

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6148 of 2019

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Arvind Kumar Sinha, aged about 55 years, Son of Sri Udit Narayan Sinha,
Assistant Financial Advisor (Budget and Books), Office of Financial Advisor
and Chief Accounts Officer, East Central Railway, P.O. Digghi Kalan, P.S.-
Hajipur, District-Vaishali at Hajipur, PIN Code-844101 (Bihar).

... .. Petitioner/s

Versus

1. The Union of India through the Chairman, Railway Board, Ministry of
Railway, Rail Bhawan, New Delhi 110001.
2. The Secretary, Railway Board, Ministry of Railway, Rail Bhawan, New
Delhi-110001.
3. The General Manager, East Central Railway, Hajipur, P.O.-Digghi Kalan,
P.S.-Hajipur, District- Vaishali at Hajipur, PIN Code-844101 (Bihar)
4. The Financial Advisor and Chief Accounts Officer, East Central Railway,
Hajipur, P.O.-Digghi Kalan, P.S.-Hajipur, District-Vaishali at Hajipur, PIN
Code-844101 (Bihar).
5. The General Manager (Personnel), East Central Railway, Hajipur, P.O.-
Digghi Kalan, P.S.-Hajipur, PIN Code-844101 (Bihar).

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Chitranjan Sinha, Senior Advocate
Mr. M.P. Dixit, Advocate
Mr. S.K. Dixit, Advocate
Mr. Sanjay Kumar Chaubey, Advocate
Ms. Swastika, Advocate
Mr. Shailendra Kumar, Advocate

For the Respondent/s : Mr. Kumar Alok, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR



ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 21-10-2019

The petitioner has put up a challenge to the order dated 06.09.2017 passed by the Central Administrative Tribunal, Patna Bench, Patna (*in short the **Tribunal***) in O.A. No. 050/00116 of 2014, whereby the order passed by the Disciplinary Authority against the petitioner of imposing a penalty of reduction to a lower stage in the time-scale by two stages for a period of three years with cumulative effect as also the appellate order dated 28.01.2014, passed by the Railway Board, whereby the order passed by the disciplinary authority has been affirmed and has been upheld.

2. After hearing the learned counsel for the parties, this Court *vide* order dated 01.07.2019 recorded as follows:-

“Heard Shri Chittranjan Sinha,
learned Senior Counsel for the petitioner
and Shri Kumar Alok for the respondent



Railways.

This is a petition questioning the correctness of the impugned judgment of the Tribunal whereby the punishment imposed on the appellant has been upheld and the appeal filed against the order of the Disciplinary Authority has also been dismissed.

The petitioner was served with a major penalty charge memorandum whereafter a detailed enquiry was conducted and an enquiry report was submitted against the petitioner. The charges included the allegation of a trap led in order to establish that the petitioner had accepted a bribe and secondly that he did not timely process the files that were required for disposal in relation to extension of time etc.

Both the charges were found proved by the Enquiry Officer whereafter the petitioner was put to show cause and he submitted his final defence. The Disciplinary Authority on the 8th of March, 2011 passed an order where the reason for punishing the petitioner has been discussed only in paragraph 6 and a penalty of reduction to a lower stage in tie scale by two stages for a period of two years with cumulative effect has been awarded. An appeal filed against the same has met with the same fact with a discussion in paragraph 3 of the appellate order.

The main grounds of challenge raised by Shri Sinha is four fold. Firstly, that the complaint on the basis whereof the entire proceedings were initiated was neither produced nor proved. The second ground is that the alleged recovery of currency notes,



their denominations and their status of recovery were also not proved. The third ground is that the procedure prescribed, particularly the Rules prescribed in paragraph 704 and 705 of the Indian Railways Vigilance Manual, for such a trap was not followed with regard to which specific objections had been taken and it was also urged that the enquiry proceedings were conducted in a manner which reflected bias thereby violating the principle of natural justice and the last contention is that both the order of the Disciplinary Authority as well as the Appellate Authority are cryptic in nature and only record conclusions with no reasons to support the same.

