

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1658 of 2017

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1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
 2. The Chief Secretary, Government of Bihar, Patna.
 3. The Principal Secretary, General Administrative Department, Government of Bihar.

... .. Petitioners

Versus

1. Sri Chandrakant Kumar Anil, S/o Late Deo Nandan Prasad, R/o Vidhadhar SDO Road, P.S.- Khagariya, District- Khagaria posted as Advisor, Bihar-State Planning Board, Vishwasaraiya Bhawan, Bailey Road, Patna.
2. The Union of India through the Secretary, Department of Personal and Training, Govt. of India, North Block, New Delhi.
3. The Union Public Service Commission, through its Secretary, New Delhi.
4. The Accountant General, Mahalekhakar Bhawan, Birchand Patel Path, Patna.

... .. Respondents

Appearance :

For the Petitioners	:	Mr. Lalit Kishore, Advocate General Mr. P.K.Verma, AAG-3 Mr. Prabhu Narayan Sharma, AC to AG
For the Respondent No.1:		Mr. Sanjay Kumar, Advocate Mr. Kamala Kant Upadhyay, Advocate
For the UPSC	:	Mr. Kaushal Kumar Jha, Advocate
For the Accountant General :		Dr. Anand Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 30-11-2018

The State of Bihar and its officials have moved this Court under Article 226 of the Constitution of India seeking quashing of the order dated 28.07.2016 passed by the Central



Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as 'the Tribunal') in O.A. No.050/00353/2016, whereby the Tribunal has set aside the order of punishment dated 29.02.2016 issued by the General Administration Department, Government of Bihar, Patna. Punishment of reduction to lower stage in the time scale of pay by one stage for a period of one year without cumulative effect and without adversely affecting his pension had been imposed on the 1st respondent, who is a Member of Indian Administrative Service of Bihar Cadre. The Tribunal has interfered with the imposition of punishment on the ground that the said order has been passed without application of mind by the Chief Minister of Bihar, who, according to the Tribunal, is the disciplinary authority.

Departmental action against members of the Indian Administrative Service, which is an All India Service, is governed by the All India Services (Discipline and Appeal) Rules, 1969 (hereinafter referred to as 'the AISD&A Rules'). Rule 7 of the said Rules prescribes the authority having power to institute proceeding and to impose penalty. The 1st respondent, at the relevant point of time of his alleged act/omission, constituting misconduct, was serving in connection with the affairs of the State of Bihar. It is,



thus, an undisputed position that the case of 1st respondent falls under Rule 7(b)(i) of the AISD&A Rules, which reads thus: -

“7. Authority to institute proceedings and to impose penalty.-- (1) Where a member of the Service has committed any act or omission which renders him liable to any penalty specified in Rule 6-

xxx xxx xxx

(b) If such act or omission was committed after his appointment to the Service--

(I) while he was serving in connection with the affairs of a State, or is deputed for Service under any company, association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by the Government of a State, or in a local authority set up by an Act of the Legislature of that State, the Government of the State;
or

xxx xxx xxx”

It is easily discernible from Rule 7(b)(i) of the AISD&A Rules that the Government of State has the authority to institute proceedings and to impose penalty against a member of Indian Administrative Services if the act or omission alleged against him is relatable to the period when he was serving in connection with the affairs of a State.

In case of the 1st respondent, the disciplinary proceeding for imposition of minor punishment was initiated against him under the order of the Chief Minister of Bihar, who happened to be



the Minister In-charge under which the General Administration Department falls.

This is also not in dispute that the file with the notings had been placed before the Chief Minister of Bihar in his capacity of the Minister In-charge of the Department because the specific proposal made by the Department for imposition of punishment after due consultation with the Union Public Service Commission, bears the signature of the Chief Minister. The opinion of the Central Administrative Tribunal, as recorded in the impugned, order is that the Chief Minister being the disciplinary authority, was required to apply his own mind, which should have been reflected in the order itself.

In the light of the provisions under Rule 7(b)(i) of the AISD&A Rules, a question has arisen, whether the Central Administrative Tribunal was correct in treating the Chief Minister as the disciplinary authority, whose individual application of mind should have reflected in the order itself?

The Tribunal forming such opinion, has remanded the matter back to the disciplinary authority which, according to it, is the Chief Minister of Bihar for examining the matter afresh and passing reasoned order. The Tribunal has relied on a Supreme Court decision in case of ***Chairman-cum-CMD, Coal India***



Limited and Others v. Ananta Saha and Others, reported in
(2011) 5 SCC 142.

When this matter was taken up, this Court, while issuing notice to the 1st respondent by order dated 27.04.2017 has framed a question of law in the following words: -

“The question of law, which arises for consideration, is whether a disciplinary authority has an obligation created under law to apply his independent mind on an issue of punishment or is it open to go by suggestions emanating from the file notings made by the subordinate authorities which travelled up to the disciplinary authority which was accepted by putting signature on such proposal. Can acceptance of such proposal amount to application of mind?”

