

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11274 of 2013

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Md. Nehal Ahamad Khan S/O Late Md. Jamaludin Khan, Vill. Post- Bantara
P.S.- Deokun In the District Of Aurangabad At Present Police Line Gopalganj
In The District Of Gopalganj.

... .. Petitioner/s

Versus

1. The State Of Bihar through its Principal secretary in the Department Of Home, Govt. Of Bihar.
2. The Director General Of Police, Bihar, Patna.
3. The Inspector General Of Muzaffarpur Zone, Muzaffarpur.
4. The Deputy Inspector General Of Police, Saran Range At Chhapara.
5. The Superintendent Of Police, Gopalganj.
6. The Deputy Superintendent Of Police, Sadar, Sub Division Gopalganj.
7. The K.S. Anupam W/O Amrit Raj, Superintendent Of Police, Gopalganj At Present Posted As Deputy Inspector General Of Police, Rail, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sanjeev Kumar
For the Respondent/s : Mr.Amar Nath Deo

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 19-11-2019

Heard counsel for the petitioner and counsel for the
respondents-State.

Petitioner while posted as Officer-in-charge of Sripur
out post in the district of Gopalganj was proceeded against by
communication dated 27.05.2009. Charges are that in short span of
15 days, two incidents of motorcycle snatching and loot had taken
place under his watch for which he had been asked to submit his
explanation. Explanation was submitted by the petitioner before



Sub divisional Police officer-cum- Enquiry officer of Sadar Subdivision, Gopalganj. Petitioner, in the enquiry has placed on record the fact of recovery of looted articles including motorcycle in question and arrest of the accused in connection with two occurrences which formed basis of the proceedings against the petitioner. Petitioner has submitted before Enquiry Officer that in view of elections at that time petitioner was also preoccupied in maintenance of law and order on account of the elections. Taking into consideration additional burden on the petitioner at that time, he had acted with due diligence and within a reasonable time to conclude the investigation after the elections in the aforesaid manner. The Officer deputed to record the evidence under Rule 828 (c) of the Bihar Police Manual taking note of petitioner's defence had given a report to the Superintendent of Police that the case does not call for any punishment.

Since petitioner had with due diligence completed investigation, recovered looted articles and arrested accused persons punishment is not desirable. Report of the Sub Divisional Police Officer was thus, submitted recommending no action against the petitioner. In spite of the said report, Superintendent of Police under his order dated 10.03.2010 has proceeded to hold the petitioner guilty of the charges and awarded punishment of



withholding of his increment of one year equivalent to two black marks.

Counsel for the petitioner submits that the order of the Superintendent of Police is without any basis and not in accordance with the procedure prescribed under rule 828 (c) of Bihar Police Manual. The nature of the charge which was being enquired into by no stretch of imagination can be construed as a misconduct.

Counsel for the State however, submits that the petitioner has been found negligent in discharging his duty which involved control of crime. The order of punishment after a proceeding does not require any interference and while exercising judicial review under Article 226 of the Constitution as admittedly opportunity had been granted to the petitioner as contemplated under Bihar Police Manual.

Upon hearing rival contentions, this court would observe that authorities had resorted to procedure as per provision contained in rule 828 (c) of Bihar Police Manual (Manual for short). In order to appreciate submissions of the parties, rule 828 (c) of Bihar Police Manual is reproduced hereinbelow:-

828: Infliction of major punishments.-

(C) *“In case in which, forfeiture of increment is proposed to be an adequate punishment, this may be inflicted without formal enquiry in the form of a proceeding but every such matter shall state*



clearly: first, the charges against the defaulter; then his answers to each charge, one by one; and lastly, the finding upon each charge of the officer inflicting the punishment. In such cases, the Superintendent need not hold the enquiry himself, nor shall the delinquent have the right to appear before him, but he has the right to appear before the officer deputed to record the evidence and to take his defence; and such officer who shall not be below the rank of inspector, shall come to a clear finding on each charge and shall submit the record with his recommendations to the Superintendent for orders.”

Under the rule, Superintendent of Police had the option either to enquire into the matter himself, or depute an officer to record the evidence and take the defence of delinquent. Obviously, Superintendent of Police has chosen second option and deputed Sub divisional Police Officer (SDPO for short) to record petitioner's defence. Having recorded the evidence and petitioner's defence, report has been submitted holding the charges not to be proved. Clear finding on each charge has been submitted by the deputed officer with his recommendation to the Superintendent of Police not to award any punishment. Under the rule, Superintendent of Police, being “the officer inflicting the punishment” under Rule 828 (c) was required to pass order after considering the charges and the defaulter/ petitioner's answer to the charges, which were contained in the recommendations submitted by the SDPO.

