

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17482 of 2008

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Naresh Nath s/o Late Jag Narayan Ram, r/v-Bharsara, P.O.-Bihiya, P.s. – Bihiya, District – Bhojpur at Ara presently posted as Joint Director, Agriculture, Saran Division, Chapra (Under Suspension)

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary –cum-Agriculture Production Commissioner, Agriculture Department, Government of Bihar, Patna
3. The Secretary, Agriculture Department, Government of Bihar, Patna
4. The Director, Agriculture Department, Government of Bihar, Patna
5. The Under Secretary, Agriculture Department, Government of Bihar, Patna
6. The Director (Administration), Agriculture Department, Government of Bihar, Patna
7. The Bihar Public Service Commission, Bailey Road, Patna through the Chairman
8. The Chairman, The Bihar Public Service Commission, Bailey Road, Patna
9. The Secretary, The Bihar Public Service Commission, Bailey Road, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S.B.K.MANGALAM, Adv.
For the Respondent/s : Mr. (AAG2)
Mr. K.Ravish
Mr. G.K.Agrawal
Mr. Sanjay Pandey

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 07-02-2017

Heard Mr. S.B.K. Manglam, learned counsel for the petitioner and learned counsel for the State. Counter affidavit has already been filed.

2. The petitioner filed this writ petition for commanding the respondents to produce the order of dismissal of the petitioner and on such, quash the same, as contained in Memo No. 2117 dated 12.08.2008 of Annexure-A to the counter affidavit.



3. The facts which are relevant for the disposal of this writ petition are that the petitioner was initially appointed, as Junior Research Assistant in Class-III in the Agriculture Department and he joined on 02.01.1980. The petitioner was promoted to the post of Senior Agriculture Extension Officer in the year 1986 at Bhabhua where he joined on 27.10.1986. Senior Agriculture Extension Officer is a Class-II post in the service of Agriculture Department, Government of Bihar. Later on, the petitioner was appointed as Block Development Officer, Marhaura in the year 1986. The petitioner was transferred and posted as Block Development Officer, Patarghat in the year 1993, which was newly created block in the district of Saharsa. The petitioner was transferred to Patarghat to Muzaffarpur, as Deputy Director, Agriculture (Tobacco) vide Memo No. 13984/Patna dated 31.12.1993. The petitioner was directed to hand over the charge till 20.01.1994, otherwise they would deem to have been relieved. The petitioner handed over the charge to his successor and he was working as Deputy Director, Agriculture (Tobacco), Muzaffarpur vide letter no. 1369 dated 24.08.1994 the District Magistrate asked the petitioner to show-cause about the charges mentioned in the letter for initiation of a departmental proceeding.

4. The petitioner after having received the aforesaid letter submitted his show-cause vide letter no. 848 dated 07.08.1995 to the



Under Secretary, Agriculture Department, Government of Bihar and the petitioner denied charges and also stated that since Patarghat block was newly created, no experienced Clerk or Accountant was posted and therefore, cash-book and the accounts could not be maintained and that was the reason for delay in handing over the charge. Even after submission of detailed show-cause, the Government of Bihar, resolved to initiate a departmental proceeding vide Memo No. 74 dated 16.01.1996 under Rule -55 of the Bihar Civil Services (Classification Control and Appeal) Rules at Annexure-8. The Chief Vigilance Officer served a memo of charges which contains sixteen different charges. The petitioner filed his detailed show-cause before the Enquiry Officer who submitted his report vide Memo No. 1997 dated 19.06.2007 at Annexure-11. The second show-cause notice was also served and the petitioner on 10.05.2007 submitted his detailed second show-cause notice stating that out of sixteen charges, Charge nos. 9(2), 9(4), 9(5), 9(6), 9(7), 9(8), 10, 11, 12, 13 and 14 were not found proved. Charges which are said to have been proved during the course of enquiry, are in sum and substances relating to the facts that the petitioner did not obey the order of transfer within time, although, no other charges either for defalcation of any government money or any other charges were proved. The Government also consulted the Bihar Public Service Commission, but the B.P.S.C. did not concur



with the view of the Enquiry Officer, as no substantial charge was proved against the petitioner. The Disciplinary Authority vide his notification, as contained in Memo No. 2117 dated 12.08.2008 (Annexure-A) dismissed the petitioner from service.

