

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4297 of 2005

=====

MRITYUNJAY SIL, son of late Manoranjan Sil, residing at Gurupally (W)
Behind House of Sri B.M. Sen, P.O. Shantiniketan, P.S. Bolpur, District-
Birbhum, West Champaran

... .. Petitioner/s

Versus

1. BIHAR STATE FINANCIAL CORPORATION, Fraser Road, Patna
through its Managing Director
2. The Board of Directors, Bihar State Financial Corporation, Fraser Road,
Patna through its Chairman
3. Managing Director, Bihar State Financial Corporation, Fraser Road, Patna
4. Ashok Kumar, son of name not known to the petitioner, Assistant General
Manager-cum-Conducting Officer, Bihar State Financial Corporation, Fraser
Road, Patna

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Manik Vedsen Mr.Subhash Chandra Bose
For the B.S.F.C.	:	Mr. Y.V. Giri, Sr. Advocate Mr. N.K. Agrawal

=====

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date: 24-08-2018

The present writ petition has been filed for quashing the order of punishment dated 22.08.2001, whereby and where under the petitioner has been dismissed from the services of the Corporation as well as the appellate order dated 16.07.2003, as communicated to the petitioner vide letter dated 01.08.2003.

The brief facts of the case are that a charge sheet dated 08.04.1996 was issued to the petitioner on the allegation of grave misconduct, negligence of duties and acting in a manner detrimental to the interest of the Corporation in discharge of his



duties by facilitating release of funds to various companies without checking the details. The petitioner had submitted his show cause whereafter the Enquiry Officer had submitted his enquiry report dated 23.09.1996 finding all the charges levelled against the petitioner to have been proved. A second show cause notice was issued to the petitioner, annexing a copy of the enquiry report, which is dated 23.09.1998 and thereafter the impugned order of punishment dated 22.08.2001, inflicting the punishment of dismissal from service of the Corporation has been inflicted upon the petitioner.

The learned counsel for the petitioner has submitted that no papers/documents were annexed to the charge sheet and despite a request of the petitioner, the same were not made available to the petitioner herein resulting in vitiating the entire departmental proceeding. It is submitted that the enquiry was completed hurriedly with oblique motive and the enquiry reports were submitted in a perverse manner holding the charges to have been proved without any evidence. The learned counsel for the petitioner has also submitted that neither any witness was examined to prove the charges nor any documents were exhibited or proved in support of the charges, hence the present case is a case of no evidence, thus the entire enquiry stands



vitiated and consequently the order of punishment has got no legs to stand, hence is fit to be set aside. It is submitted that extraneous findings have been recorded by the Enquiry Officer and in fact the Enquiry Officer has himself introduced extraneous documents and materials, which were never made available to the petitioner. Lastly, it is submitted that the order of punishment dated 28.03.1998 is itself perverse inasmuch as the same neither discloses any reason for inflicting punishment of dismissal upon the petitioner herein nor discloses any application of mind and merely narrates the sequence of events. Similarly, it is submitted that the appellate order does not deal with any of the submissions made by the petitioner herein in the memo of appeal, hence the same is also fit to be set aside.

Per contra, the learned counsel for the respondents has submitted that there is no procedural infirmity in conduct of the departmental proceedings, hence no interference is required by this Court as far as the order of punishment is concerned. However, the learned counsel for the petitioner has not been able to controvert the fact that firstly neither any witness has been examined during the course of the enquiry to establish the charges levelled against the petitioner nor any documents have been exhibited in support of the charges, hence the present case



is a case of no evidence and secondly that the impugned order of punishment dated 22.08.2001 is bereft of any reasons and does not show any application of mind and on the contrary the same merely narrates the sequence of events that had taken place during the course of the disciplinary proceedings held against the petitioner herein.

