

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22422 of 2019

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Shyam Narayan Singh, Son of Late Sakal Deo Singh, Resident of L/75,
Anugrah Puri Colony, P.S. Rampur, District- Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Mines and Geology, Bihar, Patna.
3. The Director, Department of Mines and Geology, Bihar, Patna.
4. The Enquiry Officer cum Additional Secretary, Mines and Geology, Bihar, Patna.
5. The Mines Development Officer, Head Quarter, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Sanjeev Kumar, Adv.
For the Respondent- State:		Mr. Mithilesh Kumar Upadhyay, AC to GP-3
For the Respondents- Mines:		Mr. Naresh Kumar Dikshit, Adv.
		Mr. Brij Bihari Tiwary, Adv.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date : 05.02.2021

Heard the learned counsel for the petitioner, the learned counsel for the respondent Mines Department and the learned counsel for the State, Shri Mithilesh Kumar Upadhyay, AC to GP-3.

2. The present writ petition has been filed for quashing the order of punishment dated 20.03.2019 passed by the Additional Secretary to the Government, Mines and Geology Department, Government of Bihar, Patna whereby and where-under 50% pension of the petitioner herein has been forfeited and further it has been stipulated that the period starting from 28.03.2014, i.e the date of the order of dismissal of the petitioner from service



to the date of his superannuation i.e. 31.10.2017, shall be treated as period under suspension and the petitioner would not be entitled to any amount, over and above the subsistence allowance, however, the said period shall be counted for the purposes of calculation of pension.

3. The brief facts of the case are that in the year 2011 while the petitioner was posted as Mining Inspector at Jehanabad and was given additional charge of Mining Inspector, Gaya, his residential house was raided and fixed deposits/ NSCs/ huge amount of bank deposits, cash amount and jewellery were seized leading to filing of a criminal case bearing Bodh Gaya P.S. Case No. 75 of 2011, whereafter the petitioner was taken into custody and subsequently he was put under suspension. A Vigilance case bearing Vigilance case no. 35 of 2011 was also registered against the petitioner under section 13(i) and 13(ii) of the Prevention of Corruption Act as also under section 109 of the Indian Penal Code. Thereafter, a departmental proceeding was initiated and memo of charge along with the documents relied upon was served upon the petitioner on 23.03.2012 and an enquiry officer as also a Presenting Officer was appointed. Finally the enquiry report was submitted on 15.11.2014 wherein all the charges levelled against the petitioner were found to have



been proved and then a second show cause notice was issued to the petitioner, to which the petitioner had filed his reply and then the disciplinary authority had passed the order of punishment dated 28.03.2014, whereby and where-under the petitioner was dismissed from service. The said order of punishment dated 28.03.2014 was challenged by the petitioner by filing a writ petition bearing C.W.J.C. No. 9313 of 2014 and this Court, by an order dated 08.09.2017, had held that the enquiry officer did not hold enquiry in accordance with the procedures laid down under Sub-rule (11) and other sub-rules of Section 17 of the CCA Rules, 2005, consequently, the impugned order of punishment dated 28.03.2014 was set aside and the matter was remitted back to the disciplinary authority to proceed afresh in accordance with law and conclude the departmental proceeding within a period of six months from the date of receipt of the order. The said order dated 08.09.2017 passed in CWJC No. 9313 of 2014 was challenged by the respondents by filing an appeal bearing LPA No. 1815 of 2017 and a learned Division Bench of this Court by a judgment dated 16.08.2018, had upheld the aforesaid judgment of the learned Single Judge dated 08.09.2017, however, the period of six months granted to the respondents to conclude the departmental proceeding was



directed to commence from the date of the judgment passed by the learned Division Bench, nonetheless it was also observed that since the petitioner herein had superannuated on 31.10.2017, the nature of penalty, if any, to be imposed, may undergo a change, inasmuch as the same would now have to be guided by the Bihar Pension Rules, 1950 in case the disciplinary authority/ State is of the opinion that the allegation of misconduct is of such a nature, which would require such punishment.

