

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1563 of 2014

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Navin Kumar Son Of Surendra Prasad Singh Resident Of Village - Manjhaul, P.S.
Cheriya Bariyarpur, District - Begusarai Petitioner

Versus

1. The State Of Bihar
2. The Director, Primary Education, Bihar, Patna
3. The Deputy Inspector General Of Police, Railway, Bihar, Patna
4. The S.P. Railway, Muzaffarpur
5. The Rail Police Inspector, Narkatiyaganj
6. The Officer In - Charge Rail Police Station, Narkatiyaganj

..... Respondents

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Appearance :

For the Petitioner : Mr. Sanjay Kumar, Advocate &
Mr. Sanjay Kumar Tiwari, Advocate
For the State : Mr. Sanjay Kumar, AC to AAG 4

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 12-07-2018

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

On the allegations made under charge memo dated
8.9.2012 (Annexure 2) the petitioner was proceeded against.
Allegation against him was of extorting money from the passengers
of a train which he was escorting for which a criminal prosecution
was also initiated against him. Though, he submitted his written
response (Annexure 3) to the charge memo he did not appear in the
proceedings. Records reveal that in spite of service of second show
cause on him through the Jail Superintendent, he chose not to
appear and to submit response to the second show cause.

Learned counsel for the petitioner submits that the



allegations made against the petitioner are unsustainable since the same is not based on any evidence as no evidence was produced in the enquiry. He submits that even in a proceeding where the delinquent does participate, the onus is of the department to bring home the charges with reference to some material produced in the course of enquiry.

The petitioner in the instant case, has filed an appeal so as to highlight the deficiency of the proceedings conducted by the Enquiry officer. The petitioner has submitted elaborate appeal before the DIG Rail Police, Bihar (respondent no.3) which has been rejected by order dated 5.9.2013 bearing Memo no. 1236 issued by respondent no.3. Elaborate appeal of the petitioner has been rejected by a cryptic order which shows non consideration of the issues raised by the petitioner Order of the appellate authority is as follows:-

“मैंने अपचारी द्वारा समर्पित अपील अभ्यावेदन संबंधित विभागीय कार्यवाही संचिका तथा अपील अभ्यावेदन पर रेल पुलिस अधीक्षक, मुजफ्फरपुर द्वारा उपलब्ध करायी गयी कंडिकावार टिप्पणी का गहराई से अवलोकन किया। अपचारी सिपाही पर लगाये गये आरोप गंभीर प्रवृत्ति के हैं तथा इस आरोप में अपचारी न्यायिक अभिरक्षा में रहें हैं। अपचारी द्वारा अपने अपील अभ्यावेदन में जिन तर्कों का उल्लेख किया गया है, वे इनपर लगाये गये आरोपों का खंडन नहीं करते हैं।”

The same is without assigning any reason and cannot be said to be in consideration of the elaborate appeal. In the facts and circumstances of the case, appeal was the first and the only



opportunity availed by the petitioner to highlight the infirmities in the departmental proceedings. The Appellate Authority should have considered all the pleas raised by him in his appeal.

The importance of assigning reasons has been emphasized repeatedly by this Court. Assigning reasons is essential to avoid arbitrariness and to minimize the scope of any injustice being caused. Reliance has been placed on a judgment in case of **Hasan Muzahid Vs. The Bihar State Electricity Board and others**, reported in case of **2015(4) PLJR (HC) 435**. In such a case where the Appellate authority has assigned no reason while rejecting the points raised by the petitioner in the appeal, the remedy of appeal provided under the Bihar CCA Rules, 2005 becomes an empty formality. Time and again, the Hon'ble Supreme Court held that such exercise tends to be violative of the principles of Natural Justice.

Appellate order dated 5.9.2013 issued by respondent no.3 rejecting petitioner's appeal against order of his dismissal from service dated 29.12.2012 is, therefore, unsustainable in law and is quashed. As a result of quashing of the said order, respondent no.3 would be obliged to take decision afresh after dealing with the petitioner's appeal in accordance with law and procedure prescribed under Rule 27 of the Bihar CCA Rules, 2005. The



petitioner would approach the Appellate authority (respondent no.3) with a copy of this order for fresh consideration within a period of four weeks. Appellate authority would be obliged to consider and dispose of his appeal by a reasoned and speaking order after affording due opportunity to the petitioner within a period of eight weeks thereafter.

The writ petition is allowed to the extent indicated above.

(Madhuresh Prasad, J)

Shashi.

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.7.2018
Transmission Date	NA

