

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18446 of 2008

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Dhirendra Prasad Sah @ Dhirendra Sah, son of Late Mahavir Sah, presently posted as Panchayat Secretary, Block+P.S. Choutham, Dist. Khagaria.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
2. The Deputy Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
3. The Divisional Commissioner, Munger.
4. The District Magistrate, Khagaria.
5. The Deputy Collector, Establishment, Khagaria.
6. The Circle Officer, Chautham Block, Dist. Khagaria.
7. The Block Development Officer, Chautham Block, Dist. Khagaria.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pramod Mishra, Adv.

For the Respondent/s : Ms. Alka Verma, AC to SC-17

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 27-11-2017

Heard learned counsel for the parties.

In the present case, the petitioner has approached this Court against the order passed against him for committing the misconduct.

It appears that the petitioner and other Karamcharis had taken mass leave and, thereafter, they have asked to join within the specified time. After their respective joining, a proceeding was initiated against them along with petitioner, the authority has passed order of stoppage of three increments with cumulative effect which has been affirmed by the Commissioner and up to the Government level.



The short point has been raised by the petitioner that the petitioner has been inflicted with major penalty, of stoppage of three increments with cumulative effect which, under the rule, is a major penalty, requires a full fledged enquiry but the same has not been done in the present case, merely by issuing show-cause, on receipt of the explanation, the order of major punishment has been slapped on the petitioner and other comrades.

Learned counsel for the petitioner has submitted that the petitioner has raised the aforesaid issue of full-fledged enquiry before the Commissioner but, did not give fruitful result, approached this Court in C.W.J.C. No. 7493 of 2004 and this Court remanded back the matter to the State Government for giving sympathetic consideration. The petitioner filed detailed representation but, by a cryptic order, without discussing the issue raised therein, has rejected the same vide order dated 15.10.2007 and the order does not disclose reason for rejecting the representation of the petitioner. He further submits that while rejecting the representation, the reason must be assigned, in absence of reason, it will be very difficult to assess what was going in the mind of the authority as reason is the living link between the decision and decision maker, is the in view of this Court and Hon'ble Apex Court, right from many decades, it has been held that while passing the order, the authority must show reason for arriving to such a finding is part of natural justice, in absence of the same, violates Article 14 of the



Constitution of India.

Learned counsel for the State has submitted that the authority has taken action proportionate to the demeanor of the petitioner as he was involved in wrong doing, after giving show-cause, the order of punishment has been passed.

Having considered the rival contentions of the parties, in the minor misconduct, the show-cause and the consideration of explanation is sufficient for compliance of the natural justice but, in the event the major penalty is imposed, it is presupposed that it requires a full-fledged enquiry and it must reflect that the charges have been proved by cogent evidence but, in the present case, no such proper enquiry has been followed rather procedure has been followed in perfunctory manner, after issuance of the show-cause, the order has been passed which cannot be sustained in law. Even more, the order has been passed by the Deputy Secretary vide order dated 15.10.2007 (Annexure-12) is also suffering from arbitrary exercise of power as it does not disclose reason for rejecting the application of the petitioner. If the reason is missing, the order suffers from its inherent defect as the reason is the living link between the judgment maker and the judgment. Reliance in this connection may be made to the judgment passed in the case of *Chairman & Managing Director, United Commercial Bank & Ors. Vs. P.C. Kakkar* reported in (2003) 4 SCC 364. It is relevant to quote paragraph no.15 which 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 view of the aforesaid discussion, the order dated 12.12.2002 (Annexure-7) passed by the District Magistrate, Khagaria and the order dated 21.5.2004 passed by the Divisional Commissioner and the order dated 15.10.2007 passed by the Deputy Secretary, Government of Bihar are set aside and the matter is remanded back to the District Magistrate, Khagaria, who will take action in accordance with law.

In the result, this application stands allowed to the aforesaid extent.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
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