

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1332 of 2015

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Praween Kumar Son of Late Baidyanath Prasad resident of village-Gopalpur, P.S.- Warsaliganj, District- Nawada, At present posted as Assistant Director, Office of Deputy Director-I, Monitoring and Evaluation Cell, Building Construction Department, Bishweshwariya Bhawan, Patna.

... .. Petitioner

Versus

1. The State Of Bihar through the Chief Secretary, Govt. of Bihar
2. The Principal Secretary, Building Construction Department, Govt. of Bihar, Bishweshwariya Bhawan,
3. The Principal Secretary Urban Development Department, Govt. of Bihar, Patna.
4. The Engineer-in-Chief Building Construction Department, Govt. of Bihar, Bishweshwariya Bhawan, Patna
5. The Chief Engineer South, Building Construction Department, Govt. of Bihar, Bishweshwariya Bhawan, District Patna
6. Superintending Engineer ,Building Construction Division, District- Patna.
7. The Joint Secretary-cum-Chief Vigilance Officer, Road Construction Department, Govt. of Bihar, Bishweshwariya Bhawan, District Patna
8. The Deputy Secretary Vigilance, Road Construction Department, Govt. of Bihar, Bishweshwariya Bhawan, District Patna
9. The Additional Departmental Enquiry Commissioner, Govt. of Bihar, Patna.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr.Rakesh Kumar Samrendra
For the Respondent/s : Mr. Mahtab Alam, AC to SC 20

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 08-03-2019

Heard learned Counsel for the petitioner as well as the learned State Counsel.

2. Writ petition has been filed challenging issuance of charge memo dated 2.7.2009 and supplementary charge memo dated 3.9.2010 by respondent No. 8, alleging that the same was



issued by an incompetent authority and was without jurisdiction. Prayer has also been made for quashing the enquire proceedings leading to issuance of order of punishment by the Disciplinary Authority dated 30.5.2013. The Disciplinary Authority by the said order has awarded punishment of reverting the petitioner to the lowest scale of Assistant Engineer for his remaining service and also that during service tenure the petitioner would be posted on non work posting.

3. The punishment has been inflicted upon the petitioner on the basis of charge memo and supplementary charge memo wherein allegations have been made that on 12.3.2009 the petitioner has indulged in illegalities and advertised a tender notice without sanction and approval of the competent authority. It is also alleged that he has committed illegality in selling of the Bill of Quantity (BOQ for short) so as to grant undue benefit to certain favoured persons. Allegation has also been made that the petitioner has compromised confidentiality of the office by allowing strangers access to official documents in order to grant them undue benefits in relation to nine works which were advertised and for which BOQ was sold. Quantification of the work, in respect of which allegation has been made, is to the tune of Rs. Four Crore fourteen lakh and fifteen thousand.



4. Referring to the charge memo and enquiry report, it is submitted by petitioner's Counsel that from perusal of the same it is obvious that no witness was either mentioned in the charge memo nor examined during course of enquiry in support of the charges. He submits that in the proceedings before the Enquiry Officer there has been violation of the procedure prescribed under Rule 17(14) of the Bihar CCA Rules 2005 (hereinafter referred to as "the Rules"). Referring to para 9 of the enquiry report, it is submitted that the Presenting Officer, other than placing on record the list of documents and document, has not discharged his duties as required under Rule 17(14) of the Bihar CCA Rules 2005. He submits that the proceedings have been conducted in gross violation of Rule 17 of the Rules. The issue was raised by him before the Disciplinary Authority while submitting his second show cause, however, the Disciplinary Authority has failed to consider the same.

5. In the proceedings, out of total twelve charges, eleven (except charge No. 6) have been held to be proved and punishment awarded as a result of such procedure in gross violation of the procedure established under Bihar CCA Rules 2005 as also in violation of principles of natural justice.



6. It is submitted that even before the Reviewing Authority the petitioner has raised the specific grievances regarding lack of any witness in support of the allegations as also failure of the Presenting Officer to present the case on behalf of the Department. Specific plea of the petitioner in this respect raised in his memorial dated 14.6.2013 filed under Rule 14(2) of the Bihar CCA Rules 2005 have been rejected by a cryptic order dated 10.3.2014 of the Reviewing Authority . The order of the Reviewing Authority is reproduced hereinbelow:

“उपर्युक्त विषयक प्रासंगिक पत्र के संबंध में कहना है कि आपके द्वारा समर्पित पुनर्विचार अभ्यावेदन को पुनर्विचार योग्य नहीं पाया गया है क्योंकि आपके द्वारा कोई नया तथ्य प्रस्तुत नहीं किया गया है।”

7. Counsel for the petitioner in the instant proceedings has also raised a plea regarding the very basis of the proceeding being illegal for want of jurisdiction. It is his submission that charge memo has not been approved or issued by the competent authority.

8. The importance of assigning reason have been emphasised by Courts repeatedly. Non-assigning of reasons renders the decision arbitrary and in the circumstances it is difficult even for this Court to appreciate as to what weighed before the authorities in arriving at the conclusion. Such unreasoned orders are the antitheses of fairness. Remedy of



review/appeal is rendered futile when the authority who is enjoined the duty to consider the plea does not do so. Such an empty formality cannot be countenanced.

In this connection this Court would refer to and rely upon the recent judgment of the apex Court in the case of Kranti Associates Private Ltd. & Anr. vs. Masood Ahmad Khan and others, reported in (2010) 9 SCC 496. The apex Court has emphasised the requirement of recording reasons and summered the principles for recording of reasons in paragraph 47 which are being reproduced:-

“47. Summarising 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 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.

(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. (See David Shapiro in Defence of Judicial Candor [(1987) 100 Harvard Law Review 731-37] .)

(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 [(1994) 19 EHRR 553] EHRR, at 562 para 29 and Anya v. University of Oxford [2001 EWCA Civ 405 (CA)] , 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”.

9. The order of the Reviewing Authority dated 10.3.2014 is without assigning any reason whatsoever. In view of settled principles of law requiring recording of reasons is unsustainable in law.

Order of the reviewing authority dated 10.03.2014 is quashed. Matter is remitted to the Reviewing Authority. Issues



raised in the review petition, which have been taken note of in the instant order, are required to be considered by the Reviewing Authority.

10. Since prior to institution of the instant writ proceedings, the issue regarding charge memo being without jurisdiction, has not been raised before the authority, Counsel for the petitioner has sought liberty to raise said plea with reference to the relevant Rules in this regard by supplementing his memorial dated 14.6.2013. The liberty, as prayed for, is granted. The petitioner should supplement his review referring to the extant rules and the service condition wherein the competent authority has been prescribed for issuance of charge memo on the petitioner, who at the relevant time was posted as Executive Engineer, Building Construction Department, Danapur.

11. If such supplementary application is filed within four weeks, the same is required to be considered in accordance with law by a reasoned and speaking order. It is expected that since the issue is now about ten years old already, that the respondent authorities would take a final decision on the review application expeditiously and without any undue delay.

12. The writ petition is disposed of with the aforesaid liberty.

(Madhuresh Prasad, J)

SNkumar/-

AFR/NAFR	AFR
CAV DATE	N/A
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