As a corollary to the aforesaid arguments, Shri Sinha submits that the Tribunal before whom the challenge had been raised, in stead of appreciating the aforesaid argument itself, went into the merits of the charges and virtually recorded the findings which are not even there either in the order of the Disciplinary Authority or the Appellate Authority, that too without discussing the evidence set up by the petitioner.

Shri Kumar Alok, learned counsel for the Railways prays for a short time to tile a reply to the said arguments and the contention raised in the writ petition.

Ten days' time is granted for the same. Let an affidavit be filed within ten days, one week is granted to the petitioner to file a reply to the same.

List on 24th July, 2019".

3. It has been submitted on behalf of the



petitioner that while working as a Senior Section Officer (Accts.), in the store Department of East Central Railway, Samastipur, he spotted one unknown person in his office and immediately thereafter three persons entered his office Chambers, who disclosed their identity as Vigilance Officers. The petitioner was put to a search but only Rs. 318/- was recovered from his personal possession. The so-called tainted money was recovered from the drawer of the office table of the petitioner.

4. It is the case of the petitioner that he informed about the incident to his controlling officer, viz., Senior Divisional Financial Manager, East Central Railway, Samastipur and others. No sequel action was taken against him for quite a sometime; on the contrary he stood promoted to the post of Assistant Financial Advisor, Group-B. It was only then, i.e., after three years of the alleged incident that the petitioner received a Major Penalty Charge-sheet



dated 03.12.2007.

5. In the aforesaid charge-memo, two articles of charge were framed against the petitioner; one being that during the discharge of his duties, he committed grave misconduct by demanding and accepting money for early finalization of cases pending with him pertaining to waiver of ground rent and second being that he was responsible for the delay in disposal of such files and did not maintain priority of cases pending before him, which pertained to financial concurrence for extension of delivery period and such acts were done with *mala fide* intention.

6. A detailed inquiry report was submitted on 20.05.2010, holding that both the charges against the petitioner stood proved.

7. On the basis of the aforesaid inquiry report, the Disciplinary Authority imposed a penalty of reduction in the time-scale of pay by two stages for a



period of three years with cumulative effect and the appeal preferred against the aforesaid order also failed.

8. The primary charge of the petitioner against the orders passed by the Disciplinary Authority as well as the Appellate Authority is that both the orders are cryptic and the explanation offered by the petitioner has not at all been considered which can be gathered from the lack of cogent reasons for accepting the inquiry report.

9. The Complainant, viz., Mr. B. Kumar had alleged that the petitioner had demanded money for finalizing the issue of waiver of ground rent. During the course of enquiry, aforesaid Mr. B. Kumar had agreed to act a decoy, whereas one Mr. Ajay Kumar Chaudhary had appeared as an independent witness. Neither aforesaid Mr. B. Kumar was produced in the enquiry nor the bribe money has been brought as exhibit, so that the witnesses to the trap



could be confronted.

10. It has also been urged on behalf of the petitioner that no office-staff, who could have been the most competent, natural and reliable witness, was ever examined during the enquiry and the request of the petitioner for examining some of the office-staff was unreasonably turned down.

11. There is another flaw in the process of the departmental proceeding as the sole witness, viz., Mr. Ajay Kumar Chaudhary, had been a witness in other vigilance cases also, giving rise to a genuine apprehension that he is a stock witness of the Department. The statement of the defense witnesses, it has been urged, were completely ignored.

12. Apart from this, it has been argued that evidence led by the witnesses clearly depicted that there was no delay in disposal of files and only because some enquiry was being made by the



petitioner in some of the cases, which was not convenient for many such persons coming to his office, a sham trap was staged.

13. As opposed to the aforesaid contentions raised on behalf of the petitioner, the learned counsel for the respondent/Railways has stated that money was demanded by the petitioner from one scrap dealer for financial concurrence for extension of delivery period with waiver of ground rent. A decoy check was organized by the Vigilance Department and a pre-check memo also was prepared. The office of the petitioner was visited by an independent witness along with the decoy and, thereafter, the raid was made. The post-trap memorandum also was drawn-up, on which the petitioner had also put his signature. It was thus urged that in a departmental proceeding, strict proof as in a criminal case is not required and that there are limitations of Court of law in looking at the



correctness of the decision rendered by the Disciplinary Authority as well as the Appellate Authority.

