

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 1423 of 2018

Pradeep Kumar Singh son of Rameshwar Singh, Permanent resident of Sadhpur Chhatar, P.S. Daudpur, District Chapra (Saran), presently residing at Sikandrapur bandh, P.S. Nagar Muzaffarpur, District Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Home Secretary, Government of Bihar, Patna.
2. The Director General of Police, Bihar, Old Secretariat. Patna.
3. The Inspector General of Police, Tirhut Range, Muzaffarpur.
4. Deputy Inspector General of Police, Tirhut Range, Muzaffarpur.
5. The Senior Superintendent of Police, Patna, District Patna.
6. The Senior Superintendent of Police, Muzaffarpur, District Muzaffarpur.
7. The Deputy Superintendent of Police (Headquarter), Patna, District Patna.
8. The Officer Incharge, Ahiyapur Police Station, District Muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioner : Mr. S.B.K. Mangalam, Adv.

For the Respondents : Mr. Md. Nadim Seraj, G.P. 5

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

CAV JUDGMENT

Date: 06-08-2021

The instant case has been taken up for consideration through the mode of Video conferencing in view of the prevailing sit

unt of COVID 19 Pandemic,



requiring social distancing.

2. The present writ petition has been filed for quashing the order dated 03.03.2015 passed by the respondent no. 6 i.e. the Senior Superintendent of Police, Muzaffarpur and the order dated 13.3.2015 passed by the Senior Superintendent of Police, Patna whereby and where-under, the petitioner has been dismissed from service w.e.f. 3.3.2015. The petitioner has also challenged the appellate order dated 18.8.2015, by which the Deputy Inspector General of Police, Tirhut Range, Muzaffarpur has rejected the appeal filed by the petitioner herein as well as the order passed by the Director General of Police, Patna, dated 25.10.2017 whereby and where-under the memorial submitted by the petitioner has been rejected.

3. The brief facts of the case are that the petitioner was appointed as a constable and was discharging his duty to the satisfaction of all concerned. In the year 2011, the petitioner was deputed as bodyguard of MLA, Baruraj namely Shri Brij Kishore Singh. While the petitioner was deputed as the Bodyguard of the aforesaid M.L.A. in the year 2011, one FIR bearing Ahiyapur P.S. Case No. 323 of 2011 dated 11.9.2011 was filed by one Jitendra Kumar Singh, alleging therein that the



petitioner had received a sum of Rs.1,42,000/- from the candidates participating in the selection process being conducted by the police in order to help them to pass the medical test. The petitioner was arrested and it is alleged that a sum of Rs. 40,000/- was recovered from the petitioner.

4. Thereafter, a memo of charge dated 18.12.2011 was served upon the petitioner inter alia alleging therein that the petitioner had taken illicit money from the selected candidates appearing in the police selection process for the purposes of ensuring that they pass in the medical test. The petitioner had then submitted his reply inter alia submitting therein that since the criminal proceeding was pending, the departmental proceeding be kept in abeyance till disposal of the criminal case and moreover, it was also submitted that the allegations were totally fabricated and frivolous inasmuch as he did not know either the informant or any of the selected candidates and secondly the Officer-In-charge of Ahiyapur police station had arrested the petitioner on account of his personal grudge and the Investigating Officer had then coerced him to take out a sum of Rs. 40,000/- by using ATM Card from SBI ATM machine situated at MIT Muzaffarpur and then a false seizure list was



prepared.

5. It is the allegation of the petitioner that all of a sudden, without any notice regarding conduct of the departmental proceeding, a purported second show cause notice dated 07.02.2015 was served upon the petitioner wherein, the enquiry report was also annexed. Thereafter, the impugned order of dismissal of the petitioner from service dated 3.3.2015 and 13.3.2015 were issued, which was challenged by the petitioner in appeal, however, the appeal was also dismissed by an order dated 18.8.2015. The petitioner had also filed a memorial but the same was also rejected vide order dated 25.10.2017.

