

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18300 of 2010

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Ran Bahadur Sharma, S/O Late Mulk Raj Sharma, R/O Vill.- Tendua, P.S.- Nokha,
in the district of Rohtas.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Government of Bihar, Patna.
2. The Principal Secretary Department Of Home, Government of Bihar, Patna.
3. The Inspector General, Prison.
4. The Director, Administration Home (Jail) Department, Bihar, Patna.
5. The Jail Superintendent, Central Jail, Buxar.
6. The Jail Superintendent, District Jail, Siwan.
7. The Jailor, District Jail, Siwan.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar, Advocate

For the Respondent/s :

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 10-08-2017

Petitioner, who at the relevant time was working as a Warden in the District Jail, Siwan, has filed this writ petition challenging order dated 02.03.2010 issued by the Inspector General of Prison imposing upon him punishment of stoppage of four increments with cumulative effect, confirmation of the period of suspension and the order dated 08.07.2010 passed by the appellate authority rejecting his appeal.

2. It is alleged against the petitioner that on 03.08.2008 when the officials of the District Administration, Siwan conducted a raid in the jail premises, 37 mobile and other restricted articles were



recovered from different wards of the District jail, Siwan and based on the report submitted by the District Magistrate to the Inspector General, Prison, Bihar, a charge-sheet was issued to the petitioner vide Annexure-6 dated 30th December, 2008, petitioner submitted his detailed explanation to the charge-sheet, vide Annexure-7, on 13.01.2009 and records indicates that an enquiry was ordered into the matter, the proceedings of the enquiry was held on a single day, i.e. on 29.06.2009 and based on the enquiry conducted, the enquiry officer submitted his report, Annexure-8, on 27.08.2009, holding the petitioner guilty of the charges levelled against him and based on this, the impugned action has been taken.

3. It is the case of the petitioner that before imposing punishment in question, a proper departmental enquiry has not been conducted, opportunity of defence has not been granted, documents, based on which the charges were levelled, were not supplied to him, no witness was examined in the departmental enquiry, his explanation and the statement given in the departmental enquiry were not considered and, in an illegal manner, on a single day, after concluding the enquiry, the impugned action has been taken.

4. Respondents have filed a detailed reply and they contend that the charge-sheet along with relevant documents and list of witnesses were supplied to the petitioner, the petitioner appeared



before the enquiry officer on 29.06.2009, his statement was recorded, he did not call for any witness, nor did he ask to cross-examine any witness and thereafter, the enquiry officer submitted his report, Annexure-8, based on which the impugned departmental action is taken.

5. The only question involved in this writ petition, as is made out after hearing learned counsel for the petitioner and on scanning of the record, is that as to whether the impugned action has been taken after following due process of law, grant of proper opportunity to the delinquent employee and whether principles of natural justice have been followed.

6. A perusal of the charge-sheet goes to show that the allegations levelled in the charge-sheet was based on the inspection conducted in the jail premises on 03.08.2008, the inspection report submitted by the District Magistrate and the Superintendent of Police, Siwan on 03.08.2008 and 05.08.2008 and the report submitted by the Superintendent of Jail, Siwan on 06.08.2008. That apart, in the charge-sheet, list of witnesses are also indicated, based on which the departmental enquiry was to be conducted.

7. In the counter affidavit filed by the respondents, they say that the departmental enquiry was conducted on 29.06.2009, the petitioner participated in the enquiry, his statement was recorded and



thereafter, he did not seek for cross-examining any witness and thereafter, enquiry officer submitted his report holding the petitioner guilty of charges levelled against him, vide Annexure-8. Except for making the assertions, as is indicated hereinabove in the return, respondents have not brought on record the proceedings of the departmental enquiry, the statement of witnesses recorded in the departmental enquiry, the documents produced, as referred to in the charge-sheet, and other material which form part of the departmental enquiry that was conducted on 29.06.2009. Even the report of the enquiry officer is not filed by the Department, but in the return, they rely on the enquiry report filed by the petitioner as Annexure-8.

8. That being so, this Court is required to decide as to whether the enquiry has been properly conducted or not, based on the findings and the report submitted by the enquiry officer, vide Annexure-8 on 27.08.2009. A perusal of the enquiry report indicates that it is one page enquiry report consisting of three paragraphs. In the first paragraph, the allegations levelled against the petitioner in six lines are recorded by the enquiry officer. Thereafter, the second part is the explanation given by the employee concerned to the charge-sheet which is again of about six lines, whereas the explanation submitted by the employee consists of more than 14 pages, and finally, the conclusion is recorded in four lines to say that the charges levelled



against the employee with regard to incident that took place on 03.08.2008 is proved. This is not an enquiry report in the eyes of law; it does not meet the requirement of application of mind showing reasons for recording finding and consideration of the evidence and material that came on record. The enquiry report does not indicate as to who were the witnesses who were examined in the departmental enquiry; what was the document produced, what was the statement of the petitioner in the departmental enquiry and how his explanation submitted has been considered.

