007 present at Annexure-4 and he explained that he is neither an authority under the Explosive Substance Act for instituting case against the violaters thereof and even the criminal case had to be lodged at the instance of other authorities.

According to the petitioner, this irritated the District Magistrate and who shot a letter dated 3.7.2007 present at Annexure-5 charging the petitioner with submitting misleading facts. The petitioner was also charged with not explaining as to the action taken by him against the violaters and the mining mafias. The explanation of the petitioner for not taking action under the Explosive substance Act was also held untenable because he himself had forwarded the file relating to grant of licence. The petitioner again filed his reply vide



Annexure-6 and which was met with the third show cause charging the petitioner of leaving the headquarters without permission vide Annexure-7 dated 8.8.2007. The reply of the petitioner is at Annexure-7/1 dated 9.8.2007 and when he was asked to explain by the District Magistrate vide letter dated 20.8.2007 as to what action has been taken by him against lessees who had not deposited the money. The petitioner soon thereafter was transferred to Patna on administrative grounds vide order bearing no.2070 dated 10.9.2007 placed at Annexure-10. By a subsequent order passed on the same date i.e. 10.9.2007 present at Annexure-11 the petitioner was directed to handover the charge to the Sub Divisional Officer within 12 hours. According to the petitioner, the District Magistrate was not yet satisfied and he recommended for action against the petitioner vide his letter dated 9.9.2007 addressed to the Principal Secretary, Mining and Geology Department, Government of Bihar present at Annexure-12/1 and acting thereupon, a show cause notice was served on the petitioner by the Principal Secretary on 21.9.2007 placed at Annexure-12. The petitioner filed his reply to the show cause denying all allegations present at Annexure-13. The petitioner was thereafter put under suspension vide order bearing No.2342 dated 12.10.2007 present at Annexure-14. The petitioner questioned the suspension order before this Court in C.W.J.C.No.15049 of 2007 and since no



charge memo had been served on the petitioner despite lapse of three months, as mandated under Rule 9(7) of the Bihar Government Servant (Classification Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Rules') that the order of suspension was quashed by this Court vide judgment and order dated 12.2.2008 placed at Annexure-16.

In the meanwhile a charge memo was served on the petitioner vide memo dated 230 dated 30.1.2008 vide Annexure-15. The petitioner responded to the charges and the enquiry officer submitted his report on 8.6.2009 vide Annexure-17 exonerating the petitioner of all the eight charges, so framed. The petitioner has enclosed extract of the file noting at Annexure-18 to submit that the matter was considered at the department level and it was thought proper to conclude the proceedings by issuing warning to the petitioner. The opinion of the Joint Secretary present at Annexure-18 has been endorsed by the departmental Minister and others.

According to the petitioner even when the matter had reached a conclusion, that a legal opinion was obtained from the Advocate General and when it was opined that the petitioner could be put to notice on a disagreement note. The legal opinion is present at Annexure-19 and misconstruing the same that the Department purported to initiate fresh proceeding against the petitioner which is



reflected from the letter dated 21.9.2010 present at Annexures-20 and 20/1. The petitioner challenged the action before this Court by filing a writ petition giving rise to C.W.J.C.No.17426 of 2010 and which was allowed, permitting the statutory authorities to conduct further enquiry which was directed to be concluded within one month with further 15 days to the disciplinary authority to take a final decision. The respondents yet proceeded in disregard of the order of this Court and which forced the petitioner to file a contempt application bearing M.J.C. No.137 of 2013 and a bench of this Court vide order passed on 22.1.2014 taking note of the stand taken by the Additional Advocate General to the effect that any proceeding or order passed since after 3.10.2012 i.e. the date of passing of the order by the writ Court present at Annexure-22, shall stand wiped out and would not be taken into consideration, disposed of the contempt petition. The parties were relegated at the same stage which existed on the date of passing of the order dated 3.10.2012 on the writ petition.

