IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20478 of 2016

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Sanjay Kumar, aged about 47 years, S/o Sri Braj Kishore Shrivastava, resident of Mohalla- Adarsh mohalla, P.S.- Triveniganj, District- Supaul, presently posted as Deputy Superintendent (Prision), Jehanabad.

.... Petitioner

Versus

1. The State of Bihar.
2. The Principal Secretary (Home), Government of Bihar.
3. The Inspector General (Prision), Government of Bihar.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Chitranjan Sinha, Sr.Adv.
Mr. Rakesh Kumar Shrivastava, Adv.

For the Respondent/s : Mr. Krishna Chandra, AC to AG

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 27-03-2017

Heard Mr. Chitranjan Sinha, learned Senior Counsel appearing on behalf of the petitioner, who appears with Mr. Rakesh Kumar Shrivastava, Advocate on record and Mr. Krishna Chandra, AC to Advocate General.

With the consent of the parties the writ petition has been heard with a view to final disposal at the stage of admission itself.

The petitioner has prayed for quashing of the order dated 30.6.2015 passed by the Principal Secretary (Home), Govt. of Bihar, Patna, whereby the Principal Secretary as an appellate authority while dismissing the appeal preferred by the petitioner has affirmed the order of punishment passed by the Inspector General of Prison bearing Memo No. 3836 dated 11.7.2014, whereby the petitioner has been imposed a major penalty of withholding of two annual increments with cumulative effect in exercise of powers vested in the disciplinary authority under Rule 14 of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Disciplinary Rules'). The order also restricts the pay and allowances of the petitioner to the subsistence allowance drawn by him during the period of suspension.

The facts briefly stated is that the petitioner was appointed as Assistant Jailor and at the relevant time held the post of Deputy Superintendent (Prison), Special Central Jail, Bhagalpur. The petitioner while serving as such was served with the charge memo, a copy of which is impugned at Annexure 2 and whereby he was charged with four acts of alleged misconduct. The charges levelled against the petitioner is that:

(a) He has not properly maintained the registers in relation to contingency fund receipt and the bill preparation and has not made timely payment of the monthly bills of the suppliers which are pending since October, 2012 itself, which acts so complained of shows lack of transparency, reflects financial indiscipline and in violation of departmental orders.

(b) The petitioner instead of making payment to a supplier Md. Hadish Naj for supply of 40 Kgs. of brooms, has made payment to the supplier K.K.Sinha which is a financial irregularity.

(c) The petitioner without obtaining approval of the competent authority has placed bills online which is an act of financial indiscipline and reflects carelessness.

(d) The complaints have been received as regarding the rude behaviour of the petitioner with the senior Jailor and other Jailors.

The petitioner filed his reply to the show cause. The enquiry was held and the report of the Enquiry Officer is present at Annexure 10/A to the supplementary affidavit. The Enquiry Officer while dropping the charges relatable to incorrect payment in respect of supply of brooms as well as alleged rude behaviour has, partially upheld Charge No.1 relating to non-maintenance of the registers etc. and upheld the charge of putting the bills online.

The petitioner was served with a second show cause, a copy of which is placed at Annexure 10 to the supplementary affidavit issued under the signature of the Addl. Secretary of the Director (Administration). The petitioner filed an exhaustive reply thereto, a copy of which is present at Annexure 11. The reply has been rejected by the Inspector General of Prison and while upholding Charge No.1 and 3 in terms of the report of the Enquiry Officer, that the punishment of withholding of two annual increments with cumulative effect has been passed together with restriction with the pay and allowance to the subsistence allowance and which order dated 11.7.2014 of the disciplinary authority has been affirmed by the appellate authority vide Annexure 4 when the appeal filed by the petitioner has been dismissed by the appellate authority i.e. Principal Secretary (Home) vide order passed on 30.6.2015. Feeling aggrieved the petitioner is before this Court.

