

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8735 of 2018

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Ghanshyam Jha, son of Late Dr. Kapileshwar Jha, resident of 20/N Professor Colony, Police Station- Patrakar Nagar in the District of Patna, presently posted as Mineral Development Officer, Jamui.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Mines and Geology, Government of Bihar, Patna.
2. The Principal Secretary, Department of Mines and Geology, Government of Bihar, Patna.
3. The Additional Secretary, Department of Mines and Geology, Government of Bihar, Patna.
4. The Special Secretary, Department of Mines and Geology, Government of Bihar, Patna.
5. The Director, Department of Mines and Geology, Government of Bihar, Patna.
6. The Under Secretary, Department of Mines and Geology, Government of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Abhinav Srivastava, Advocate Mr. Sanjay Kumar, Advocate Mr. Manoj Kumar, Advocate
For the Respondent/s	:	Mr. Naresh Dikshit, Advocate Ms. Kalpana, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
CAV JUDGMENT

Date : 08-07-2019

Heard the learned counsel for the parties.

2. The petitioner has challenged the order dated 14.12.2017 contained in Memo No. 7533/M whereby he has been subjected to a punishment of stoppage of promotion for five years and withholding of three increments with cumulative effect; as also the order dated 12.03.2018 contained in Memo No. 1347/M whereby the revision preferred by the petitioner against the aforesaid



order of punishment was rejected and the order of punishment has been affirmed and upheld.

3. The petitioner has provided in this writ petition a long history of litigation for and after his tenure as Assistant Mining Officer at Sheikhpura from 20.02.2006 to 10.09.2007.

4. In order to appreciate the contentions raised on behalf of the petitioner against the orders impugned, I deem it necessary to state in brief the background facts.

5. During the tenure of the petitioner as Assistant Mining Officer at Sheikhpura, he was served with a show cause notice by the District Magistrate, Sheikhpura on 20.06.2007 to explain as to why a criminal case was not lodged against unauthorized and illegal stone crushers and lease holders who were using explosives for mining purposes.

6. According to the petitioner, he after requisitioning one section armed force from the District Magistrate, Sheikhpura had made an inspection of the field for enforcing the provisions of Bihar Mines Mineral Regulation and in the process had dismembered the belt of the crushing machine leading to immediate stoppage of the crushing of the stones in an unauthorized manner. Vehicles and brick kilns were also raided by him.



7. The petitioner explained his cause and informed the District Magistrate, Sheikhpura that FIR has been lodged by him under the Bihar Minor Mineral Concession Rules, 1972 but not under the Explosives Act as he was not authorized to do so.

8. The petitioner was also issued another show cause for some other so called lapses viz. leaving the headquarters without permission, which was also explained by him. Some other charges were also thrown on his face but according to the petitioner, he replied to all such charges.

9. The petitioner thereafter was transferred to Patna on 10.09.2007 and at Patna he received a communication from the Principal Secretary, Department of Mines & Geology, Government of Bihar asking him to explain the charges levelled against him by the District Magistrate, Sheikhpura. The petitioner had no option but to narrate the background facts in his show cause reply to demonstrate that the charges levelled by the District Magistrate, Sheikhpura were all false. The petitioner thereafter was suspended on the charge of using intemperate language in his correspondence and remaining absent from headquarters, disobeying the orders of the superiors and for being involved in corrupt practices. Thereafter a departmental proceeding was



initiated against him and the enquiry and presenting officer were also appointed.

10. In the meanwhile since the charges could not be framed within the stipulated period under the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005, the order of suspension was quashed by order of this Court dated 12.02.2008.

11. Thereafter, on conclusion of enquiry, the enquiry officer submitted his report exonerating the petitioner of all the charges levelled against him.

12. It has been submitted on behalf of the petitioner that the enquiry report was considered by the department and a decision was taken to exonerate the petitioner with a warning for not using intemperate language in his correspondence. The notings in the file of the Joint Secretary disclosing the aforesaid facts has been brought on record by the petitioner. Despite this, it has been averred, the file was sent to the learned Advocate General for his opinion, who opined that the disciplinary proceeding may be conducted by issuing fresh show cause to the petitioner intimating him about the point of difference of the disciplinary authority with the enquiry report. But in actuality, a fresh departmental proceeding was initiated against the petitioner by order dated 21.09.2010 and out of the eight charges for which the



departmental proceeding was held earlier, five of such charges were levelled against the petitioner.