5. Mr. S.B.K. Mangalam learned counsel for the petitioner submits that during the course of departmental enquiry the petitioner has given his exhaustive show-cause. Even the Enquiry Officer did not find any charge, with regard to defalcation of government money, proved. Charges which are said to have been proved are with regard to disobedience of the petitioner in handing over the charge to his successor. It is submitted that the petitioner was posted, as Block Development Officer, Patarghat block which was newly created and no experienced Clerk or Accountant was posted in Patarghat block, therefore, the cash-book and accounts registers were not updated which caused delay in handing over the charge to the successor of the petitioner. The petitioner wrote several letters for posting of Clerk and Accountant in Patarghat block to the District Magistrate, Deputy Development Commissioner (D.D.C.), District Panchayat Officer and after much delay the Accountant and Clerk were posted. Thereafter, the Cash-books and Accounts of the block were updated and the petitioner handed over the charge. The Enquiry Officer also found these facts proved. It is further submitted that the



petitioner gave detailed show-cause, but the Enquiry Officer did not advert the points raised by the petitioner in his report. The petitioner also filed his second show-cause, but the Disciplinary Authority has also not considered any facts enumerated in the second show-cause of the petitioner and without giving any reason, the order of dismissal was passed, which is non-speaking and thus the order is vitiated on account of violation of principle of natural justice.

6. Learned counsel for the petitioner placed his reliance on the Judgment of the Supreme Court as reported in **2010(9) SCC at page 496 (Kranti Associates Pvt. Ltd. and Anr vs. Masood Ahmed Khan and Ors)**. The relevant para 46 and 47 are herein reproduced :-

Para 46 – The position in the United States has been indicated by this Court in S.N. Mukherjee in SCC p. 602, para 11: AIR para 11 at p. 1988 of the judgment. This Court held that in the United States the courts have always insisted on the recording of reasons by administrative authorities in exercise of their powers. It was further held that such recording of reasons is required as “the courts cannot exercise their duty of review unless they are advised of the considerations underlying the action under review”. In S.N. Mukherjee this Court relied on the decisions of the US Court in Securities and Exchange Commission v. Chenery Corpn. And Dunlop v. Bachowski in support of its opinion discussed above.



Para 47 :- Summarizing the above discussion, this courts hold:

(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 life blood 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.

(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 v. Spain EHRR, at 562 para 29 and Anya v. University of Oxford, wherein the Court referred to Article 6 of 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".

7. Learned counsel for the petitioner further placed his reliance on para 19 of the Judgment reported in 2010 (Vol. 2) S.C.C. at page 497 (Vallikumari vs. Andhra Education Society and Ors)



which is as follows:-

Para 19 – In his order, the Chairman of the Managing Committee did refer to the allegations levelled against the appellant and representation submitted by her in the light of the findings recorded by the enquiry officer, but without even adverting to the contents of her representation and giving a semblance of indication of application of mind in the context of Rule 120(1)(d)(iv) of the Rules, he directed her removal from service. Therefore, there is no escape from the conclusion that the order of punishment was passed by the Chairman without complying with the mandate of the relevant statutory rule and the principles of natural justice. The requirement of recording reasons by every quasi-judicial or even an administrative authority entrusted with the task of passing an order adversely affecting an individual and communication thereof to the affected person is one of the recognized facets of the rules of natural justice and violation thereof has the effect of vitiating the order passed by the authority concerned.

8. Learned counsel for the State/respondents has submitted that the order of dismissal does not warrant any interference, as the petitioner has not been able to show any illegality in the procedure of departmental proceeding. The finding of dismissal is based on sound reasoning.



9. From perusal of the order, as contained in Annexure-A of the counter affidavit by which, the service of the petitioner has been terminated, it appears that the charges have been enumerated and the Disciplinary Authority has not considered any material or the facts stated by the petitioner in his show-cause. The Enquiry Officer did not find any charge proved with regard to defalcation of any amount. The charges which are said to have been proved are only with regard to disobedience, for which the petitioner has categorically stated that on account of the circumstances, beyond his control, he could not hand over the charge. The order itself speaks that there is no semblance of consideration of any material submitted by the petitioner in his show-cause. Therefore, on the ground that the order is non-speaking, I find that the order impugned is not sustainable in the eye of law.

10. Mr. Mangalam has further submitted that the petitioner has already retired from service and he has already suffered a lot, as no retiral benefit is given to the petitioner. No useful purpose will be served, remitting the case to the Disciplinary Authority, for passing order afresh, but since the Enquiry Officer has submitted his report and I find that the Disciplinary Authority did not consider the defense of the petitioner, therefore, I thought it proper to remit the case to the Disciplinary Authority to pass order afresh in accordance with law after considering the grounds of the petitioner by reasoned



order.

11. Having considered the facts aforesaid and discussions made, I find that order dated 12.08.2008, as contained in Memo No. 2117 (Annexure-A), is fit to be set aside, as illegal. Accordingly, the aforesaid order is set aside and the matter is remitted to the Disciplinary Authority to pass order afresh, in accordance with law, within three months from the date of receipt of this order.

The writ petition is accordingly allowed.

(Prabhat Kumar Jha, J.)

Vinita/-

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

