

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12892 of 2019

Anil Kumar Jha Son of late Arun Kumar Jha, Resident of Village- Singia, P.S.
Bisfi, District- Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Main Secretariat, Patna.
2. The Additional Chief Secretary, General Administration Department, Main Secretariat, Patna.
3. The Deputy Secretary, General Administration Department (formerly Known as Personnel and Administrative Reforms Department), Main Secretariat, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Kishore Kumar Thakur,
Advocate

Mr. Hemant Kumar,
Advocate

For the Respondent/s : Mr. Md.Nadim Seraj,
(GP5)

Mr. Dhurendra Kumar,
AC to GP-5

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

CAV JUDGMENT

Date : 07-08-2019



1. The challenge in the present writ petition is to the order dated 06.06.2019 contained in Memo No. 764 issued under the signature of Deputy Secretary, General Administration Department, whereby the petitioner has been dismissed from service.

2. Heard Mr. Kishore Kumar Thakur, learned Advocate for the petitioner and Mr. Dhurendra Kumar, learned AC to GP-5.

3. The State of Bihar enacted the Bihar Act 15 of 2003, whereby Bihar Reservation of Vacancies in Posts and Services (For Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1991 was amended and the benefit of reservation was denied to the reserved category candidates falling outside the State of Bihar.

4. The petitioner, at the relevant time, functioned as an Under Secretary in Personnel and Administrative Reforms Department which is now known as General Administration Department. He had issued a note under the circumstance that no promotion is admissible to any reserved category



candidate hailing from outside the State of Bihar, even though they were appointed on their respective posts before 11.06.1996. This note was approved by the Departmental Commissioner as well as the Secretary of the Department. One Rajiv Nandan Maurya, one of the employees who apprehended his reversion from the post of Superintending Engineer, filed an unaffidavited complaint against the petitioner before the Vigilance Department alleging that the petitioner was demanding Rs. 50,000/- as gratification for putting up a note which would favour him.

5. A trap was laid and the petitioner was arrested accepting Rs. 10,000/- tainted money. He was suspended and was subjected to a departmental proceeding.

6. In the departmental proceeding, the Enquiry Officer did not find the allegations to be in conformity with the charge and recommended for the exoneration of the petitioner.

7. The aforesaid report was assessed by the Government and it was found that other factors also had to be



taken into account before a decision could be given. A decision also was taken that the issue with respect to materials collected during the trap and of the petitioner having been arrested in a vigilance case was not taken into account which was per force necessary to be included in the charge. The petitioner thereafter was subjected to a departmental proceeding with the charge as indicated in the report.

8. Since the departmental proceeding was not being concluded finally, the petitioner approached this Court *vide* C.W.J.C. No. 2301 of 2009. A Bench of this Court *vide* order dated 17.11.2009 took note of the fact that the disciplinary authority did not conclude the proceeding as was obligated under the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 and directed that if the departmental proceeding is not concluded within the period of four months for no fault of the petitioner, the respondents would be restrained from proceeding with the departmental proceeding any further. In that event, it was also directed that the Secretary, Personnel and Administrative



Reforms would initiate fresh departmental proceeding against those erring officials who would have been found to have failed in their duty of complying the order of the Court which had the net effect of according benefit to the petitioner.

9. The proceedings, as it were, could not be completed within the timeline directed by this Court and therefore the departmental proceeding against the petitioner was stayed. With respect to the payment of the petitioner during the suspension period, it was decided that the matter would be dealt with only after the conclusion of the criminal case lodged against the petitioner. The impact of the aforesaid order of the learned single Judge, referred to above, and the consequent action of the department was that the proceedings against the petitioner were kept on hold and the suspension of the petitioner was revoked.

10. In the meantime, as it appears from the records, the State of Bihar challenged the aforesaid order passed in C.W.J.C. No. 2301 of 2009 referred to above. The LPA Court set aside the order passed by the writ court and directed for



revival of the proceedings and completion of the same within a period of eight months. In the event of the proceeding not being completed, the disciplinary authority was directed to record the reasons for such delay.

11. The proceedings against the petitioner therefore was revived. A departmental Commissioner was appointed as the conducting officer.

12. Mr. Thakur, learned counsel for the petitioner has submitted that the conducting officer found the petitioner guilty and held that whatever may be the materials in his defence, the fact remained that the petitioner was made accused in a criminal case and was arrested in the trap conducted by the vigilance. The aforesaid report of the enquiry officer was accepted in totality by the disciplinary authority who *vide* his resolution dated 06.06.2019 subjected the petitioner to the punishment of dismissal from service.

13. Mr. Thakur, learned counsel for the petitioner while challenging the aforesaid order has submitted that the resolution of the Government is absolutely laconic and does



not refer to the grounds raised by the petitioner in the departmental proceeding. No evidence has been led by the department to prove the fact that the petitioner was subjected to such trap proceedings.

14. The entire report was prepared on the basis of documents viz. the FIR, the trap memo and the representation of the petitioner. The aforesaid documents also were not proved for coming to the conclusion that the petitioner was guilty of the charges and therefore was required to be subjected to the maximum/most harsh punishment of dismissal from service.

15. *Per contra*, the learned counsel for the State has tried to defend the order by submitting that all the procedural formalities were complied with and it was ultimately found that petitioner was guilty of the charge of corruption and therefore nothing less than dismissal by way of punishment could have been imposed upon the petitioner.

