

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4254 of 2008

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Chandra Kishore Prasad, retd. Assistant Mining Officer, Son of late Keshav Prasad,
Resident of East Patel Nagar, Road No.7, P.S. Shashtri Nagar, Patna-23.

.... Petitioner/s

Versus

1. The State of Bihar through the Commissioner-cum-Secretary, Department of Mines and Geology, Government of Bihar, New Secretariat, Vikas Bhawan, Patna.
2. The Commissioner-cum-Secretary, Department of Mines and Geology, Government of Bihar, New Secretariat, Vikas Bhawan, Patna.
3. The Special Secretary, Department of Mines and Geology, Government of Bihar, New Secretariat, Vikas Bhawan, Patna.
4. The Under Secretary, Department of Mines and Geology, Government of Bihar, New Secretariat, Vikas Bhawan, Patna.
5. The Accountant General (Bihar), Patna, Veer Kunwar Singh Marg, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Akashdeep, Adv. Mr. Shyameshwar Kr. Singh, Adv.
For the Resp. 1 to 4	:	Mr. Naresh Dikshit, Adv. Mr. Vivek Anand Amritesh, Adv.
For the A.G.	:	Mr. Raghwanand, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date: 14-11-2017

Heard learned counsel for the parties.

The petitioner was appointed as Assistant Mining Officer, was posted at Pakur and was deputed at the check post to prevent illegal trafficking of stones chips i.e. minor mineral.

During 1995, at Pakur-Dulhiyan Road, a check post was opened, remained operational between 1 AM to 10 PM i.e. 16 hours,



in 2 shifts, 8 hour each. In 1st shift, the duty of the petitioner along with P.N. Singh from 6 AM to 2 PM and in 2nd shift i.e. 2 PM to 10 PM was manned by Sri A.K. Jha and Sri D.N. Singh. The petitioner along with Sri P.N. Singh were deputed at the check post from 6 AM to 2 PM on 11.1.1996, 12.1.1996 and again from 6 AM of 13.1.1996 to 6 AM of 14.1.1996. The Deputy Commissioner, Pakur randomly started checking the trucks loaded with stone chips and was found that they were without valid paper, on query, they have informed the Deputy Commissioner of Mines that on payment of Rs. 100, the trucks were allowed to move out from the check post, then the report was submitted by the Deputy Mines Officer, Pakur on 28.1.1996 wherein he has given description of the incident and his checking, the statement made by he drivers who were carrying the stone chips. From the report, it appears that he had intercepted four trucks bearing number WB-65-1643, WB-65-0492, BHX-7697 and WB-65-1039 and in the report, it has been mentioned that at the relevant time, the check post was manned by Sri C. K. Prasad, the Assistant Mines Officer and Sri P.N. Singh, Mines Inspector. On 7.1.1996, again a random checking was started in Pakur-Dhuliyar Road at Chandpur and Chanchki, intercepted two trucks bearing no. WB-65-1073 and URH-563 and they were also not carrying valid document but, the drivers had informed that they came out from the check post on payment of



Rs. 100. At that time, at the check post, Sri C.K. Prasad, the Assistant Mines Officer, Sri P.N. Singh, Mines Inspector and later on Sri D.N. Singh, Mines Inspector were present. Again on 11.1.1996 at 6 AM to 6 AM of 12.1.1996, a random checking was started and it was found that there were illegal movement of the trucks without valid document and, during checking, it was found, entry in Register was not correct than that of the actual number of trucks crossing the barrier. Allegation has been made that those persons, who were posted at the check post, were engaged in the illegal earning. From the report (Annexure-1), it appears that identical allegation has been made against Sri C.K. Prasad, Sri P.N. Singh, on the basis of that report, the Department decided to initiate a proceeding against the present petitioner and Sri P.N. Singh, charge-sheet was issued vide letter dated 10.1.1997 (Annexure-2), in terms thereof, the petitioner filed its reply of those charges denied the allegation leveled against him, taken a plea that the check post did not have proper infrastructure and truck can escape easily from there as proper arrangement can only prevent the escape of truck from the check post. It has further been taken ground that trucks slipped away from there though tried to intercept which they had recorded in the register, so both Sri P.N. Singh and the present petitioner had replied and denied the allegation of extracting money illegally, as the enquiry could not be concluded, in the



meantime, the petitioner has superannuated from service on 30.6.2001. A new enquiry officer was appointed on 2.8.2002, as per petitioner, he filed an application on 19.2.2002 to supply document and for examination of the witnesses as claimed by the petitioner but those documents were not supplied.

Learned counsel for the petitioner submits that on conclusion of proceeding, the enquiry report dated 12.6.2003 was submitted. The enquiry officer found that the charges were not proved against the petitioner nor against Sri P.N. Singh. The enquiry report with respect to Sri P.N. Singh was accepted and he has been exonerated vide order dated 17.2.2004 but, in the case of the petitioner, the Disciplinary Authority differed with the finding of Enquiry Officer, gave second show-cause to the petitioner vide letter dated 26.6.2004 (Annexure-9) whereby the petitioner was called upon to give explanation of second show-cause wherein the proposed punishment was mentioned of reduction of pension by 10%. The petitioner approached this Court in C.W.J.C. No. 5697 of 2004 and this Court, placing reliance in the 1998 (7) SCC 84 (Punjab Natinal Bank & Ors. Vs. Kunj Behari Mishra), 2003 (1) PLJR 31 (Saroj Kumari VS. the State of Bihar & Ors. and 1993 (4) SCC 727 (Managing Director, ECIL, Hyderabad & Ors. Vs. B. Karunakar & Ors.) and quashed the second show-cause holding that they have not



followed the proper procedure in the matter of second show-cause and remanded back for taking proper action in accordance with law laid down by the Hon'ble Apex Court. In pursuance thereof, after remand of the matter, again second show-cause was issued on 6.3.2006 (Annexure-11) to the writ application wherein it has been mentioned that the charge has been proved which is the grievance of the petitioner, if such finding has been recorded then nothing left for the Disciplinary Authority to consider his objection and the Disciplinary Authority recorded disagreement, replied by the petitioner and ultimately the punishment has been passed by the Disciplinary Authority reducing the pension by 10%.