6. The learned counsel for the petitioner has submitted that the principle of natural justice has not been complied with inasmuch as the departmental proceeding has been held behind the back of the petitioner. It is next submitted that the order impugned dismissing the petitioner from his service dated 3.3.2015 and 13.3.2015 have been passed without proper application of mind and no reason has been furnished in support of the decision to dismiss the petitioner from his service, hence, the impugned orders dated 3.3.2015 and 13.3.2015 are vitiated in the eyes of law. In this connection, the learned counsel for the



petitioner has referred to a judgement rendered by the Hon'ble Apex Court, reported in (2010) 9 SCC 496 (**Kranti Associates Pvt. Ltd. & Anr. vs. Masood Ahmad Khan**). The learned counsel for the petitioner has further submitted that a bare perusal of the enquiry report would show that the only relevant document which has been exhibited during the course of departmental enquiry is the FIR of Mithanpur P.S. Case No. 200 of 2011. It is also submitted that only two witnesses have been examined, i.e. one who is stated to be the confidential reader of the Senior Superintendent of Police, Muzaffarpur and the other who is Sub-Inspector of Police. While the first witness has only stated in his deposition that the Senior Superintendent of Police, Muzaffarpur had given orders for lodging of the FIR and he recognizes the signature of the Senior Superintendent of Police, Muzaffarpur, made on the said order, while the second witness has only stated that a second FIR was directed to be lodged and thereafter, departmental proceeding was initiated against the petitioner vide memo dated 18.12.2011 which bears the signature of the Senior Superintendent of Police, Muzaffarpur, which he recognizes. One other witness, who is the Inspector of police had also been examined and he had only narrated the contents of the



7. The learned counsel for the petitioner Shri B.K.M. Mangalam has submitted that none of the witnesses examined by the prosecution have either seen the petitioner taking money from the candidates nor have deposed against the petitioner inasmuch as they have not stated that the petitioner was engaged in the business of extracting money from the candidates to ensure that they pass in the medical test, nonetheless, it is submitted that the petitioner was not granted opportunity to cross-examine the said three witnesses, hence, the entire proceeding stands vitiated. It has been further submitted that the enquiry report dated 24.1.2015 would show that no evidence has been led by the prosecution so as to prove the charges levelled against the petitioner, hence, the enquiry report stands vitiated in the eyes of law.

8. The learned counsel for the respondents Shri Md. Nadim Seraj, G.P.-5 has submitted that there is no lacuna in the conduct of the departmental proceeding, hence, this Court would not sit in appeal and re-appreciate the evidence, thus no interference is required in the order of punishment dated 3.3.2015 and 13.3.2015, whereby and whereunder the petitioner has been dismissed from service. It is further submitted that a serious allegation levelled against the petitioner and



moreover, the charges have also stood proved during the course of departmental enquiry held against the petitioner and since the police department is a disciplined force, any deviation/derelection is required to be dealt with a firm hand, hence, the Senior Superintendent of Police, Muzaffarpur has rightly passed the order of removal of the petitioner. It is thus submitted that consequently, the appellate order and the order passed on the memorial filed by the petitioner also do not suffer from any infirmity. The learned counsel for the respondents State has also referred to a constitution Bench judgment rendered in the case of **P. Josheph John vs. The State of Travancore- Cochin**, reported in *AIR 1955 SC 160*.

9. I have heard the learned counsel for the parties and gone through the materials on record. This Court finds that firstly the petitioner has not been granted adequate opportunity for cross-examining the witnesses examined by the prosecution which has definitely resulted in violation of the principles of natural justice. This Court also finds that virtually no evidence has been led during the course of the departmental proceedings either oral or documentary, which would suggest the guilt of the petitioner, hence, the present case is a case of no evidence. In this connectio

relevant to refer to the judgement



rendered by the Hon'ble Apex Court in the case of **Roop Singh Negi vs. Punjab National Bank & Ors.**, reported in (2009) 2 SCC 570 and the one reported in (2010) 2 SCC 772 (The State of Uttar Pradesh vs. Saroj Kumar Sinha). It would be apt to refer to paragraphs no. 27 to 29 of the judgment rendered in the case of Saroj Kumar Sinha (*supra*) herein below:-