9. In the case of **Anil Kumar Versus Presiding Officer**, AIR 1985 SC 1121, it has been held by the Supreme Court that an enquiry report with regard to a departmental enquiry conducted by the enquiry officer should not be based on the *ipse dixit* of the enquiry officer. It should show as to what are the charges levelled against the petitioner, how a departmental enquiry was conducted. What was the evidence that came on record, it should show analysis of the evidence and conclusion of the enquiry officer based on reasons to show that the evidence that came before the Enquiry Officer was analyzed in the backdrop of the explanation submitted by the petitioner and he holds the delinquent employee guilty of the charges levelled against him. The Hon'ble Supreme Court in the aforesaid case holds that if the report of enquiry officer does not meet the aforesaid requirement of law, it is a



total violation of the principles of natural justice and based on such enquiry report, no punishment can be imposed upon a delinquent employee. In the case of **Anil Kumar** (supra), the Hon'ble Supreme Court in para 5 and 6 has laid down the principle in the following manner:-

“5.It is well-settled that a disciplinary enquiry has to be a quasi-judicial enquiry held according to the principles of natural justice and the Enquiry Officer has a duty to act judicially. The Enquiry Officer did not apply his mind to the evidence. Save setting out the names of the witnesses, he did not discuss the evidence. He merely recorded his *ipse dixit* that the charges are proved. He did not assign a single reason why the evidence produced by the appellant did not appeal to him or was considered not credit-worthy. He did not permit a peep into his mind as to why the evidence produced by the management appealed to him in preference to the evidence produced by the appellant. An enquiry report in a quasi-judicial enquiry must show the reasons for the conclusion. It cannot be an *ipse dixit* of the Enquiry Officer. It has to be a speaking order in the sense that the conclusion is supported by reasons. This is too well-settled to be supported by a precedent. In *Madhya Pradesh Industries Ltd. v. Union of India* [1966] 1 SCR 466 : (AIR 1966 SC 671), this Court observed that a speaking order will at best be a reasonable and at its worst be at least a plausible one. The public should not be deprived of this only safeguard. Similarly in *Mahabir*



Prasad v. State of Uttar Pradesh [1971] 1 SCR201: (AIR 1970 SC 1302), this Court reiterated that satisfactory decision of a disputed claim may be reached only if it be supported by the most cogent reasons that appealed to the authority. It should all the more be so where the quasi-judicial enquiry may result in deprivation of livelihood or attach a stigma to the character. In this case the enquiry report is an order sheet which merely produces the stage through which the enquiry passed. It clearly disclosed a total non-application of mind and it is this report on which the General Manager acted in terminating the service of the appellant. There could not have been a gross case of non-application of mind and it is such an enquiry which has found favour with the Labour Court and the High Court.”

6. Where a disciplinary enquiry affects the livelihood and is likely to cast a stigma and it has to be held in accordance with the principles of natural justice, the minimum expectation is that the report must be a reasoned one. The Court then may not enter into the adequacy or sufficiency of evidence. But where the evidence is annexed to an order sheet and no correlation is established between the two showing application of mind, we are constrained to observe that it is not an enquiry report at all. Therefore, there was no enquiry in this case worth the name and the order of termination based on such proceeding disclosing non-application of mind would be unsustainable.”



10. If the enquiry report and the proceedings of the enquiry are analyzed in the backdrop of the aforesaid requirement of law as laid down by the Hon'ble Supreme Court as detailed hereinabove, the enquiry report is a perverse report, does not show the application of mind and, in fact, is a cyclostyle report with many blanks.

11. Accordingly, this Court finds that the report of the enquiry officer does not meet the requirement of law, it is in violation of the principles of natural justice and based on the said enquiry report, the action undertaken is not sustainable. Even the defence and the explanation of the petitioner is not being adverted to, considered and discussed in the enquiry report. That apart, vide Annexure-15 dated 19.08.2010, petitioner submitted a detailed appeal to the Principle Secretary to the Department, reported various grounds as are indicated hereinabove and the findings of the appellate authority as contained in Annexure-2, dated 08.07.2010 goes to show that he has also not considered all aspects and in a mechanical manner has rejected the appeal. Taking note of all these factors and the manner in which the major punishment has been imposed upon the petitioner, this Court has no other option but to allow this writ petition.

12. Accordingly, impugned orders dated 02.03.2010 passed by the disciplinary authority (Annexure-1) and the order dated 08.07.2010 (Annexure-2) passed by the appellate authority are



quashed. The petition stands allowed and disposed of.

(Rajendra Menon, CJ)

Sunil/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	19.08.2017
Transmission Date	