Several grievances have been raised by the petitioner in the present case, one of the grievances has been raised now it is not proper after a long period of time the matter should be quashed and remanded back as the equity lies in favour of the petitioner, during that period the petitioner continued to face situation of hanging of the sword over the head. Another point has been taken that the Disciplinary Authority while issuing the show-cause has recorded the charge proved i.e. he has shown his mind by such recording, it was useless to proceed further and also the difference of opinion in such situation has no meaning in the eye of law. Third point has been raised that Mr. P.N. Singh who was posted in the same shift along



with the petitioner during the period the alleged trucks had escaped, Mr. P.N. Singh was also proceeded, enquiry report pertaining to P.N. Singh accepted, he was left out whereas the petitioner has been proceeded and punishment has been awarded. He has taken a plea that for the same incident, when enquiry officer with respect to both did not find charges proved, can a person be punished and another person will be let out. He has further submitted that while passing the order, the Disciplinary Authority did not care to examine the reply of second show-cause, when an explanation was filed, it is the bounden duty of the Disciplinary Authority to examine as to whether there is any merit in the in the defence taken by the petitioner but, ignoring all the defence, has passed the order of punishment. Now so far the delay is concerned, it appears that the matter is running in this Court since 2008. So no one can be blamed for delay as time consumed due to pendency, the judgment which has been placed reliance by the petitioner in the case of *Gurusharan Prasad Singh Vs. State of Bihar through the Secretary, Government of Bihar, Patna & Ors.* reported in 2009 (2) *PLJR 194* does not apply to the fact of this case. Annexure-1 itself reflects that Mr. P.N. Singh and the petitioner were deputed at the same place and at same time, during the period the truck escaped. If the truck escaped, it was joint responsibility of Mr. P. N. Singh and the petitioner, both were equally liable for the same treatment. For the



same incident when two persons were posted, it does not stand to the reason why one person has been left out but, another person has been punished, either punishment will be inflicted on both persons or none will be punished for identical charge and enquiry report. Third one most important that in the show-cause the Disciplinary Authority has used the word “अतएव संचालन पदाधिकारी से असहमति व्यक्त करते हुए विभाग ने पाया कि आपके विरुद्ध गठित आरोप प्रमाणित होते हैं।” this part will be treated to have been deleted as allowing that finding, nothing left for consideration. So from Annexure-11, it will be treated that the word “अतएव संचालन पदाधिकारी से असहमति व्यक्त करते हुए विभाग ने पाया कि आपके विरुद्ध गठित आरोप प्रमाणित होते हैं।” will be treated not to be part of the show-cause. The Disciplinary Authority without application of mind and by a cryptic order dated 30.4.2007 inflicted punishment of reduction of pension by 10%. It is well settled principle of law that when an authority is discharging the administrative or quasi judicial function, his order of punishment must reflect application of mind by passing a reasoned order which would show how he has reacted to the explanation submitted by the delinquent. If the ultimate order is bereft of the reasonings, it amounts to violating of Article 14 of the Constitution of India as the reasoning is the living link between the mind of decision maker and decision will reflect what was going on in the mind of the Disciplinary Authority while passing the order but, it



is completely missing in the order. Reliance in this regard may be made to the judgment in the case of *Chairman And Managing Director, United Commercial Bank and Ors. Vs. P.C. Kakkar* reported in (2003) 4 364 relevant portion whereof reads as follows:-

“15. *It needs no emphasis that when a Court feels that the punishment is shockingly disproportionate, it must record reasons for coming to such a conclusion. Mere expression that the punishment is shockingly disproportionate would not meet the requirement of law. Even in respect of administrative orders Lord Denning M.R. in Breen v. Amalgamated Engineering Union 1971 (1) All E.R. 1148 observed "The giving of reasons is one of the fundamentals of good administration". In Alexander Machinery (Dudley) Ltd. v. Crabtree 1974 LCR 120 it was observed: "Failure to give reasons amounts to denial of justice". Reasons are live links between the mind of the decision taken to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system. Another rationale is that the affected party can know why the decision has gone against him. One*



of the salutary requirements of natural justice is spelling out reasons for the order made in other words, a speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance. But as noted above, the proceedings commenced in 1981. The employee was placed under suspension from 1983 to 1988 and has superannuated in 2002. Acquittal in the criminal case is not determinative of the commission of misconduct or otherwise, and it is open to the authorities to proceed with the disciplinary proceedings, notwithstanding acquittal in criminal case. It per se would not entitle the employee to claim immunity from the proceedings. At the most the factum of acquittal may be a circumstance to be considered while awarding punishment. It would depend upon facts of each case and even that cannot have universal application."

In that view of the matter, the order dated 30.4.2007 is set aside and the matter is remanded back to the Disciplinary Authority who will consider the objection in the light of the observations made herein above and will pass a final order in accordance with law.

This writ application is, accordingly, allowed to the extent indicated above.

This order has been passed in presence of the counsel for the Mines Department, it is his duty to communicate this order to the Disciplinary Authority and the Disciplinary Authority will pass orders



within a period of three months from the date of receipt/production of
a copy of this order.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.11.2017
Transmission Date	NA