“27. A bare perusal of the aforesaid sub-rule shows that when the respondent had failed to submit the explanation to the charge-sheet it was incumbent upon the inquiry officer to fix a date for his appearance in the inquiry. It is only in a case when the government servant despite notice of the date fixed failed to appear that the inquiry officer can proceed with the inquiry ex parte. Even in such circumstances it is incumbent on the inquiry officer to record the statement of witnesses mentioned in the charge-sheet. Since the government servant is absent, he would clearly lose the benefit of cross-examination of the witnesses. But nonetheless in order to establish the charges the Department is required to produce the necessary evidence before the inquiry officer. This is so as to avoid the charge that the inquiry officer has acted as a prosecutor as well as a judge.

28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary Government. His function is to



examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the un rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

29. Apart from the above, by virtue of Article 311(2) of the Constitution of India the departmental enquiry had to be conducted in accordance with the rules of natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee.”

10. Therefore, this Court finds that since no cogent evidence has been led in the present case during the course of the departmental enquiry, to come to a conclusive finding that the charges levelled against the petitioner have stood proved, the enquiry report stands vitiated. This Court further finds that since no opportunity has been granted to the petitioner to cross-examine the witness produced by the prosecution, though formal in nature, the principle of natural justice has not been complied with, hence, on this ground as well, the enquiry report dated



24.1.2015 is fit to be set aside. Accordingly, the enquiry report dated 24.1.2015 is quashed.

11. It is equally a well settled law that a disciplinary authority/an administrative authority, in an order passed by it, is required to record reasons for its decision in a clear and explicit manner so as to indicate that the authority has given due consideration to the various issues involved and the need for recording of reasons is even greater in a case where the order is passed at the original stage. Reference in this connection be had to a judgment reported in A.I.R. 1990 SC 984 (**S.N. Mukherjee vs. Union of India**), paragraph nos. 35, 36, 38 and 39 whereof are reproduced herein below:-

“35. Reasons, when recorded by an administrative authority in an order passed by it while exercising quasi-judicial functions, would no doubt facilitate the exercise of its jurisdiction by the appellate or supervisory authority. But the other considerations, referred to above, which have also weighed with this Court in holding that an administrative authority must record reasons for its decision, are of no less significance. These considerations show that the re- cording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and ensures a degree of fairness in the proce

making. The said purpose would



apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. In our opinion, therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a Court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge.

36. Having considered the rationale for the requirement to record the reasons for the decision of an administrative authority exercising quasi-judicial functions we may now examine the legal basis for imposing this obligation. While considering this aspect the Donough more Committee observed that it may well be argued that there is a third principle of natural justice, namely, that a party is entitled to know the reason for the decision, be it judicial or quasi-judicial. The committee expressed the opinion that "there are some

e refusal to give grounds for a



decision may be plainly unfair; and this may be so, even when the decision is final and no further proceedings are open to the disappointed party by way of appeal or otherwise" and that "where further proceedings are open to a disappointed party, it is contrary to natural justice that the silence of the Minister or the Ministerial Tribunal should deprive them of the opportunity." (P 80) Prof. H.W.R. Wade has also expressed the view that "natural justice may provide the best rubric for it, since the giving of reasons is required by the ordinary man's sense of justice." (See Wade, Administrative Law, 6th Edn. P. 548). In Siemens Engineering Co. case (Supra) this Court has taken the same view when it observed that "the rule requiring reasons to be given in support of an order is, like the principles of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process." This decision proceeds on the basis that the two well-known principles of natural justice, namely (i) that no man should be a Judge in his own cause and (ii) that no person should be judged without a hearing, are not exhaustive and that in addition to these two principles there may be rules which seek to ensure fairness in the process of decision-making and can be regarded as part of the principles of natural justice. This view is in consonance with the law laid down by this Court in A.K. Kraipak and Others v. Union of India and Others, [1970] 1 SCR 457, wherein it has been held:

"The concept of natural justice has undergone a great deal



recent years. In the past it was

thought that it included just two rules namely (i) no one shall be a Judge in his own cause (nemo debet esse judex propria causa) and (ii) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice." (P. 468-69) A similar trend is discernible in the decisions of English Courts wherein it has been held that natural justice demands that the decision should be based on some evidence of probative value. (See: R. v. Deputy Industrial Injuries Commissioner ex P. Moore, [1965] 1 Q.B. 456; Mahon v. Air New Zealand Ltd., [1984] A.C. 648.

38. *The object underlying the rules of natural justice "is to prevent miscarriage of justice" and secure "fairplay in action." As pointed out earlier the requirement about recording of reasons for its decision by an administrative authority exercising quasi-judicial functions achieves this object by excluding chances of arbitrariness and ensuring a degree of fairness in the process of decision-making. Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied in the extent of their application depends*



upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi-judicial functions the legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement. It may do so by making an express provision to that effect as those contained in the Administrative Procedure Act, 1946 of U.S.A. and the Administrative Decisions (Judicial Review) Act, 1977 of Australia whereby the orders passed by certain specified authorities are excluded from the ambit of the enactment. Such an exclusion can also arise by necessary implication from the nature of the subject matter, the scheme and the provisions of the enactment. The public interest underlying such a provision would outweigh the salutary purpose served by the requirement to record the reasons. The said requirement cannot, therefore, be insisted upon in such a case.

39. For the reasons aforesaid, it must be concluded that except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions is required to record the reasons for its decision."



12. Now coming back to the present case, it is apparent from the impugned orders of punishment of dismissal dated 3.3.2015/ 13.3.2015, that no reason whatsoever has been furnished by the disciplinary authority, in support of its decision and further the said order of the disciplinary authority does not either show any application of mind or consideration of the issues involved or any justification for passing the said order of dismissal, hence, on this ground as well, the impugned order of punishment dated 3.3.2015/ 13.3.2015 is fit to be set aside, although another aspect of the matter is that since the enquiry report has already been set aside, the impugned orders of punishment, even otherwise, have got no legs to stand. Therefore, the impugned orders of punishment dated 3.3.2015/ 13.3.2015 passed by the Senior Superintendent of Police, Muzaffarpur and the Senior Superintendent of Police, Patna respectively, are quashed. Consequently, the appellate order dated 18.8.2015 passed by the Deputy Inspector General of Police, Tirhut Range, Muzaffarpur and the order rejecting the memorial of the petitioner dated 25.10.2017, passed by the Director General of Police, Patna are also bound to fall as a result of setting aside of the enquiry report and quashing of the impugned order dated 3.3.2015/ 13.3.2015,



hence the same are also set aside.

13. Having regard to the facts and circumstances of the case, and for the grounds mentioned hereinabove, the writ petition stands allowed on the aforesaid terms, however, the matter is remitted back to the disciplinary authority with liberty to proceed afresh against the petitioner from the stage of conduct of the departmental enquiry.

14. It is needless to state that as a consequence of quashing of the order of dismissal dated 03.03.2015/13.03.2015, the appellate order dated 18.08.2015 and the order passed on memorial dated 25.10.2017, though the petitioner shall be entitled to be reinstated forthwith, however, the payment of the consequential benefits shall abide by the final outcome of the fresh disciplinary proceedings to be conducted by the disciplinary authority, as aforesaid, nonetheless, the same shall be completed within a period of 06 months from the date of receipt/production of a copy of this Order, failing which the petitioner shall become entitled to payment of all the consequential benefits including 100% back wages, as a result of quashing of the impugned orders dated 03.03.2015/13.03.2015, 18 08 2015 and 25.10.2017. It is made clear that the



petitioner shall cooperate in the fresh proceedings to be conducted by the disciplinary authority, failing which the disciplinary authority shall be free to proceed ex-parte against the petitioner.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	NAFR
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