This application, therefore, involves the above two questions of law of seminal significance.

We have heard Mr. Lalit Kishore, learned Advocate General and Mr. P.K.Verma, learned Additional Advocate General, who has assisted the Advocate General. Mr. Sanjay Kumar and Mr. Kamla Kant Upadhyay, learned counsel has represented the 1st respondent, whereas Mr. Kaushal Kumar Jha, learned Advocate, has represented Union Public Service Commission.

Mr. Lalit Kishore has contended that in exercise of power conferred under Article 166(3) of the Constitution of India,



the Rules of Executive Business has been framed. According to him, the decision for imposition of punishment on 1st respondent has been taken by following the procedure prescribed under the said Rules. According to him, the file was placed before the Chief Minister of Bihar in his capacity of Minister In-charge of the Ministry concerned and the notification imposing punishment has been issued under the orders of the Governor of Bihar. He has placed reliance on Supreme Court's decision, in case of ***Shamsher Singh v. State of Punjab***, reported in **AIR 1974 SC 2192** with reference to paragraphs 29, 30, 35 and 40 thereof, to contend that the decision of the Chief Minister, as Minister In-charge of the Department concerned is based on the proposals made by the Head of the Department in accordance with the procedure prescribed under the Rules of Executive Business. He has also relied on two other Supreme Court's decisions, namely, ***Bachhittar Singh v. State of Punjab***, reported in **AIR 1963 SC 395** (paragraph 8, 9 and 10) and ***G. Nageswara Rao v. A.P.S.R.T. Corpn.***, reported in **AIR 1959 SC 308** (paragraph 38) to support his contention.

Mr. Kamala Kant Upadhyay, learned counsel for the 1st respondent, has, on the other hand, reiterated that the Supreme Court's decision in case of ***Chairman-cum-CMD, Coal India Limited and Others v. Ananta Saha and Others*** (supra) has been



rightly applied by the Tribunal while setting aside the punishment order. Defending the decision of the Tribunal, he contends that it was incumbent upon the Chief Minister to have applied his mind before taking a decision of imposition of punishment upon the 1st respondent.

Before we deal with the rival submissions made on behalf of the parties, as noted above, we need to take note of certain facts as asserted in the writ application.

At the relevant point of time, the 1st respondent was posted as Secretary, Public Grievance Cell, when he made certain allegations against his senior officer of the same cadre, who was then holding the post of Principal Secretary, Cabinet Secretariat Department, Government of Bihar, of misusing the official telephone and vehicles made available to him for official purposes. The allegations made by him were meticulously examined and were found to be baseless. Conduct of the 1st respondent of making baseless allegations was also treated to be an act of insubordination. When an explanation was sought for from him for making baseless allegations against a senior officer, he questioned the competence of the authority for seeking any explanation. He was told thereafter that the Chief Secretary was the competent authority to seek explanation from his subordinates working under



the administrative control of the State Government. The 1st respondent, however, did not submit his explanation. Considering the conduct of the 1st respondent, to be in violation of Rule 3(1) and 3(2-A) of the All India Services (Conduct) Rules, 1968, after obtaining necessary approval of the competent authority, articles of charges, statements of imputation of misconduct and misbehaviour were framed under Rule 10 of AISD&A Rules, 1969, for awarding minor punishment. He was asked to file his written statement of defence, which he did not do. There is specific statement made in the writ application that several opportunities were given to the 1st respondent to file his written statement of defence, but he did not choose to respond, by filing written statement of defence and rather kept on questioning the authority of the Chief Secretary of seeking explanation from him. It is asserted in the writ application that though replies were sent to him by the Department on the question of the competence of the Chief Secretary to seek explanation, he did not respond. It was in that background that the State Government proposed to award punishment of 'censure' under Rule 6(1) of the AISD&A Rules. Before imposition of punishment, however, the advise/opinion of the Union Public Service Commission (U.P.S.C.) was taken and UPSC advised to impose punishment of 'reduction to lower stage



in the time scale of pay by one stage for a period of one year without cumulative effect and without adversely affecting his pension'. As per the advice of the U.P.S.C., the State Government imposed the punishment on the 1st Respondent.

Aggrieved by the said decision, the 1st respondent had preferred O.A. No. 050/00219/2015. The Tribunal, by judgment and order dated 23.04.2015 had set aside the order of punishment dated 18.03.2015 with the following observations :-

“Thus from the perusal of above and as per the admission of the respondent that they never served the copy of the advice of the U.P.S.C., in our opinion, they have clearly violated their own Rule 10(2) as well as office memorandum dated 19.11.2014, as the penalty has been enhanced by the U.P.S.C. against the proposed penalty made by the State Government. Thus, in our opinion, it is a clear violation of natural justice, which is against the settled principle of law as held in the case of Union of India and others vs. S.K.Kapoor.