4. It appears that in compliance of the direction of the learned Division Bench of this Court dated 16.08.2018 passed in L.P.A. No. 1815 of 2017, the respondent authorities had proceeded afresh with the departmental proceeding under Rule 139 C of the Pension Rules, 1950 and a show cause notice dated 12.09.2018 was issued to the petitioner under Rule 139 C of the Bihar Pension Rules, whereafter a notice dated 01.12.2018 was issued to the petitioner informing him that the signatory to the said letter has been appointed as an enquiry officer to conduct the enquiry regarding the charges framed against the petitioner, hence, he should appear before him and submit his defence statement and other evidence on 27.12.2018 and then the enquiry officer had also given a notice dated 06.12.2018 to the



petitioner fixing the date of his appearance as 13.12.2018. The petitioner is stated to have submitted his reply dated 02.11.2018 and 19.12.2018 and then the enquiry officer had submitted his enquiry report vide letter dated 02.01.2019 finding all the charges levelled against the petitioner to have been proved, especially the ones pertaining to conniving with the traders and helping them in re-starting the illegal crushers which had been shut down by the District Administration in order to gain illicit income and appertaining to amassing of huge amount of wealth, including cash amount, jewellery etc., by the petitioner by corrupt means and by misusing his official post, which had been recovered from the house of the petitioner when a raid was conducted at his house. The disciplinary authority had then issued a second show cause notice to the petitioner dated 03.01.2019, enclosing a copy of the enquiry report and calling upon the petitioner to submit his reply, where-after the petitioner had submitted his reply and then the impugned order of punishment dated 20.03.2019, as aforesaid, has been passed, which is under challenge in the present proceedings.

5. The learned counsel for the petitioner has submitted that the impugned order of dismissal dated 20.03.2019 is bad in law inasmuch as the same does not disclose the fact and



circumstances narrated by the petitioner in his reply and the defence of the petitioner to the findings of the enquiry officer has not been discussed in respect of the various charges levelled against him, as such the disciplinary authority has failed to apply his independent mind. It is further submitted that the charges in a departmental proceeding is required to be established on the basis of evidence produced before the enquiry officer and the charges cannot be presumed to have been proved on the basis of inference drawn by the enquiry officer, as such the findings of the enquiry officer and conclusion thereof, must be supported by reasons as also there should be evidence, adduced by the prosecution, which links the charged officer with the misconduct alleged against him, however, no evidence whatsoever has been led by the prosecution during the course of the departmental enquiry. In this regard, the learned counsel for the petitioner has referred to the judgments reported in 2017 (3) PLJR 500 (**Ashwani Kumar vs. The State of Bihar & Ors.**), reported in (2009) 2 SCC 570 (**Roop Singh Negi vs. Punjab National Bank & Ors.**), reported in 2009 (4) PLJR 451 (**Obaidur Rahman vs. The State of Bihar & Ors.**), reported in 2019 (2) PLJR 209 (**Meena Pratap & Ors. Vs. The State of Bihar & Ors.**) and the one reported in 2011 (4) PLJR 106



(Shailesh Kr. Ojha vs. The State of Bihar & Ors.).

6. Per contra, the learned counsel for the respondent Mines Department has submitted that grave allegations have been levelled against the petitioner pertaining to him amassing huge wealth, disproportionate to his source of income, by engaging in corruption and misusing his official post and moreover, the petitioner has also been alleged to be instrumental in restarting the illegal crushers, which had been shut down by the District Administration, in connivance with the traders, hence, no mercy is required to be shown to the petitioner. It is stated that the enquiry officer in his enquiry report dated 02.01.2019 has found all the charges to have been proved, whereupon the disciplinary authority had issued a second show cause notice dated 03.01.2019 to which reply dated 23.01.2019 was submitted by the petitioner and after consideration of the same, the impugned order of punishment dated 20.03.2019 has been passed. Thus, it is submitted that there is no procedural irregularity so as to warrant any interference in the impugned order 20.03.2019. It is further submitted that in a writ jurisdiction under Article 226 of the Constitution of India, this Court would not sit in appeal over the findings of the enquiry officer and re-appreciate the same, hence, no interference is required with the impugned



order of punishment dated 20.03.2019.