It is thereafter that the petitioner was served with the second show cause notice bearing Memo No.1268 dated 21.3.2014 which also contains a disagreement note impugned at Annexure-28. The petitioner filed his reply on 7.4.2014 which is placed at Annexure-29 and which is followed by the dismissal order bearing memo No.4224 dated 25.11.2014 whereby the petitioner has been



dismissed from service. The order is impugned at Annexure-32 to the writ petition and feeling aggrieved the petitioner is before this Court.

Ms. Nivedita Nirvikar learned counsel has appeared for the petitioner along with Mr. Rajesh Kumar Singh learned Advocate on record, the State is represented by Mr. Niraj Kumar Sinha, learned A.C. to PAAG 2 and the Mining Department is represented by Mr. D.K. Sinha learned Senior counsel who appears alongwith Mr. Rajendra Prasad, Advocate.

Ms. Nirvikar learned counsel for the petitioner referring to the enquiry report present at Annexure-17 has submitted that even where the petitioner received appreciation at the hands of the Principal Secretary of the Department on 19.4.2007, everything changed within two months thereafter by the entry of the new District Magistrate at Shekhpura and unnecessarily, the petitioner has been chased with allegation which bear no foundation. According to learned counsel for the petitioner, the petitioner has a strong record to back him during his tenure at Sheikhpura when the Revenue was enhanced manifold and which was appreciated even by the Principal Secretary of the department. She submits that it is owing to some kind of misunderstanding that not only the petitioner was show caused several times within months of receiving the appreciation but was also transferred outside the District. She submits that not being satisfied by



the transfer, that the District Magistrate, Sheikhpura has chased him till Patna to make a strong recommendation for initiating action and in which, he has succeeded. She submits that the stand of the petitioner is vindicated by the enquiry report when the Enquiry Officer has exonerated the petitioner of all charges and which view has been endorsed by the departmental Secretary as well as the departmental Minister. It is stated that even when at the highest departmental level the authorities were satisfied that the case of the petitioner did not warrant any further action and the matter could be concluded by issuing a warning to the petitioner to be careful in future, yet the file has been processed and even though the Joint Secretary of the Department did lodge a protest against such initiative taken and even though the Law Department objected to the second round proceeding yet legal opinion was taken on the issue.

It is her submission that even as per the legal opinion it is only charge Nos. (i),(ii),(iii),(v) and (vii) on which a disagreement could be issued however this opinion was misconstrued to institute fresh proceeding and after a challenge before this Court in the writ vide Annexure-22 and contempt vide Annexure-27 that the respondents did realize their limitations to issue a disagreement note at Annexure-28 which is dated 21.3.2014. According to learned counsel although the disagreement note is on the findings of the Enquiry Officer but it is



not a show cause against penalty. Learned counsel submits that the petitioner did file his reply which is present at Annexure-29 raising his objections. According to learned counsel even the opinion of the Bihar Public Service Commission was not in favour of continuance of the proceedings.

Learned counsel has referred to a judgment of the Supreme Court reported in **(1998) 7 SCC 84 (Punjab National Bank and Ors. vs. Sh. Kunj Behari Misra)** and with reference to the opinion of the Court present at paragraph 19, she submits that no show cause against the proposed penalty was received in the present case. Learned counsel for the purpose has also relied upon a judgment reported in **(2006) 9 SCC 440 (Lav Nigam Vs. Chairman & Md. ITI Ltd. & Anr.)** paragraphs 9 and 10.

It is next submitted that for no justifiable reason since after the order of this Court on the writ petition a second file was created. According to learned counsel whereas initially the matter was being dealt in file No. 19 of 2009 and had continued until the submission of the enquiry report but it is after seeking legal opinion which suited the respondents, that a second file was created bearing No.13 of 2012. According to learned counsel the allegation levelled against the petitioner has no foundation and the re-initiation of the proceedings is without departmental sanction and even though there was no evidence



regarding the petitioner of colluding with the mining Mafia, the allegations mostly charge him on indiscipline, arrogant behaviour and unauthorized absence. Learned counsel submits that once a view was taken by the departmental Secretary and the Minister, to conclude the proceeding with a warning, the approval of the Minister should have been taken on the initiation in the light of the legal opinion.

