

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8960 of 2017

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Ram Newaj Dubey, Son of Late Chandrama Dubey, resident of Flat No. 301, Maa Chhin Mastike Complex, Shekhpura, P.O.- Veterinary College, P.S. Shastrinagar, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar, through the Chief Secretary, Government of Bihar.
2. The Principal Secretary, Road Construction Department, Government of Bihar, Vishveshwariya Bhawan, Patna- 800015.
3. The Principal Secretary, Building Construction Department, Government of Bihar, Vishveshwariya Bhawan, Patna- 800015.
4. The Special Secretary, Building Construction Department, Government of Bihar, Vishveshwariya Bhawan, Patna- 800015.
5. The Additional Secretary, Road Construction Department, Government of Bihar Vishveshwariya Bhawan, Patna- 800015.
6. The Deputy Secretary, Vigilance, Road Construction Department, Government of Bihar, Vishveshwariya Bhawan, Patna- 800015.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Y. V. Giri, Senior Advocate
Mr. Pranav Kumar, Advocate

For the Respondent/s : Ms. Prachi Pallavi, Advocate

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 10-07-2018

Heard learned counsel for the petitioner and learned counsel for the State.

In the present case, the petitioner is challenging the order dated 15.06.2016 (Annexure 7) passed by the Deputy Secretary, Vigilance, Road Construction Department by which he has been inflicted the punishment of stoppage of two increments with non-cumulative effect.

The petitioner was Executive Engineer at the relevant time.



The Government had decided to demolish MLA's flats for construction of new building. A complaint was made about the misdemeanor committed by the petitioner in the shape of sub-standard construction and others that led to constitution of vigilance case and the vigilance has submitted the report whereafter a proceeding was initiated against him by issuing charge-sheet in Prapatra-K. In Prapatra-K allegation has been made that construction of MLA's club is a shoddy construction and it is not up to the mark and prima facie he was found to be responsible for that construction. The petitioner has filed reply, he has given his details in what manner he cannot be held responsible. The Disciplinary Authority by the impugned order dated 15.06.2016 has passed the order as aforesaid.

Learned counsel for the petitioner submits that by issuance of Prapatra – K it was presumed that it was major penalty and there should have been a full fledged inquiry proceeding in terms of Rule 17 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (herein after referred to as the 'Rules') but that has not been done merely after issuance of show-cause, the punishment order has been passed against him as minor penalty and which ultimately affected the promotion of the petitioner to the post of Superintending Engineer. He has



further submitted that the petitioner has filed detailed show-cause but the Disciplinary Authority while passing a final order has not taken care to consider the objection which has been taken but in mechanical and cryptic manner placing reliance on the report which was never served upon him, arrived to a conclusion of committing minor misconduct inflicted the punishment accordingly and as such the order is not sustainable where as learned counsel for the State has submitted that there was no need for detailed enquiry even though the Prapatra-K was issued, but ultimately it was decided to start a minor penalty proceedings. Accordingly after receipt of the show cause a minor punishment has been awarded by the Disciplinary Authority.

Having considered the rival contentions of the parties, the Rules prescribes the manner and method for holding a minor penalty proceeding as well as major penalty proceeding. Rule 17 deals with the major penalty proceeding and Rule 19 provides minor penalty proceeding. Even presuming the minor penalty in terms of Rule 19 but it was the duty of Disciplinary Authority that while arriving to the conclusion of having committed misconduct, the order must reflect that the Disciplinary Authority as applied its mind and only after due consideration would have arrived to a conclusion thereby inflicted the



punishment on the delinquent. But in the present case the consideration of objection is absent. It appears that he has passed the order in mechanical manner without going to the defence which has been taken by the petitioner and final order of punishment has been passed. The reason is a living link between the mind of decision maker and decision and absence of reason is an arbitrary exercise of power violates Article 14 of the Constitution of India. Reliance would be placed on judgment of Hon'ble Supreme Court in the case of Chairman and Managing Director, United Commercial Bank and others v. P.C. Kakkar, reported in (2003) 4 SCC 364. It will be relevant to quote paragraph 15 of the aforesaid judgment:

“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 Engg. Union observed: (All ER p.1154h) “The giving of reasons is one of the fundamentals of good administration.” In Alexander Machinery (Dudley) Ltd. v. Crabtree it was observed: “Failure to give reasons amounts to denial of justice. Reasons are live links between the



mind of the decision-taker 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 the 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 the facts of each



case and even that cannot have universal application.”

In such view of the matter, the order of punishment and order of appellate authority dated 15.06.2016 (Annexure 7) are hereby set-aside and the matter is remanded back for consideration and pass order in accordance with law.

Learned counsel for the petitioner submits that as the petitioner has been awarded minor penalty and on that account his right for consideration of promotion has been affected, as such, authority should consider the case of the petitioner for promotion as per the law.

It goes without saying that case of the petitioner will be considered in terms of service condition as applicable. The authority will take into consideration Rule 14(4) of the Rules.

With the aforesaid observation and direction this writ petition is allowed to the aforesaid extent.

(Shivaji Pandey, J)

Vinay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.7.2018
Transmission Date	NA