Mr. Chitranjan Sinha, learned Senior Counsel appearing on behalf of the petitioner, has taken this Court through the reply filed by the petitioner in response to the second show cause vide Annexure 11 as well as to the appeal, a copy of which is present at Annxure 12 to the supplementary affidavit to submit that even when the petitioner has denied the allegation as regarding non-maintenance of the registers and has demanded its production and has also specifically stated that the payment was made as and when bills were received from the supplier, yet neither any documentary nor any oral evidence was produced by the Presenting Officer to support the allegation. He submits that similar is the situation in so far as Charge No.4 is concerned. While the petitioner has specifically stated that he had not issued any instruction to the person concerned for putting the bills online and that the Computer In-charge may be produced for cross-examination, as well the Presenting Officer should produce the evidence to support the allegation, yet nothing was produced. He submits that the disciplinary authority has not decided the issues raised by the petitioner although he has discussed the objections in the impugned order present at Annexure 3A but the disciplinary authority sweepingly rejecting the reply of the petitioner has mechanically upheld the charges simply on grounds that it is obligation of the petitioner as a Deputy Jail Superintendent to maintain registers in terms of Rule 753 of the Bihar Prison Manual.

The issue raised by Mr. Chitranjan Sinha to contest the impugned order is that it does not deal with the explanation given by the petitioner nor discusses the issues raised thereunder and that the show cause notice against the enquiry report at Annexure 10 itself reflects that the punishment was premeditated. Learned counsel has relied upon the judgment of the Supreme Court since reported in (1992)4 SCC 54 (**State of Punjab & ors. v. Ram Singh Ex-constable**) and (2005)8 SCC 351 (**M.M.Malhotra v. Union of India & ors.**) to submit that even if the findings of the Enquiry Officer as upheld by the disciplinary authority and the appellate authority, is taken on its face value, yet the acts complained of would not constitute a misconduct to invite a disciplinary proceeding because all that the disciplinary authority has mentioned in the order of punishment is, that the petitioner has failed to abide by the statutory obligations of a Deputy Superintendent in terms of the Bihar Prison

Manual.

He submits that the Supreme Court in the judgment referred to above has held that an act of negligence of inefficiency cannot constitute a misconduct nor can be a subject matter of a disciplinary proceeding.

The argument of Mr. Chitranjan Sinha has been contested by Mr. Krishna Chandra, AC to Advocate General, who has reiterated the position reflecting from the charge memo as affirmed by the Enquiry Officer in so far as charge no.1 and 3 is concerned, which inter alia charges the petitioner of keeping the bills pending and not maintaining the registers in its proper form. While accepting that the Enquiry Officer has declined to uphold the charge regarding lack of transparency in maintenance of the register but the other allegations has been upheld including the allegation of putting the bills online without approval of the appropriate competent authority.

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

The sequence of events having already been discussed, requires no further reference. Of the four charges that were framed against the petitioner, while charge nos. 2 and 4 have been dropped due to lack of evidence on the failure of the Presenting Officer to substantiate the same, while charge no.1 has been upheld partially, charge no.3 has been upheld in its totality. I have already indicated the four charges facing the petitioner.

Charge no.1 is in several parts and charges the petitioner of non-maintenance of registers relating to receipt and payment of the bills from the contingency fund as well as of not making payment of monthly bills to the suppliers which were pending since October, 2012. A serious charge of not maintaining transparency in the matter of payment to the suppliers has been made which according to the disciplinary authority amounts to financial indiscipline and contrary to the departmental orders. The report of the Enquiry Officer against this charge is present at Annexure 10/A and while the serious part of the charge has not been upheld nor there is any disagreement on this finding of the Enquiry Officer whereby the allegation of lack of transparency in the matter of payment to the suppliers have not been upheld, the other allegation of non-maintenance of the register and of not making timely payment to the suppliers has persuaded the disciplinary authority to impose the punishment.