According to learned counsel the opinion of the disciplinary authority is on the lines of the opinion of the Advocate General and is nothing beyond. It is submitted that second show cause notice is nothing but a reiteration of the chargesheet and does not give reasons to differ with the reasons assigned by the Enquiry Officer to drop the charges. According to learned counsel, the respondents have not followed the procedure mandated under Rule 18(7) read along side rule 21 of 'the Rules' which casts an obligation on the disciplinary authority to weigh the opinion of the Commission and also give reasons as to the disagreement therefrom. According to learned counsel once the issue stood concluded until the departmental Minister, the only authority who could have opined on issuance of a disagreement note or initiating further enquiry was the Chief Secretary and none else.

Summarizing her arguments, it is contended by Ms. Nirvikar that the order passed is neither resting on supporting evidence nor is



the proceeding sustainable on statutory violation and even the disagreement note as well as the order of dismissal passed by the disciplinary authority is a non-speaking order without expressing any reasons for disagreeing with the opinion of the Enquiry Officer.

The arguments of learned counsel for the petitioners is contested by Mr. Niraj Kumar Sinha, learned A.C. to PAAG 2 as well as Mr. D.K. Sinha learned Senior counsel appearing for the Department of Mines.

It is the argument of learned counsel for the respondents that there is no infirmity in the procedure and that since at the highest level there was a disagreement on the Enquiry Officer's report, a disagreement note was served on the petitioner along with reasons for disagreement. It is the submission of learned counsel for the respondents that the disagreement note contains all the reasons for disagreement. It is the stand of the respondents that since the evidence mentioned in the charge memo was not considered by the Enquiry Officer, that it is relying thereupon, the disagreement note was issued, which had the approval of the Chief Minister. It is the stand of the learned counsel that due procedure has been followed in the matter and the disciplinary proceeding has been held after due opportunity of hearing to the petitioner. It is the case of the respondents that the charges against the petitioner are very serious and it is on



consideration of the charge in the background of the supporting evidence, that a disagreement note was issued and since the reply of the petitioner was not found satisfactory, that the dismissal order has followed.

Mr. D.K. Sinha learned Senior counsel appearing for the Department has made reference to the statement of the petitioner present in paragraphs 12 and 13 of the writ petition to submit that the conduct of the petitioner is reflecting therefrom because he himself admits that he has disobeyed the order of the District Magistrate. Mr. Singh has relied upon a decision of the Supreme Court reported in **(2010) 5 SCC 349 (Union of India Vs. Alok Kumar)** and with reference to paragraphs 82, 83 , 85, 91 and 92 he submits that although a lot has been argued on the prejudice theory and on alleged statutory violations but the legal position has been settled and until such time that prejudice is established as a fact, a mere lacuna here and there, would not be sufficient to quash the order under challenge.

Learned counsel has next referred to the judgment of this court reported in **2000(1) PLJR 566 (Shri Mohd. Quasim Ansari vs. State of Bihar Ors.)** to submit that a recommendation of the Enquiry Officer is a mere recommendation and does not attain finality unless it is accepted by the disciplinary authority. The next judgment relied upon by Mr. D.K. Sinha learned Senior counsel is the judgment of the



Supreme Court reported in **(2006) 9 SCC 440 (Lav Nigam Vs. ITI Ltd.)** relied upon by Ms. Nirvikar in support of her stand regarding issuance of a notice against proposed penalty to submit that although the earlier rule did envisage a notice against proposed penalty but the said provision has been deleted in the present rule.