16. From perusal of the order impugned, it clearly appears that only the factual background and the procedure



followed has been recounted and no attempt has been made to evaluate the explanation offered by the petitioner. The facts that the aforesaid Rajiv Nandan Maurya / the complainant was ultimately dismissed from service and that the earlier report of the petitioner did not at all benefit aforesaid Mr. Rajiv Nandan Maurya and the report was legally tenable, were not taken into account. The punishment has been imposed only on the ground that there is a criminal case pending against the petitioner. The documents viz the F.I.R., the trap memorandum and the facts leading to the launching of criminal case have not been proved.

17. In ***Kuldeep Singh Versus Commissioner of Police and Ors. [(1999) 2 SCC 10]***, the Supreme Court in paragraph nos. 6, 7 and 8 has held as follows:

6. It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the Enquiry Officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the Appellate Authority.



But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictates of the superior authority.

7. In Nand Kishore Prasad vs. State of Bihar it was held that the disciplinary proceedings before a domestic Tribunal are of quasi-judicial character and, therefore, it is necessary that the Tribunal should arrive at its conclusions on the basis of some evidence, that is to say, such evidence which, and that too, with some degree of definiteness, points to the guilt of the delinquent and does not leave the matter in a suspicious state as mere suspicion cannot take the place of proof even in domestic enquiries. If, therefore, there is no evidence to sustain the charges framed against the delinquent, he cannot be held to be guilty as in that event, the findings recorded by the Enquiry Officer would be perverse.

8. The findings, recorded in a domestic enquiry, can be characterised as



*perverse if it is shown that such findings are not supported by any evidence on record or are not based on the evidence adduced by the parties or no reasonable person could have come to those findings on the basis of the that evidence. This principle was laid down by this Court in **State of Andhra Pradesh vs. Rama Rao** in which the question was whether the High Court, under **Article 226**, could interfere with the findings recorded at the departmental enquiry. This decision was followed in **Central Bank of India Limited vs. Prakash Chand Jain and Bharat Iron Works vs. Bhagubhai Balubhai Patel**. In **Rajinder Kumar Kindra vs. Delhi Administration** it was laid down that where the findings of misconduct are based on no legal evidence and the conclusion is one to which no reasonable man could come, the findings can be rejected as perverse. It was also laid down that where a quasi-judicial tribunal records findings based on no legal evidence and the findings are its mere ipse dixit or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated.*

18. The same issue came up for consideration in the case of **Roop Singh Negi Versus Punjab National Bank and Others [(2009) 2 SCC 570]**, wherein the Supreme Court in



paragraph 14, 15 and 23 of the judgement has held as follows:

" 14. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence.

15. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the Enquiry Officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. Appellant being an employee of the bank, the said



confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the Enquiry Officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.

*23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the Criminal Court on the basis of self-same evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the **Evidence Act** may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the Enquiry Officer was based on merely ipse dixit as also surmises and*



conjectures, the same could not have been sustained. The inferences drawn by the Enquiry Officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.”

19. Thus, in the present case, the only evidence available with the disciplinary authority are the documents relating to the criminal case against the petitioner. No attempt has been made by the disciplinary authority to come to any definite conclusion with respect to the demand of tainted money.

20. The proof of demand of illegal gratification is a necessary pre-requisite to uphold the charge of demand of illegal gratification and mere recovery will not be sufficient for imposition of penalty of dismissal of the petitioner.

21. From the perusal of the records it appears that (a) no evidence has been led on the alleged demand of illegal gratification by the petitioner; (b) neither the complainant nor the Inspector of Vigilance Investigating Bureau has been examined in the disciplinary proceeding; (c) no other evidence



has been led in proof of the charge and finally (d) the order of dismissal is a non-speaking order.

22. The Supreme Court in ***Commissioner of Police, Delhi & Ors. Versus Jail Bhagwan [(2011) 6 SCC 376]*** has held that in a case of disciplinary proceeding founded on alleged demand of illegal gratification, absence of definite / clear proof supporting the acceptance of illegal gratification by the delinquent would make charge rest on no evidence.

23. Apart from the aforesaid, what really has caught the attention of this Court is that the order impugned does not at all refer to the explanation offered by the petitioner. The order, thus, suffers from the vice of being non-speaking order and one is not in a position to fathom what has weighed with the disciplinary authority in subjecting the petitioner with the aforesaid punishment.

24. In ***Kranti Associates Private Limited & Anr. Versus Masood Ahmed Khan & Ors. [(2010) 9 SCC 496]***, the Supreme Court has listed the reasons for any order to be a reasoned /



speaking order. Para 47 of the judgement lists such reasons.

They are being reproduced here for easy reference:

" 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-making 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 731-32)

(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 an art of "due process".



25. Thus, the order impugned cannot be sustained in the eyes of law and is set aside.

26. The matter is remitted to the disciplinary authority to pass a fresh order in accordance with law after taking into account the defence of the petitioner and giving his own reasons for rejecting or accepting such defence. The order shall be passed within a period of eight weeks from the date of production/communication of a copy of this order.

27. Whether the petitioner would be allowed to remain under suspension during that period would be the decision of the disciplinary authority.

28. With the aforesaid observation / direction, this petition stands disposed off.

(Ashutosh Kumar, J)

skm/-

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CAV DATE	
Uploading Date	07.08.2019
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