I have heard the learned counsel for the parties and have perused the materials on record and I find that no witnesses whatsoever or any documents have been either examined or exhibited in order to prove the charges levelled against the petitioner beyond all reasonable doubts, thus the present case is a case of no evidence, hence the order of punishment, based on the said perverse enquiry report cannot be sustained and is fit to be set aside. Reference in this connection be had to a judgment of the Hon'ble Apex Court report in **(2009) 2 SCC 570 (Roop Singh Negi vs. P.N.B. & ors.), A.I.R. 1967 SC 269 (State of Bombay (now Maharashtra) vs. Nurul Latif Khan)**, and the one reported in **(2010) 2 SCC 772 (State of Uttar Pradesh vs. Saroj Kumar Sinha)**, paragraph nos. 27, 28 and 29 whereof are reproduced herein below:-

"27. A bare perusal of the aforesaid sub-rule shows that when the respondent had failed to submit the explanation to the charge-sheet it was incumbent upon the inquiry officer to fix a date for his appearance in the inquiry. It is only in a case when the government servant despite



notice of the date fixed failed to appear that the inquiry officer can proceed with the inquiry ex parte. Even in such circumstances it is incumbent on the inquiry officer to record the statement of witnesses mentioned in the charge-sheet. Since the government servant is absent, he would clearly lose the benefit of cross-examination of the witnesses. But nonetheless in order to establish the charges the Department is required to produce the necessary evidence before the inquiry officer. This is so as to avoid the charge that the inquiry officer has acted as a prosecutor as well as a judge.

- 28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.*
- 29. Apart from the above, by virtue of Article 311(2) of the Constitution of India the departmental enquiry had to be conducted in accordance with the rules of natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee."*

It is equally a well settled law that a disciplinary authority/an administrative authority, in an order passed by it, is required to record reasons for its decision in a clear and explicit manner so as to indicate that the authority has given due consideration to the various issues involved and the need for recording of reasons is even greater in a case where the order is passed at the original stage. Reference in this connection be had



to a judgment reported in ***A.I.R. 1990 SC 984 (S.N. Mukherjee vs. Union of India)***, paragraph nos. 35, 36, 38 and 39 whereof are reproduced herein below:-

- “35. Reasons, when recorded by an administrative authority in an order passed by it while exercising quasi-judicial functions, would no doubt facilitate the exercise of its jurisdiction by the appellate or supervisory authority. But the other considerations, referred to above, which have also weighed with this Court in holding that an administrative authority must record reasons for its decision, are of no less significance. These considerations show that the recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and ensures a degree of fairness in the process of decision-making. The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. In our opinion, therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a Court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge.
36. Having considered the rationale for the requirement to record the reasons for the decision of an administrative authority exercising quasi-judicial functions we may now examine the legal basis for imposing this obligation. While considering this aspect the Donough more Committee observed that it may well be argued that there is a third principle of natural justice, namely, that a party is entitled to know the reason for the decision, be it judicial or quasi-judicial. The committee expressed the opinion that "there are some cases where the refusal to give grounds for a decision may be plainly unfair; and this may be so, even when the decision is final and no further proceedings are open to the disappointed party by way of appeal or otherwise" and that "where further proceedings are open to a disappointed party, it is contrary to natural justice that the silence of the Minister or the Ministerial Tribunal should deprive them of the opportunity." (P 80) Prof. H.W.R. Wade has also expressed the view that "natural



justice may provide the best rubric for it, since the giving of reasons is required by the ordinary man's sense of justice." (See Wade, Administrative Law, 6th Edn. P. 548). In Siemens Engineering Co. case (Supra) this Court has taken the same view when it observed that "the rule requiring reasons to be given in support of an order is, like the principles of audi alteram parlem, a basic principle of natural justice which must inform every quasi-judicial process." This decision proceeds on the basis that the two well-known principles of natural justice, namely (i) that no man should be a Judge in his own cause and (ii) that no person should be judged without a hearing, are not exhaustive and that in addition to these two principles there may be rules which seek to ensure fairness in the process of decision-making and can be regarded as part of the principles of natural justice. This view is in consonance with the law laid down by this Court in [A.K. Kraipak and Others v. Union of India and Others](#), [1970] 1 SCR 457, wherein it has been held:

"The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely (i) no one shall be a Judge in his own cause (nemo debet esse judex propria causa) and (ii) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice." (P. 468-69) A similar trend is discernible in the decisions of English Courts wherein it has been held that natural justice demands that the decision should be based on some evidence of probative value. (See: R. v. Deputy Industrial Injuries Commissioner ex P. Moore, [1965] 1 Q.B. 456; Mahon v. Air New Zealand Ltd., [1984] A.C. 648.