7. I have heard the learned counsel for the parties and gone through the materials on record. A bare perusal of the impugned order dated 20.03.2019 passed by the Additional Secretary to the Government, Mines and Geology Department, Government of Bihar, Patna, would show that a narration regarding the litigation pertaining to the present case has been made in the first paragraph, whereas in the second paragraph, a narration of the sequence of events right from the appointment of the enquiry officer till issuance of the show cause notice dated 23.01.2019 has been made and in paragraph-3, it has been merely stated that upon due review and in view of the order of the Hon'ble High Court, the order of dismissal of the petitioner dated 28.03.2014 is being cancelled and under rule 139 of the Bihar Pension Rules, 1950, the order of forfeiture of 50% pension is being imposed upon the petitioner herein. It is thus clear that neither the impugned order dated 20.03.2019 deals with the defence put-forth by the petitioner to the findings of the enquiry officer in respect of the charges levelled against him nor the same considers the fact and circumstances disclosed by the petitioner in his reply to the second show cause notice dated 03.01.2019, as submitted by the petitioner on 23.01.2019,



hence, it is apparent that the disciplinary authority has not only failed to consider the defence of the petitioner, which itself vitiates the impugned order and makes it unsustainable on account of the violation of the principles of natural justice but the impugned order dated 20.03.2019 is also unreasoned and does not deal with the plea in defence of the petitioner herein much less contains reasons in support of the finding and conclusion arrived therein i.e. imposition of the punishment of forfeiture of 50% pension, consequently the impugned order dated 20.03.2019 stands vitiated inasmuch as no cogent, clear and succinct reasons have been furnished in support of the decision to inflict punishment of forfeiture of 50% pension upon the petitioner, which is an indispensable component in making a decision, thus, this Court has no option but to quash the order dated 20.03.2019 passed by the Additional Secretary to the Government, Mines and Geology Department, Government of Bihar, Patna in view of the said issue being squarely covered by the principle of law laid down by the Hon'ble Apex Court in a judgment reported in (2010) 13 SCC, 427 (**Oryx Fisheries (P) Ltd. v. Union of India**), paragraph no. 25, 26, 32, 35, 36 and 39 to 41 whereof are reproduced herein below:-



“25. Expressions like “a reasonable opportunity of making objection” or “a reasonable opportunity of defence” have come up for consideration before this Court in the context of several statutes. A Constitution Bench of this Court in *Khem Chand v. Union of India* [AIR 1958 SC 300] , of course in the context of service jurisprudence, reiterated certain principles which are applicable in the present case also.

26. S.R. Das, C.J. speaking for the unanimous Constitution Bench in *Khem Chand* [AIR 1958 SC 300] held that the concept of “reasonable opportunity” includes various safeguards and one of them, in the words of the learned Chief Justice, is: (AIR p. 307, para 19)

“(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;”

32. Therefore, while issuing a show-cause notice, the authorities must take care to manifestly keep an open mind as they are to act fairly in adjudging the guilt or otherwise of the person proceeded against and specially



when he has the power to take a punitive step against the person after giving him a show-cause notice.

35. Going by the aforesaid test any man of ordinary prudence would come to a conclusion that in the instant case the alleged guilt of the appellant has been prejudged at the stage of show-cause notice itself.

36. The appellant gave a reply to the show-cause notice but in the order of the third respondent by which registration certificate of the appellant was cancelled, no reference was made to the reply of the appellant, except saying that it is not satisfactory. The cancellation order is totally a non-speaking one. The relevant portion of the cancellation order is set out:

“*Sub.:* Registration as an Exporter of Marine Products under the MPEDA Rules, 1972.