In view of the above, we quash and set aside the Memo dated 18.03.2015. However, respondents will be at liberty to proceed further after serving the copy of U.P.S.C. advice as per law.”

It was in compliance of the order dated 23.04.2015 of the Tribunal that the advice of the U.P.S.C. was served on the 1st respondent through letter dated 21.05.2015. After receiving the advice of the U.P.S.C., the 1st respondent submitted his



representation wherein he denied the charges levelled against him. The representation of the 1st respondent and the opinion of the U.P.S.C. were simultaneously examined and upon consideration, his representation was rejected by the Government by order dated 22.01.2016. The order dated 22.01.2016 was also issued under the orders of the Governor of Bihar, which contained reasons. Subsequently, the impugned order dated 29.02.2016 was passed, this time also in the name of the Governor of Bihar through which the said punishment was imposed on the 1st respondent in terms of the advice of the Union Public Service Commission.

A counter affidavit has been filed on behalf of the 1st respondent. There is no specific denial of the averments made in the writ application as noted above. The only plea, which has been taken in the counter affidavit, is that the decision of the Tribunal is in accord with the Supreme Court's decision in case of ***Chairman-cum-CMD, Coal India Limited and Others v. Ananta Saha and Others*** (supra).

We have carefully perused the pleadings on record and the order of the Tribunal, which is impugned. We have given our anxious consideration to the submissions advanced on behalf of the parties. From the impugned order we notice that the Tribunal had called for the original file concerning initiation of the



departmental action against the 1st respondent. The Tribunal has held the impugned order of imposition of punishment to be suffering from the vice of non-application of mind on the ground that it does not disclose application of mind by the Chief Minister, treating the Chief Minister of Bihar to be the disciplinary authority. This is evident from paragraph 9 and 10 of the judgment and order of the Tribunal under challenge, which reads thus :-

“9. From perusal of the above notings as well as the Hon’ble Apex Court judgment passed in the case of Ananta Saha [supra], and out Co-ordinate Bench order, we do not find any reason to deviate from the same. Accordingly, in our opinion though the Disciplinary Authority has appended his signature but it does not seem that he has applied his mind by way of writing any reason to approve the same as has been observed by the Hon’ble Apex Court.

10. Therefore, it would be fair and prudent to remand back the matter to the Disciplinary Authority to look into the matter afresh and to pass reasoned order on the file as observed by the Hon’ble Apex Court in the case of Ananta Saha [supra] within a period of one month.”

In our opinion, the premise drawn by the Tribunal is not acceptable because the Chief Minister of the State cannot be held to be a disciplinary authority since the language of Rule 7(b)(i) of AISD&A Rules is clear whereunder the ‘State Government’ has been defined as the disciplinary authority for a member of an All



India Service who is serving in connection with the affairs of a State. Article 154 of the Constitution of India states that the executive power of the State shall be vested in the Governor and shall be exercised by him directly or through officers subordinate to him in accordance with the Constitution. Article 166 of the Constitution deals with the conduct of business of the Government of a State and in tune to the provisions under Article 154, it declares that all actions of a Government of a State shall be expressed to be taken in the name of the Governor. Sub-Article (3) of Article 166 vests in the Governor, a power to make Rules for more convenient transaction of the business of the 'Government of the State' and for allocation amongst Ministers of the State business insofar as it is not business with respect to which the Governor is, by or under the Constitution, required to act in his discretion. Evidently, business of the 'Government of the State' is to be controlled by the rules framed by the Governor in that behalf and a decision or any action taken in accordance with the Rules framed by the Governor of a State under Article 166(3) of the Constitution of India by a Minister or Officer under the Rules of Executive Business is a decision of the President or the Governor.

In the circumstances noted, the only irresistible conclusion, which we can arrive at, is that if this provision, viz.



Article 166 (3), is read carefully with Article 154 of the Constitution, it would be manifest that the executive powers are to be exercised by the Governor either by himself or through officers subordinate to him in accordance with the Rules framed under Article 166(3) of the Constitution of India. The Governor of Bihar has framed Rules known as 'Rules of Executive Business, 1979'.