The sum and substance of argument by the State and learned Senior counsel for the department is that since due opportunity of representation has been given to the delinquent and who has failed to persuade the disciplinary authority in his favour, a mere different opinion would not be sufficient to interfere with the penalty. Learned counsel has referred to an unreported bench decision of this Court arising from **C.W.J.C.No.1142 of 2015 (Allama Mukhtar Vs. State)** in support of such submission.

I have heard learned counsel for the parties and I have perused the records.

Though exhaustive arguments have been advanced by learned counsel representing the respective parties but in my opinion and for the present I need not enter into the relative merits of the case because I find a very serious infirmity in the decision making process. Whether or not there is evidence to support the charge and whether or not evidence was led to support the charge are matters discussed by the Enquiry Officer but the opinion of the disciplinary authority has



differed on the finding recorded by the Enquiry Officer. It is a different matter that while the Enquiry Officer has submitted his report as back as on 8.6.2009 vide Annexure-17 to exonerate the petitioner from all charges, it has taken the Department almost 5 years thereafter to arrive at a conclusion to issue a disagreement note. Two files relatable to the proceeding has been produced by learned State counsel and I find from the two files so produced by Mr. Sinha learned A.C. to PAAG 2 that whereas the original file No.19 of 2009 is the file containing the decisions taken on initiation of the proceeding until the submission of the enquiry report by the Enquiry Officer and also contains recommendations of the Departmental Minister to accept the Enquiry Officer's report but some executive much below in rank, has differed from the Departmental Minister to again initiate the file, this time by opening a new file bearing No.13 of 2012.

I have not been able to understand the necessity/requirement of initiating a different file merely because a proposal was mooted by some one down the ladder in hierarchy, to differ with the opinion of the Departmental Minister and when it was thought proper to obtain legal opinion which recommended issuance of a disagreement note on Charge Nos. (1),(2),(3), (5) and (7). In between the respondents misconstruing the legal opinion, initiated fresh proceeding but which



was interfered with by this Court vide Annexure-22 with the direction to the Enquiry Officer to conclude further enquiry and pass final orders. Defying the order of this Court the respondent(s) yet chose to continue with the second round enquiry and which led to the filing of the contempt application and it is only when confronted by the bench that it dawned upon the respondents that they were proceeding contrary to 'the rules', to take a stand before this Court in the contempt application that they shall proceed in terms of the order passed on the writ petition on 3.10.2012. This led to the issuance of the disagreement note vide Annexure-28 and although an exhaustive reply has been filed by the petitioner vide Annexure-29 thereto and even though the opinion of the BPSC is for punishment other than dismissal but yet it has resulted in the order of termination impugned at Annexure-32.

As I have already observed, for the present, I shall not be entering into the merit of the charges and whether there was evidence available to support the charges and whether those evidence has been led by the department during the course of enquiry because in the present case even though this Court gave the authorities a liberty of holding further enquiry, the disciplinary authority misconstrued the order of this Court passed on the writ petition at Annexure-22 and initiated fresh proceeding. It is only when the matter reached the



contempt stage that the mistake was accepted by the State but yet they have not chosen to hold further enquiry rather they have proceeded to issue a disagreement note simplicitor vide Annexure-28 on the enquiry report dated 8.6.2009 present at Annexure-17.

In other words, even if the disciplinary authority has found the enquiry officer's report wanting on certain issues and even though liberty was granted to him by this Court to hold further enquiry yet the liberty has not been exercised rather the disciplinary authority has proceeded with the disagreement note. The disagreement note has been contested by the petitioner by filing a very exhaustive reply, a copy of which is present at Annexure-29. In fact he has clearly stated that the disagreement note is based on no evidence. The petitioner has also relied on a number of enclosures in his reply to the disagreement note, to vindicate his stand. The reply runs into almost 70 pages inclusive of the enclosures but has been rejected by the disciplinary authority without any discussion and even without assigning any reason for rejection.