Please refer to Show-Cause Notice No. 10/ 3/ MS/ 2006/ MS/3634 dated 23-1-2008 acknowledged by you on 28-1-2008 directing you to show cause why the certificate of registration as an exporter, No. MAI/ME/119/06 dated 3-3-2006 granted to you as merchant



exporter should not be cancelled for the following reasons:

1. It has been *proved beyond doubt that you have sent sub-standard material to M/s Cascade Marine Foods, LLC, Sharjah.*

2. You have *dishonoured your written agreement with M/s Cascade Marine Foods, LLC, Sharjah to settle the complaint* made by the buyer as you had agreed to compensate to the extent of the value of the defective cargo sent by you and have now evaded from the responsibility.

3. This irresponsible action has brought *irreparable damage to India's trade relation with UAE.*

Your reply dated 4-2-2008 to the show-cause notice is not satisfactory because the quality complaint raised by M/s Cascade Marine Foods, LLC, Sharjah have not been resolved amicably. Therefore, in exercise of the power conferred on me vide Rule 43 of the MPEDA Rules, read with Office Order Part II No. 1840/2005 dated 25-11-2006, I hereby cancel Registration



Certificate No. MAI/ME/119/06 dated 3-3-2006 issued to you. The original certificate of registration issued should be returned to this office for cancellation immediately.

In case you are aggrieved by this order of cancellation, you may prefer an appeal to the Chairman within 30 days of the date of receipt of this order vide Rule 44 of the MPEDA Rules.”

(emphasis supplied)

39. On the requirement of disclosing reasons by a quasi-judicial authority in support of its order, this Court has recently delivered a judgment in *Kranti Associates (P) Ltd. v. Masood Ahmed Khan* [(2010) 9 SCC 496 : (2010) 3 SCC (Civ) 852] on 8-9-2010.

40. In *Kranti Associates* [(2010) 9 SCC 496 : (2010) 3 SCC (Civ) 852] this Court after considering various judgments formulated certain principles in SCC para 47 of the judgment which are set out below: (SCC pp. 510-12)

“(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 Harv. L. Rev. 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 p. 562, para 29 and *Anya v. University of Oxford* [2001 EWCA Civ 405 : 2001 ICR 847 (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’.”

41. In the instant case the appellate order contains reasons. However, absence of



reasons in the original order cannot be compensated by disclosure of reason in the appellate order.”

8. In this connection, it would also be relevant to refer to a judgment reported in 2009 (4) PLJR 451 (**Obaidur Rahman vs. The State of Bihar & Ors.**), Paragraph nos. 5 and 9 whereof are reproduced herein below:-

“5. There would be yet another reason for this Court to hold the action and the impugned order of the respondent to be bad. The petitioner was an Executive Engineer and therefore, had full power to allot work and pass bills at his level. In the case of the petitioner, it was his predecessor who had allotted work but its completion was made in the period of functioning of the petitioner. The petitioner, therefore, had to pass the bills. If the notice of inspection, measurement books and/or other connected documents went to show that completion of work by the contractor concerned passing of such bill by the petitioner for the work done by the contractor therefore, by itself cannot be said to be a misconduct specially when the completion of work in the work order was never disputed.

9. All these issues, therefore, were required to



be considered when the petitioner had explained these aspects by way of his defence in his reply dated 11.2.2004 (Annexure-2). As noted above, the impugned order in fact does not record any reason for rejecting the defence of the petitioner. Accordingly, the impugned order must be held to be in violation of principles of natural justice and thus bad in law.”

9. Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, the impugned order dated 20.03.2019 passed by the Additional Secretary to the Government, Mines and Geology Department, Government of Bihar, Patna is set aside, however, with liberty to the disciplinary authority to proceed afresh in accordance with law and pass the final order within a period of three months from today. It is needless to state that the punishment inflicted by the impugned order dated 20.03.2019 shall abide by the final outcome of the departmental proceeding in question.

10. The writ petition stands allowed.

(Mohit Kumar Shah, J)

Tiwary/-

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