In so far as these two charges are concerned, the petitioner has specifically mentioned in his reply at Annexure 11 that he has been following the precedent prevailing in the Jail and that the registers were in order. The petitioner has specifically mentioned that the bill book, stock book, contingency register etc. were up-to-date and that the allegation was without any foundation. He has also mentioned that during his period there has been no complaint of defalcation nor any financial issues have been raised. The petitioner has again stated that the allegation is only on paper with no supporting documents. As regarding not making timely payment of monthly bills to the suppliers it has been specifically stated that the default and lapse lay with the suppliers who did not submit their bills timely. The petitioner has specifically stated that where the suppliers themselves have delayed submissions of bill he could not have been held at fault. The petitioner has also specifically mentioned that he had requested the Enquiry Officer to produce suppliers who were making any complaint for their cross-examination but none of them were produced. He has also mentioned that no registers was produced to confirm any irregularity in its maintenance.

As regarding Charge No.3 i.e. of placing the bills online without approval of the competent authority, the petitioner has specifically objected to the charge as being vague without any descriptive details and has also stated that the Presenting Officer has failed to produce any evidence to support the charge. He has further stated that the Computer In-charge was never produced for cross-examination. The specific objection taken by the petitioner on the charges as lacking on foundation, surprisingly, has been taken note of by the disciplinary authority while passing the impugned order, yet has been sweepingly rejected without assigning any reasons. The Inspector General has also got swayed by the provisions underlying Rule 753 of the Bihar Prison Manual which simply discusses obligation cast on a Deputy Jail Superintendent for upholding the charge without bothering to examine whether there was any material to connect the delinquent with the charge. The petitioner while filing his appeal at Annexure 12 has again drawn the attention of the appellate authority to the lacuna in the disciplinary proceedings and which has also been taken note of by the appellate authority at paragraph 7 and despite taking note of the objections raised by the petitioner that the two charges which have been upheld by the Enquiry Officer as well as disciplinary authority were lacking in foundation and resting on no evidence, yet the appellate authority has endorsed the view of the disciplinary authority vide order impugned at Annexure 4. The writ petition is fit to be allowed for more than one reason.

The finding of the Enquiry Officer as affirmed by the disciplinary authority as well as appellate authority is resting on no evidence and despite repeated objections being raised by the petitioner on this issue, the authorities have not bothered to satisfy themselves including the Enquiry Officer. It is not in dispute that neither the required registers were led as evidence before the Enquiry Officer which were foundation for the charge nor suppliers were examined on alleged delayed payment by the petitioner. This goes so far as charge no.1 is concerned and in so far as charge no. 3 is concerned, again the Computer In-charge was neither examined nor the bills which was allegedly put online was led as evidence in the proceedings. Even though departmental proceedings are resting on preponderance of probability and not on conclusive evidence, to drive home the charges but then there cannot be a mechanical satisfaction on an allegation even in absence of any evidence supporting the charges. The case in hand is a case resting on no evidence and the satisfaction drawn by the Enquiry Officer as endorsed by the disciplinary authority and the appellate authority is perverse for they mechanically proceed to endorse the view without discussing the reasons therefore.

The orders impugned is also not sustainable because the allegations even if taken on its face value, yet would not constitute a misconduct. In general, an act of inefficiency or not coming up to the standard required, cannot invite a disciplinary proceeding unless the results of such acts is proven disaster. Reference is made to the judgment of the Supreme Court in the case of **Union of India v. J. Ahmad**, reported in (1979)2 SCC 286 which position has been reiterated in the subsequent judgments of the Supreme Court rendered in the case of **Ram Singh** (supra) as relied upon by Mr. Sinha as well as in the case of **M.M.Malhotra** (supra). In this context I deem it appropriate to reproduce the relevant extract of the judgment rendered in the case of J. Ahmad (supra):