13. The aforesaid decision of the authorities was challenged by the petitioner in C.W.J.C. No. 17426 of 2010 in which a Bench of this Court by order dated 03.10.2012 directed that the matter relating to the petitioner be remitted to the enquiry officer for further enquiry. With this order, an issue was raised by the petitioner before the new enquiry officer that there being essential difference between "*fresh*" and "*further*" enquiry and the High Court having remitted the matter for further enquiry, the enquiry could not have been transferred to another enquiry officer in a fresh proceeding. However a fresh proceeding begun before the new enquiry officer. Two contempt applications were also filed by the petitioner wherein the stand of the State was that after the order dated 03.10.2012 passed in C.W.J.C. No. 17426 of 2010 referred to above all the orders in the file would stand wiped out and the case would be relegated to the stage what was directed by order dated 03.10.2012.

14. It has then been submitted on behalf of the petitioner that without taking into consideration the findings of the enquiry report submitted in earlier departmental proceeding and without leading any documentary or oral evidence and completely ignoring the



show cause reply of the petitioner an order of dismissal from service was passed vide order dated 25.11.2014 contained in Memo No. 4224.

15. The petitioner had to again challenge the aforesaid order before this Court vide C.W.J.C. No. 22534 of 2014. A Bench of this Court vide order dated 16.03.2017 held the impugned order of dismissal to be mechanical, bereft of discussion and not expressing any reason for imposing the extreme penalty of dismissal, which was passed without rejecting the explanation of the petitioner or expressing any opinion thereon and consequently unsustainable in the eyes of law. The order therefore was set aside but the matter was remitted to the disciplinary authority to pass a fresh order, if so advised, for consideration of the opinion of the departmental Minister which had not been interfered with or overruled by any superior authority as also the opinion of the Bihar Public Service Commission, the opinion of the enquiry officer and the explanation of the petitioner on the disagreement note.

16. Thereafter, the order dated 14.12.2017 was passed subjecting the petitioner to a punishment of stoppage of promotion for five years and withholding of three increments with cumulative effect. The aforesaid



order was challenged in revision which too was rejected vide order dated 12.03.2018.

17. Both the orders are under challenge in the present petition.

18. The grounds on which the aforesaid orders have been challenged by the petitioner are:

(a). the petitioner had earlier received appreciation at the hands of Principal Secretary of the department for sterling performance in the district of Sheikhpura;

(b). the enquiry officer in the report dated 08.06.2009 has exonerated the petitioner of all the charges;

(c). the departmental Secretary and the Minister have endorsed their opinion and accepted the enquiry report;

(d). non-observance of Rule 18(7) and 21 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 which mandates that the Service Commission shall be consulted and its advice be taken into consideration before imposing any penalty on a government servant and the order passed by the disciplinary authority shall be communicated to the government servant in its entirety with all the reports;



(e) no plausible reason has been assigned for differing with the opinion of the Bihar Public Service Commission and;

(f) complete non-observance of Rule 13(3) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 and Rule 22(2) of the Rules of Executive Business, 1979.

19. The stand of the State in the present petition is that in compliance of the order dated 16.03.2017 passed in C.W.J.C. No. 22534 of 2014, show cause notice was issued to the petitioner, affording an opportunity to him to prefer his reply on the five charges. The reply filed by the petitioner was considered and was found that the petitioner had not given any new evidence or information and the reply was merely a repetition of the earlier stand of the petitioner. It has further been reiterated by the learned counsel for the State that the opinion of the departmental Minister of the Bihar Public Service Commission and enquiry officer was also perused by the respondent authority, who after taking into consideration all the aspects, passed an order of punishment of stoppage of promotion for five years and withholding of three increments with cumulative effect. There is no reason to interfere with the aforesaid order as the same has been affirmed in revision. It was also submitted that



the opinion of the disciplinary authority and the revisional authority could not be substituted and if it is found that all the procedural formalities were complied with, any interference would be uncalled for.

20. On perusal of the order of dismissal, it appears that the authority concerned held that since the petitioner was proceeded departmentally on the orders of the Chief Minister, therefore the opinion of the departmental Minister was not necessary to be followed. So far as the opinion of the Bihar Public Service Commission was concerned, it only opined that dismissal was not the proportionate punishment but the Commission had not indicated about the nature of punishment. The impugned order admits that there was difference of opinion with respect to the report of the enquiry officer and in the event of no further enquiry with respect to some of the charges, the petitioner was served with a second show cause notice and therefore the requirement under Section 18(3) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 was complied with. The explanation of the petitioner was stated to be unacceptable.

