

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2835 of 2018

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Matiur Rahman, Son of Late Safirudin, resident of Village- Puthimari, P.S.-
Kochadhaman, District- Kishanganj, Bihar.

... .. Petitioner

Versus

1. The State of Bihar through the Secretary, Cabinet Secretariat (Rajbhasha) Department, Urdu Directorate, Government of Bihar, New Secretariat, Patna.
2. The Principal Secretary, Cabinet Secretariat Department Urdu Directorate, Government of Bihar, New Secretariat, Patna.
3. The Principal Secretary, Rural Development Department, Government of Bihar, Patna.
4. The Chairman-cum- Member, Board of Revenue, Bihar, Patna.
5. The Director, Urdu Directorate, Cabinet Secretariat (Rajbhasha) Department, Urdu Directorate, Government of Bihar, Patna.
6. The Deputy Development Commissioner, Araria.
7. The District Magistrate, Araria.
8. The Deputy Election Officer cum Enquiry Officer, Araria.
9. The Block Development Officer, Palasi, District- Araria.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mrigank Mauli, Advocate Mr. Prince Kumar Mishra, Advocate Mr. Sanjay Kumar, Advocate Mr. Sanket, Advocate
For the Respondent/s	:	Mr. Mithilesh Kumar Upadhyay, A.C. to GP-3

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 28-06-2018

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

2. In the present case, the petitioner is challenging the order dated 02.02.2018 passed by the Appellate Authority, Chairman-cum-Member, Board of Revenue, Bihar, Patna, whereby and whereunder, he has dismissed the appeal preferred by the petitioner and has affirmed the order of dismissal containing memo no.27 dated 15.01.2014 passed by the



Disciplinary Authority.

3. The petitioner was Nazir, posted at Palasi block. On inquiry, it was found that he has deposited the money meant for the Indra Awas Yojana in Dehti PACS illegally, that led to initiation of departmental proceeding by issuing “*Prapatra-K*” in terms of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005. Inquiry was conducted and Inquiry Officer recorded a finding against the petitioner and passed the order of punishment of dismissal from service. Against that, the appeal has been filed by the petitioner, but the Appellate Authority dismissed the appeal and affirmed the order of the Disciplinary Authority.

4. Learned counsel for the petitioner submits that when he has joined the Palasi block already account was opened in the Dehti PACS on the direction of the D.D.C., Araria, and in pursuance of that direction the Nazir of different blocks has also opened the accounts in the Dehti PACS and deposited the money, on that account the other Nazirs and Block Development Officers were also proceeded departmentally and they have been let off without any punishment, whereas this petitioner though he has not opened the account merely he has deposited the



amounts what was being done by his predecessor and for that he has been proceeded departmentally and punishment of dismissal from service has been imposed upon the petitioner. He further submits that when other persons have been let off without any harm for the same charges, in such circumstance, the order of awarding the punishment is an act of arbitrary exercise of power and requires interference by this Court.

5. On perusal of the order of the appellate authority, it appears that he has not applied his independent mind though he has recorded the case of both the sides and abruptly dismissed the appeal, holding that he does not find any merit in the case. The appellate authority is supposed to apply his judicial mind and must reflect the reason which has been repeatedly held by this Court and Hon'ble Supreme Court. Reliance can be placed on the decision of the Hon'ble Supreme Court in the case of **Chairman & M.D., UCO Bank v. P.C. Kakkar**, reported in **2003(4) S.C.C. 364**. It will be relevant to quote paragraph no.15 of the said judgment, which is as follows:-

“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 Engineering 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 criminal case. It per se would not entitle the employee to claim immunity from the proceedings. At the most the factum of the acquittal may be a circumstance to be considered while awarding punishment. It would depend upon facts of each case and even that cannot have universal application.”

6. As the order of the Appellant Authority does not disclose the reason which is the part of the natural justice and one of the concomitant of Article 14 of the Constitution of India. In such a situation, the order of the Appellant Authority is not sustainable in law.

7. In such view of the matter, the order dated 02.02.2018 passed by the Appellate Authority, Chairman-cum-Member, Board of Revenue, Bihar, Patna, is set aside and the matter is remanded back to the Appellate Authority for fresh consideration. This Court directs the Appellate Authority to



consider and examine the grounds which has been taken by the petitioner in support of his submission that others similarly situated persons who were also proceeded departmentally have been let off without any harm and decide the matter within 8 (eight) weeks from the date of receipt/production of a copy of this order.

8. With the aforesaid observations and directions, this writ petition is disposed of.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	04.07.2018
Transmission Date	N/A.