38. The object underlying the rules of natural justice "is to prevent miscarriage of justice" and secure "fairplay in action." As pointed out earlier the requirement about recording of reasons for its decision by an administrative authority exercising quasi-judicial functions achieves this object by excluding chances of arbitrariness and ensuring a degree of fairness in the process of decision-making. Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi-judicial functions the legislature, while conferring the said power, may feel



that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement. It may do so by making an express provision to that effect as those contained in the [Administrative Procedure Act](#), 1946 of U.S.A. and the Administrative Decisions (Judicial Review) Act, 1977 of Australia whereby the orders passed by certain specified authorities are excluded from the ambit of the enactment. Such an exclusion can also arise by necessary implication from the nature of the subject matter, the scheme and the provisions of the enactment. The public interest underlying such a provision would outweigh the salutary purpose served by the requirement to record the reasons. The said requirement cannot, therefore, be insisted upon in such a case.

39. *For the reasons aforesaid, it must be concluded that except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions is required to record the reasons for its decision. “*

In the instant case no reason whatsoever has been furnished by the disciplinary authority while passing the impugned order of punishment of dismissal dated 22.08.2001 in support of its decision and further the said order of the disciplinary authority does not either show any application of mind or consideration of the issues raised by the petitioner or any justification for passing the said order, hence on this ground as well the impugned order of punishment dated 22.08.2001 is fit to be set aside. This Court is of the view that the enquiry report under consideration is based on no evidence inasmuch as the prosecution has failed to either lead oral evidence or prove the documents being relied upon during the course of the enquiry proceedings, hence the aforesaid enquiry report is fit to



be quashed inasmuch as the present case is squarely covered by the judgments rendered by the Hon'ble Apex Court in the case of **Roop Singh Negi** (supra) and **Saroj Kumar Sinha** (supra). The enquiry report is also fit to be set aside on the ground of default of sufficient opportunity to the petitioner to present his defence as well as non-furnishing of the relevant documents to the petitioner herein.

Having regard to the facts and circumstances of the case as discussed herein above, the aforesaid enquiry report is set aside and since the said enquiry report has been set aside, the order of punishment dated 22.08.2001 cannot be sustained in the eyes of law, more so since the same has been passed without any application of mind and the same does not contain any reasons for inflicting punishment of dismissal upon the petitioner, hence the impugned order of punishment dated 22.08.2001 is quashed. Consequently, the appellate order dated 16.07.2003 is bound to fall as a result of the quashing of the impugned order dated 22.08.2001, apart from the same being perverse since the same does not either consider or deal with the issues raised by the petitioner in the memo of appeal, hence the appellate order dated 16.07.2003 is also set aside.

In view of the setting aside of the aforesaid enquiry



report dated 23.09.1996, the order of dismissal dated 22.08.2001 and the appellate order dated 16.07.2003, the question that now arises for consideration is regarding back wages to be granted or not to be granted especially in a case like the present one wherein this Court has found the case of the petitioner to be a case of wrongful termination from service. In this regard, it would be apt to refer to a judgment reported in **(2013) 10 SCC 324 (Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya & Ors.)**, paragraph No. 38 to 38.7 whereof are reproduced herein below:-

“38. The propositions which can be culled out from the aforementioned judgments are:

- 38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.*
- 38.2. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.*
- 38.3. Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was*



gainfully employed and was getting the same or substantially similar emoluments.

- 38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.
- 38.5. The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimising the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.
- 38.6. In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalisation of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer i.e. the employee or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in *Hindustan Tin Works (P) Ltd. v.*



Employees 7.

38.7. The observation made in J.K. Synthetics Ltd. v. K.P. Agrawal⁵ that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three- Judge Benches^{7,8} referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman.

Thus, in cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule. It is also a trite law that once the employee shows that he was not gainfully employed elsewhere, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed, which the respondents in the present case have failed to do so. Another factor to be considered is that in case the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or the workman, then the court concerned will be fully justified in directing payment of full back wages. I find that the present case is a case of gross injustice meted out to the petitioner herein by the respondents and the materials on record sufficiently demonstrates that the principles of natural justice has been given a go by and the petitioner has been victimized, as such I am of the view that as a consequence of quashing of the enquiry report, order of punishment and the appellate order, the petitioner is entitled to full back wages along with all consequential benefits.



The writ petition is allowed with a direction to the respondents to pay the back wages of the petitioner along with all consequential benefits forthwith.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	01.06.2019
Transmission Date	N/A