21. On a careful analysis of the entire gamut of facts, it appears to this Court that though reasons have been assigned by the disciplinary authority for imposing



punishment and also adhering to the directions of this Court while remitting the matter but those reasons do not effectively take into account the background facts, the explanations offered by the petitioner and other attendant circumstances. All that has been held by the disciplinary authority is that some more positive action was required to be taken by the petitioner towards implementation of the Bihar Minor Mineral Concession Rules and that the petitioner ignored his obligations as an officer of the government. What has further struck this Court is that the revision under Section 28 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 has been only mechanically rejected by approving the decision of the disciplinary authority.

22. No doubt, there are various limitations in appraising the decision of an authority in a domestic proceeding in the judicial side and this Court is conscious of the refrain of not substituting its own opinion with the opinion of the disciplinary authority and what has actually to be seen is whether opportunity was provided to a delinquent/employee to explain his cause and whether such explanation has been considered in accordance with the rules of conducting such departmental proceeding, nonetheless, any order is required to be an informed one *i.e.* a reasoned order. Even the appellate or revisional



authority is under an obligation to give reasons for affirming or reversing the order of the disciplinary authority. In the absence of reasons in the order of the revisional authority, the same cannot be adjudged in a judicial proceeding as the mind of the revisional authority would remain obscure and unknown to the judicial authority.

23. In ***Madhya Pradesh Industries Limited Vs. Union of India*** (AIR 1966 SC 671) the Supreme Court noted the difference between an order of reversal and affirmation by the revisional/appellate authority and held that a revising/appellate authority was not bound to give full reasons. It was further held that ordinarily the appellate or revisional authority ought to give its own reasons succinctly but in case of affirmation of an order which gives adequate reasons, the revisional authority may agree with those reasons. However it was clarified that the nature and elaboration of the reasons by the superior/appellate/revisional authority shall necessarily depend upon the facts of each case.

24. However in a later judgment of ***Bhगत राजा Vs. The Union of India*** (AIR 1967 SC 1606), the earlier view in *Madhya Pradesh Industries Industries Limited Vs. Union of India* (supra) was overruled and it was held that reasons are required to be given by the



appellate/revisional authority or the tribunal as they are amenable to supervisory powers of the High Court and the High Court would be under a great disadvantage if no reasons are given and the revision is dismissed in a cryptic manner.

(Also refer to the ***State of Gujarat v. Patel Raghav Nath*** (AIR 1969 SC 1297) and ***M/s Travancore Rayons Ltd. v. Union of India and others*** (AIR 1971 SC 862).

25. What would be a speaking order and when would that be necessary has also been laid down by the Supreme Court in ***Kranti Associates Private Limited and Another v. Masood Ahmad Khan and Ors.*** (2010) 9 ***SCC*** 496.

26. In the aforesaid judgment, it has been held that it would be necessary to record reasons even in administrative decisions if such decisions affect anyone prejudicially. However a reasoned order is a must in a quasi judicial proceeding as it serves the wider principle viz. justice must not only be done but it should also appear to be done. It also operates as a valid restraint on any possible arbitrary exercise of judicial/quasi judicial/administrative powers. Reasons reassure that discretion has been exercised on relevant and not



extraneous considerations. This would obviously facilitate the process of judicial review by superior courts.

27. Since the petitioner has been subjected to a punishment which order has been subjected to revision, it would have been only proper on the part of the revisional authority to have at least indicated that the reasons given by the disciplinary authority are acceptable and are not required to be interfered with. Merely rejecting the revision of the petitioner does not give any idea to this Court whether the reasoning given by the disciplinary authority has been reviewed. It was all the more necessary for the reviewing authority to have assessed the reasons assigned by the disciplinary authority because as a matter of self-restraint, the court would not like to substitute its own opinion with the opinion of the disciplinary authority.

28. For the aforesaid reasons, the order passed in revision is set aside.

29. The matter is remitted to the revisional authority to write out a fresh order in accordance with law after assessing the correctness of the reasons assigned by the disciplinary authority.

30. The aforesaid order shall be passed within a period of three months of the receipt/production of a copy of this order. Till the time the order is passed by the



revisional authority, the order of disciplinary authority shall remain in abeyance.

31. The application stands allowed to the extent indicated above.

(Ashutosh Kumar, J)

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AFR/NAFR	AFR
CAV DATE	08.05.2019
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Transmission Date	