Now, the Rules of Executive Business vests no power in the Chief Minister to act as the disciplinary authority. Under the said Rules, the files relating to imposition of penalty has to travel through the Principal Secretary and Chief Secretary to the Minister In-charge and thereafter to the Chief Minister, if the provisions so require. In the present case, admittedly, the file was routed through Principal Secretary and the Chief Secretary with definite proposal of imposition of punishment based on the advise of the Union Public Service Commission. Rule 8 of the Rules of Executive Business provides that each department or group of departments of the Secretary shall consist of a Principal Secretary/Secretary to the Government, who shall be the official Head of the Department. Rule 10 requires that subject to orders of the Chief Minister under Rule 15, all cases referred only in the Third Schedule to the Rules shall be brought before the Council of Ministers, in accordance with the provisions of the Rules contained in Part-III. The matter



relating to imposition of punishment on a Member of All India Service does not fall in Third Schedule. Rule 11 is significant and it provides that the Minister In-charge of the Department shall be primarily responsible for disposal of business appertaining to the Department. There should be no doubt that responsibility of the Minister for disposal of business is to ensure that the same is done in accordance with the procedure prescribed under the said Rules and will certainly not mean that the Minister shall, himself, dispose of all matters. Part-III of the Rules lays down the procedure for departmental disposal of business, Rule 21 whereof says that except as otherwise provided by any other rule, cases shall ordinarily be disposed of by or under the authority of the Minister In-charge, who may, by means of standing order, give such directions as he thinks fit for disposal of cases in the Department. Rule 23 clearly says that except as provided in the Rules, the cases shall be submitted by the Principal Secretary/Secretary in the Department, to which the case belongs, to the Minister In-charge. In our view, therefore, the plea that the Chief Minister ought to have himself passed an order disclosing his individual application of mind is not acceptable to us, since the same is not specifically provided under the AISD&A Rules or



Rules of Executive Business. Our attention has been drawn to Clause 6.29 of the Secretariat Instructions, which reads as under :-

“6.29. Mode of signifying agreement with notes.- When an officer agrees with a preceding note or recommendation, he shall append his signature and nothing more. Marginal notes or notes to emphasize the special points may, however, be made.”

A portion of the said Secretariat Instructions has been brought on record by way of Annexure-4 to the writ application. Though, the said instructions appear to be executive in nature, it certainly lays down a procedure, as to how the view of a subordinate officer is to be endorsed i.e. by the higher officer by putting his signature only.

On examination of the impugned order, we notice that the only reason why the Tribunal has interfered with the order imposing penalty is that the Chief Minister merely put his signature, instead of passing a detailed order, which a disciplinary authority is required to do. The practice of endorsing the view of the subordinate officer by the superior by putting a signature, in our view, cannot be said to be wholly unjustified, particularly when the authority endorsing the view of his subordinate does not have any legal responsibility to record reasons individually.



We answer the questions, which have been framed at the very outset, accordingly and hold that the Chief Minister of Bihar is not the disciplinary authority under Rule 7(b)(i) of IASD&A Rules read with the provisions under the Rules of Executive Business, 1979, framed by the Governor of Bihar under Article 166(3) of the Constitution of India.

Above being the position, the Chief Minister of Bihar does not have any legal obligation to record his own reasoning and pass orders based on such reasonings. The Chief Minister/Minister In-charge can endorse the view of his/her subordinate by putting his/her signature.

There is yet another aspect of the matter. It is the specific case of the State of Bihar that despite notices having been issued to the 1st respondent, asking him to file his written statement of defence, he had not done so. The 1st respondent, however, submitted his response only after the advice/opinion of the Union Public Service Commission was made available to him. Though he stated in his said reply dated 02.06.2015 that he had not received any of the notices for submission of written statement of defence, no such plea was taken in his application before the Tribunal, while assailing the order of punishment, nor any such ground has been taken while assailing the impugned order. Non-denial of,



specific averments made in the writ application by the 1st respondent of service of notice for filing of written statement of defence, amounts to admission by the 1st respondent of service of notice. There is no denial, thus, that despite opportunities having been given, the 1st respondent did not file his written statement of defence in response to the article of charge. Once he failed to respond to the article of charge, the 1st respondent cannot raise a plea of violation of principles of natural justice.

We further notice that the order dated 22.01.2016, issued by the General Administration Department, Government of Bihar, in the name of the Governor of Bihar, whereby the 1st respondent's representation filed after supply of the advice/opinion of the Union Public Service Commission has been rejected, cannot be said to be non-speaking since, in our view, the same contains reasons. For the same reasons, the consequential order, dated 29.02.2016, imposing punishment on the 1st respondent, which is apparently the decision of the State Government, could not have been interfered with by the Tribunal on the ground that the order suffered from the vice of non-application of mind as it did not reflect application of mind by the Chief Minister of Bihar.

In result, the impugned judgment and order, dated 28.07.2017, passed in O.A. No. 0050/00353/2016, by the Central



Administrative Tribunal, Patna Bench, Patna, is hereby set aside.
This application is allowed.

There shall be no orders as to cost.

(Chakradhari Sharan Singh, J)

Jyoti Saran, J : I agree.

(Jyoti Saran, J)

Pawan/-

AFR/NAFR	A.F.R.
CAV DATE	N/A
Uploading Date	01.12.2018
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