In the instant case, Superintendent of Police has proceeded to pass order of punishment, contrary to the



recommendation/ conclusion. Punishment however is not founded on any reasons in support thereof.

The Superintendent of Police has relied upon rejection of preliminary show cause submitted by the petitioner prior to charge memo. The development thereafter on account of institution of a proceeding and recording of evidence by the officer deputed by the Superintendent himself has been ignored by the Superintendent of Police. The deputed officer on the other hand has recorded his finding on the basis of evidence and petitioner's defence as per procedure in Rule 828 (c) of the Bihar Police Manual. The same, however has not been considered by the Superintendent of Police which is required as per procedure prescribed under rule 828 (c) of Bihar Police Manual.

The order of the Superintendent of Police is bad on two counts. One on account of violation of the procedure under rule 828 (c) of Bihar Police Manual; and secondly, same is without any basis or reason in support of the conclusion.

Rule 828 (c) of Bihar Police Manual clearly contemplates recording a finding in respect of each and every charge by “the officer inflicting the punishment”. In the instant case, punishment was being inflicted by the Superintendent of Police. Under Rule 828(c) of the Bihar Police Manual he was



required to record his own finding on each charge. The only material before the Superintendent, for recording his findings was the record containing findings and recommendations of the SDPO.

The record and recommendations submitted by SDPO contained the charges against the petitioner. It also contained his answer to each charge. Rule 828 (c) mandates that charges and answer of the defaulter has to be considered, and then only the Superintendent could have recorded his findings upon each charge.

No such finding has been recorded by the Superintendent of Police as required under Rule 828(c) of the Manual, with reference to any material whatsoever. Findings of the Superintendent of Police are cryptic and reads as follows:-

“अतः संचालन पदाधिकारी के मंतव्य से असहमत होते हुए आरोपित अवर निरीक्षक नेहाल अहमद को इस विभागीय कार्यवाही में दोषी पाकर इनका एक वर्ष का वेतन वृद्धि का समपहरण किया जाता है जिसका मान्य दो काले दाग”

Judicial review is of the decision making process to see that proceedings have been conducted in accordance with the procedure prescribed. In this case the procedure is prescribed under Rule 828(c) of the Manual. Apparently the procedure prescribed under Rule 828(c) has not been followed.

The order of Superintendent of Police, Gopalganj without recording his own findings upon each charge is in violation of procedure prescribed under Rule 828(c) of the Manual



and thus legally unsustainable. In this connection, this court would refer to recent judgment of the apex court in the case of Union of India and others vs P. GUNASEKARAN reported in (2015) 2 SCC 610 wherein the scope of judicial review has been reiterated. Para 12 of the said judgment is worth reproducing which reads as follows:-

“Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers Under Articles 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

- a. the enquiry is held by a competent authority;*
- b. the enquiry is held according to the procedure prescribed in that behalf;*
- c. there is violation of the principles of natural justice in conducting the proceedings;*
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*



f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;

h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

i. the finding of fact is based on no evidence”.

Order of Superintendent of Police is also without assigning any reasons and shows total non-application of mind. The same is in teeth of the law laid down by the apex court in the case of **Kranti Associates Private Limited and another vs. Masood Ahmed Khan and others reported in (2010) 9 Supreme Court Case page 496** wherein the apex court has considered the law requiring assigning of reasons by Administrative authorities, whether performing quasi judicial or purely administrative functions. The law in this regard has been summarized in para 47 which reads as follows:-

“Summarizing the above discussion, this Court holds:

a. In India the judicial trend has always been to record reasons, even in administrative decisions, if 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 life blood 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.

l. 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. (David Shapiro in Defence of Judicial Candor (1987) 100 Harvard Law Review 731-737).



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. (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of 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".

On that score also, the order of the Superintendent of Police, Gopalganj dated 10.03.2010 is bad in law and hereby quashed. Petitioner has also approached the appellate authority.

Deputy Inspector General, Saran at Chapra under order dated 28.07.2010 has rejected the appeal. Order dated 28.07.2010 of the DIG as well as order of the Inspector General of Police, Muzaffarpur dated 23.02.2012 affirming the illegal order are also quashed.

As a result of quashing of the orders, petitioner is entitled to all consequential benefits.

Writ petition stands allowed.

(Madhuresh Prasad, J)

s.hassan/-

AFR/	AFR
CAV DATE	NA
Uploading Date	11.02.2020
Transmission Date	NA

