

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P (S) No. 1485 of 2015

Subas Singh, son of Jai Narayan Singh, Resident of R.P.F. Post, Ranchi
Railway Station, P.O., P.S. & District-Ranchi.

... Petitioner

Versus

1. The Union of India through the Divisional Manager, South Eastern Railway, Ranchi, P.O. & P.S.- Hatia, District-Ranchi.
2. The DIG-cum-Additional Chief Security Commissioner, RPF, South Eastern Railway, Garden Reach, Kolkata, P.O., & P.S. & District-Kolkata (West Bengal).
3. The Senior Divisional Security commissioner, RPF, South Eastern Railway, Ranchi, P.S. & P.S.-Hatia, District-Ranchi.
4. The Assistant Security Commissioner, RPF, South Eastern Railway, Ranchi, P.O. & P.S.-Hatia, District-Ranchi.

... Respondents

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD

For the Petitioner	: Mr. Rahul Kumar, Adv.
	: Miss. Apoorva Singh, Adv.
For the Respondents	: Mr. Vijoy Kumar Sinha, (A.S.C. Rly)

05/Dated 13th December, 2018

The writ petition is filed for quashing the order dated 18.12.2014 as contained under Annexure-9 whereby and whereunder a sum of Rs.10,24,801/- has been directed to be recovered from the petitioner in lieu of the fact that the petitioner has been found to be performing unauthorized occupation of Railway Quarter for certain period as also the appellate order as contained under Annexure-11.

Mr. Rahul Kumar, learned counsel for the petitioner while assailing the aforesaid order has submitted that he has not been heard before taking decision as under Annexure-9 and further the appellate authority has also passed a cryptic order.

The learned counsel for the petitioner while assailing the order as contained in Annexure-9, has submitted that the petitioner has not been provided with an opportunity of hearing before passing the order for recovery. For the same cause of action, departmental proceeding has been initiated in which the petitioner has been inflicted with the punishment of stoppage in increment with non-cumulative effect, the

charges which pertains to the departmental proceeding wherein the period of unauthorized occupancy of the aforesaid quarter is from the month of October, 2012 but the Annexure-9 has been passed alleging the petitioner for unauthorized occupancy of the quarter from the year 2000 and therefore there is contradiction in the charges.

He submits that if an opportunity of hearing would have been given to him then he would have pleaded about the concerned, but since Annexure-9 dated 18.12.2014 has been passed unilaterally and as such, the same is not sustainable in the eye of law.

He further submits by assailing the appellate order dated 03.03.2015 as contained in Annexure-11 that the appellate authority has passed a cryptic order since he in one line, has communicated the petitioner that the Divisional Railway Manager on consideration of the decision taken by the authority, has declined to interfere with the same which the petitioner has a right to know that on what ground the appellate authority has rejected his appeal.

Mr. Vijay Kumar Sinha, learned counsel for the Railway has submitted that Annexure-9 has been passed taking into consideration the fact that the petitioner has been found to be unauthorized occupant of the quarter and also taken house Rent Allowance and therefore the order of recovery has been passed.

He further submits that the decision taken by the original authority as contained under Annexure-9 has been considered by the appellate authority therefore there is concurrent finding, hence required no interference.

Heard learned counsel for the parties and on appreciating their rival submissions it is evident that the petitioner is aggrieved with the decision of recovery made from the petitioner vide order dated 18.12.2014 which is on the ground of allegation of unauthorized occupation of quarter, the petitioner has taken the ground that there is discrepancy and contradiction in the charges and the allegations since he has also been subjected to departmental proceeding which ultimately culminated into order of punishment wherein the charges is on the basis of retaining the quarter unauthorizedly from the month of October, 2012 while in the impugned decision of recovery has been passed for the period from 2000. This court while exercising its mind on the merit of the claim of the petitioner thinks it proper to go into the first ground of

the petitioner which pertains to violation of principle of natural justice and on going across the order as under Annexure-9 it is evident that no opportunity of hearing has been provided to the petitioner otherwise it would have been reflected in the aforesaid order but no reference of any show cause or its consideration is reflected on the aforesaid order hence it is evident that the petitioner has not been given an opportunity before taking decision for recovery of an amount of Rs. 10,24,801/-

It is settled position of law that even in which the matter of recovery, no regular departmental proceeding is required to be initiated but the person against whom a decision is going to be taken it is his right to be heard and for that a show cause notice is required to be issued so that he may be able to rebut the allegation and then only it will be said to be in accordance with law and otherwise it will be said to be order in violation of principles of natural justice.

There is no dispute in settled position of law that an order if passed without providing opportunity of hearing will be said to be bad in the eye of law for want of principle of natural justice, reference in this regard may be made to the judgment rendered by Hon'ble Supreme Court in the case of **MANEKA GANDHI VERSUS UNION OF INDIA AND ANOTHER** reported in **(1978) 1 SCC 248**, **A.K. KRAIPAK AND OTHERS VERSUS UNION OF INDIA AND OTHERS** reported in **(1969) 2 SCC 262**, **KUMAON MANDAL VIKAS NIGAM LTD. VERSUS GIRJA SHANKAR PANT AND OTHERS** reported in **(2001) 1 SCC 182**, **DEV DUTT VERSUS UNION OF INDIA** reported in **(2008) 8 SCC 725**.

Furthermore, by going through Annexure-11 which is an appellate order by way of a communication. The petitioner has invoked the jurisdiction of the appellate authority and therefore he has got a right to know the reason of rejection of the appeal, it is settled that conferring of power upon the appellate authority to exercise its power as an appellate authority, it is duty of the appellate authority to take a decision in the matter after applying its mind i.e. by disclosing the reason, law is settled that unreasoned order amounts to failure in justice, reference need to be made of judgment rendered by Hon'ble Apex Court in the case of **NMRDA OFFICERS ASSOCIATION KEDARNATH RAO CHORPADE VERSUS MUMBAI METROPOLITAN REGIONAL DEVELOPMENT AUTHORITY AND ANOTHER** reported in **2005(2) SCC 235**, **CHAIRMAN**

DISCIPLINARY AUTHORITY, RANI LAXMI BAI KSHETRIYA GRAMIN BANK VERSUS JAGDISH SARAN VARSHNEY AND OTHERS reported in **(2009) 4 SCC 240**. It is also settled that the appellate authority is not required to give detail reasons but the employee is entitled to know at least the mind of the appellate authority, reference needs to be made of a judgment rendered by Hon'ble Apex Court in the case of **DIVISIONAL FOREST OFFICER KOTHAGUDEM AND OTHERS VERSUS MADHUSUDHAN RAO** reported in **(2008) 3 SCC 469**.

This Court after assessing the factual aspects and settled position of law is of the view that the order as contained under Annexure-9 since has been passed without providing an appropriate of hearing therefore the same is held to be unsustainable and accordingly quashed.

It is the further view of this Court that the order passed by the appellate authority, since is cryptic, hence the same is also held to be non-sustainable accordingly quashed.

It is also settled that on technicality no one can be given any benefit, therefore, the issue is being remitted before the authority for passing a fresh order after providing opportunity of hearing to the petitioner within eight weeks from the date of receipt of copy of this order, which shall be presented by the petitioner within two weeks from the date of its receipt.

The writ petition is accordingly disposed of.

(Sujit Narayan Prasad, J.)