14. The learned Advocate for the respondent/Railways has also relied upon the impugned order which takes note of various decisions of the Supreme Court that the procedural formalities are provided only for affording a reasonable and adequate opportunity to a delinquent employee and violation of each and every such procedural provision, would not automatically vitiate the enquiry and that judicial review is not to be dealt with like an appeal from a decision of the Court below.

15. We have heard the submissions advanced on behalf of the parties.

16. What is intriguing to us is that the orders passed by the Disciplinary Authority as well as the Appellate Authority are absolutely cryptic, nay, *laconic*. This, therefore, has prevented us from



venturing into the decision making factors which have weighed with the authorities.

17. It is too late in the day to emphasize the importance of a reasoned order. Unless an order is a speaking order, it is difficult to assess whether all the grounds raised on behalf of the parties have been taken into account before passing such order/s.

18. In ***Kranti Associates Private Limited and Anr. Vs. Masood Ahmed Khan and Ors.; (2010) 9 SCC 496***, the Supreme Court has summarized the following grounds for holding that a reasoned order is a must for it to be sustained legally:-

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, I such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any



possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person



deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(i) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in *Defence of Judicial Candor*.)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See *Ruiz Torija v. Spain* EHRR, at 562 para 29 and *Anya v. University of Oxford*, wherein the Court referred to Article 6 of the European Convention of Human Rights which requires,

"adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a



part of "due process".

19. There is no dispute that breach of a directory provision may not vitiate the proceedings, but the entire aspect of the departmental proceeding has to be taken into account and if an important directive, which actually is in the nature of a guarantee against forceful trap, is not complied with, the proceedings do become suspect.

20. The procedure prescribed in paragraphs 704 and 705 of the Indian Railways Vigilance Manual may be directory (refer to ***Chief Commercial Manager, South Central Railway, Secunderabad and Ors. Vs. G. Ratnam and Ors. With The Divisional Commercial Manager, South Central Railway, Secunderabad and Ors. Vs. M. Subramanyam Devers And Union of India Vs. M. Anjaneyulu; 2007 AIR SCW 5419***), but in the background of the fact scenario that the complainant was not produced during the enquiry; the tainted



money was not exhibited and independent witnesses were not examined, such breach of even a directory provision becomes an issue which cannot be lightly brushed aside.

21. As has been observed by this Court in the order dated 01.07.2019, the alleged recovery of currency notes, their denominations and their status of recovery have not been proved at all.

22. These aforementioned aspects do not appear to have been dealt with in the impugned order and it appears that the Tribunal, instead of assessing the aforesaid grounds raised on behalf of the petitioner, has only focused on the superficial procedural aspect of the matter, *viz.*, that opportunity was given to the petitioner in the proceeding to put up his case and the punishment was awarded after a detailed inquiry report was submitted.

23. We have also noticed that the Tribunal has completely eschewed itself from delving



even skin-deep into the materials brought forth before it on the plea that judicial review has not to be dealt with as if an appeal is being decided. The proposition of law which has been quoted by the Tribunal, no doubt, is the accepted position in law; nonetheless, the grounds urged before a Tribunal is required to be dealt with or else the order does not remain sustainable in the eyes of law.

24. We find that except for reiterating the settled position of law with respect to natural justice and the limitations of judicial review in matters of domestic enquiry, no actual assessment of the case of the parties has been made by the Tribunal

25. Consequently, we do not approve of the decision rendered by the Tribunal and we are left with no other choice, but to set-aside the same.

26. The matter is remitted to the Tribunal to write out a fresh order in the light of what has been aforenoted within a period of eight (8)



weeks of the date of receipt/production of copy of this order.

27. The writ petition stands allowed to the extent indicated above.

(Amreshwar Pratap Sahi, CJ)

(Ashutosh Kumar, J)

Praveen-II/-

AFR/NAFR	AFR
CAV DATE	N/A
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