> "11...........A single act of omission or error of judgment would ordinarily not constitute misconduct though if such error or omission results in serious or atrocious consequences, the same may amount to misconduct as was held by this Court in P.H.Kalyani vs. Air France, Calcutta, wherein it was found that the two mistakes committed by the employee while checking the load sheets and balance charts would involve possible accident to the aircraft and possible loss of human life and, therefore the negligence in work in the context of serious consequences was treated as misconduct. It is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would ipso facto constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness

of the negligence. Carelessness can often be productive of more harm than deliberate wickedness or malevolence. Leaving aside the classic example of the sentry two sleeps at his post and allows the enemy to slip through, there are other more familiar instances of which a railway cabinman signals in a train on the same track where there is a stationery train causing head-on collision; a nurse giving intravenous injection which ought to be given intramuscular causing instantaneous death; a pilot overlooking an instrument showing snag in engine and the aircraft crashes causing heavy loss of life. Misplaced sympathy can be a great evil (see Navinchandra Shakerchand Shah v. Manager, Ahmedabad Coop, Department Stores Ltd. 8). But in any case, failure to attain the highest standard of efficiency in performance of duty permitting an inference of negligence would not constitute misconduct nor for the purpose of Rule 3 of the Conduct Rules as would indicate lack of devotion to duty."

A similar view was taken by the Supreme Court in a judgment of Ram Singh (supra). Para 4 and 5 of the judgment reads thus:

"4. Misconduct has been defined in Black's Law dictionary, Sixth Edition at page 999 thus:
'A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, willful in character, improper or wrong behaviour, its synonyms are misdemeanour,

misdeed, misbehaviour, delinquency, impropriety, mismanagement, offence, but not negligence or carelessness.'

Misconduct in office has been defined as:

"Any unlawful behaviour by a public officer in relation to the duties of his office, willful in character. The term embraces acts which the office-holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act.'

In P. Ramanatha Aiyar's the Law Lexicon, Reprint Edition 1987 at p.821, 'misconduct' defines thus:

"The term misconduct implies a wrongful intention, and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word misconduct is a relative term, and has to be construed with reference to the subject matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct. In usual parlance, misconduct means a transgression of some established and definite rule of action, where no discretion if left, except what necessity may demand and carelessness, negligence and unskillfulness are transgressions of some established, but indefinite, rule of action, where some discretion is necessarily left to the actor. Misconduct is a violation of definite law; carelessness or abuse of discretion under an indefinite law. Misconduct is a forbidden act; carelessness, a forbidden quality of an act, and is necessarily indefinite. Misconduct in office may be defined as unlawful behaviour or neglect by a public officer, by which the rights of a party have been affected."

5. Thus it could be seen that the word 'misconduct' though not capable of precise definition, its reflection receive its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behavour, willful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. ….………."

Last but not the least is the failure of the disciplinary authority as well as the appellate authority to deal with the reply filed by the petitioner on his objections to the finding in respect of charge nos. 1 and 3. Unfortunately even though both the disciplinary authority as well as the appellate authority has discussed the objections raised by the petitioner in respect of the orders but thereafter they have failed in their obligation to assign reasons for rejecting the same. The endorsement of the charge is mechanical and rejection of the objections raised and the explanation given by the petitioner, is without any foundation. Reference in this regard is made to the judgment of the Supreme Court in the case of **Kranti Associates Private Limited & anor. v. Masood Ahmed Khan & ors**., reported in (2010)9 SCC 496, in which the Supreme Court while discussing the development in law has briefly listed the obligation cast on authorities performing quasi judicial function and the necessity of assigning reasons:

> "47. Summarizing 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 consideration.

(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 since 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 Condor, 32(1987)100 Harvard Law Review 731-37)

(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 Strashourg 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 the European Convention of Human Rights which required,

"adequate and intelligent reasons must be given for judicial decision".

(o) In all common law jurisdiction 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"."

For the reasons and discussions aforementioned, the order dated 30.6.2015 passed by the Principal Secretary (Home), Govt. of Bihar, Patna together with the order bearing Memo No. 3836 dated 11.7.2014 passed by the Inspector General (Prison) cannot be upheld and are accordingly quashed and set aside. The writ petition is allowed. The consequences shall follow.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
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