A plain reading of the order of termination impugned at Annexure-32 would show that even when the disciplinary authority has chosen to impose an extreme penalty of dismissal on the petitioner but it has not bothered to satisfy itself on the opinion of the Departmental Minister who has twice opined for dropping of the



proceedings by issuance of a warning to the petitioner of being careful in future.

The disciplinary authority has also neither chosen to discuss the reasons to differ from the opinion of the BPSC who has opined against the dismissal nor the disciplinary authority has chosen to deal with the explanation of the petitioner who has consistently stated that the allegations are founded on no evidence. Though the petitioner has enclosed a number of documents in his reply to the disagreement note to establish his innocence in the matter but no reasons are assigned for rejection of the explanation and upholding the penalty of dismissal.

The legal position on the onus to be discharged by authority performing quasi judicial functions as well as the manner of disposal stands discussed in the judgment of the Supreme Court rendered in the case of **Travancore Rayons Ltd. v. The Union of India and Ors.** since reported in Air 1971 SC 862. The duty cast on the quasi judicial authority as well as the importance of assigning reasons while adjudicating on inter party rights having been settled, and followed until date, yet has evaded the wisdom of the authorities performing such quasi judicial functions, as often seen. Even as recently, the Supreme Court in the case of **Kranti Associates Private Limited vs. Masood Ahmed Khan** reported in (2010)9 SCC 496, has reiterated the position. While discussing on the duty cast on the quasi judicial



authority to assign reasons, the Court has discussed the legal position developed over the period and has summarized the legal position in paragraph 47 of the judgment in the following manner:

“Summarising the above discussion, this Court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.



(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or “rubber-stamp reasons” is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in *Defence of Judicial Candor*³²).

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See *Ruiz Torija vs. Spain*³³ EHR, at 562 para 29 and *Anyia v. University of Oxford*³⁴, wherein the Court referred to Article 6 of the European Convention of Human Rights which requires,

“adequate and intelligent reasons must be given for judicial decisions.”

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of “due process”.

Reverting to the order of dismissal impugned at Annexure-32, while paragraph 1 and 2 of the order merely discusses the sequence of events, paragraph 3 refers to the issuance of the second show cause notice and the receipt of the reply but the disciplinary authority thereafter without expressing any opinion on the reply so submitted



by the petitioner, straightway proceeds to seek opinion of the BPSC on the proposed dismissal. In other words paragraph 3 of the order of the disciplinary authority expresses a premeditated intention of dismissal because the order at paragraph 3 proceeds to seek opinion of the BPSC on the proposed dismissal without even rejecting the reply of the petitioner. Paragraph 4 of the impugned order though disagrees with the opinion of the BPSC on the proposed dismissal but again the reasons are missing and though a duty is cast upon the disciplinary authority to assign reasons in terms of Rule 21 of 'the Rules' as rightly argued by Ms. Nirvikar, the onus is not discharged. The entire proceeding from the stage of issuance of disagreement note is a bundle of flouted procedures.

The order of dismissal apparently is mechanical, bereft of discussion and expresses no reasons for imposing the extreme penalty of dismissal which has been passed without rejecting the explanation of the petitioner or expressing any opinion thereon.

For the reasons mentioned, the order of dismissal passed by the disciplinary authority bearing Memo No.4224 dated 25.11.2014 impugned at Annexure-32 cannot be upheld and is accordingly quashed and set aside and the matter is remitted back to the disciplinary authority to pass a fresh order, if so advised, in consideration of the opinion of the Departmental Minister which has



not been interfered with or over ruled by any superior authority, the opinion of the Bihar Public Service Commission, the opinion of the Enquiry Officer and the explanation given by the petitioner on the disagreement note.

The writ petition is allowed with consequential reliefs.

Let the records of the proceedings i.e File No. 19 of 2009 and File No. 13 of 2012 be returned to the custody of learned State counsel.

Bibhash/-

AFR/NAFR	AFR
CAV DATE	08.12.2016
Uploading Date	18.03.2017
Transmission Date	NA

(Jyoti Saran, J.)

