IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19270 of 2014

==

Lakshmi Prasad Sahu, son of Late H.N. Sahu, permanent resident of MOhalla- Brahmpura, PO- MIT, P.S.- Brahmpura, District- Muzaffarpur

... ... Petitioner/s

Versus

1. The State Of Bihar and Ors Department of Mines and Geology, Government of Bihar, Patna
2. The Principal Secretary, Mines and Geology, Department of Mines and Geology, Government of Bihar, Patna
3. The Additional Secretary Mines and Geology, Department of Mines and Geology, Government of Bihar, Patna
4. The Joint Secretary Mines and Geology, Department of Mines and Geology, Government of Bihar, Patna
5. Assistant Director Mines, Sasaram, District Mining Office, Rohtas

... ... Respondent/s

==

Appearance :

For the Petitioner	:	Mr.Akashdeep, Advocate
For the State	:	Mr.Sarvesh Kumar Singh, AAG-13

==

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

C.A.V. JUDGMENT

Date : 13-10-2022

By the instant writ application the petitioner has prayed for quashing of the entire Departmental Proceedings based on Charge Memo dated 28.04.2014 bearing Memo No.1803. The order of punishment dated 20.01.2016 is also assailed in the instant proceedings. Petitioner's review against the order of punishment dated 20.01.2016 has been rejected under Communication bearing Memo Mo.1175 dated 20.04.2016, which is also impugned in the instant writ proceedings.

2. The brief factual background is that the Principal Secretary, Department of Mines and Geology, Government of Bihar, carried out an inspection on 09.07.2011 in the District of Rohtas based on complaint of large scale illegal stone mining. At that point of time the petitioner was discharging the duties and functions of Deputy Director. The Principal Secretary assigned the following responsibilities to the petitioner:-

a. He was made responsible for enquiry to be conducted by the then Assistant Director, Sasaram, into the measurement and evaluation of illegal mining in Daudnagar area.

b. The petitioner was directed to take measurement of the illegal mining in Vasa and Amra Area, in accordance with rules, and

c. Along with the Assistant Director the petitioner was directed to take measurement of the illegally mined stones and Vasa and Amra area.

This assignment was communicated to the petitioner through letter dated 14.07.2011.

3. On 04.10.2012 the Principal Secretary directed the petitioner to submit his report with regard to the action taken by him. It is the petitioner's case that he submitted a detailed report on 08.10.2012 specifying steps taken by him. He also made suggestions for checking the illegal mining and containing the mafia active in the region. The department took no action on the petitioner's report, and on the contrary a show cause notice was issued to the petitioner on 06.11.2012 asking him to explain why proceedings be not initiated against him for not carrying out the entrusted responsibility. It is alleged that by his inaction the petitioner has facilitated large scale illegal mining. It is the petitioner's case that thereafter he asked the Incharge of the Office of Assistant Director, Mines, to submit an up to date report in the matter, which was not submitted.

4. The report was not made available to the petitioner by the Senior Deputy Collector, nor was any action taken on his report submitted earlier for checking illegal mining; and containing the activities of the mafia. On the contrary, the Department insisted that petitioner submit a reply to the show cause notice, which the petitioner submitted on 05.01.2013 and 09.01.2013. He has denied the allegation and given a detailed account of steps taken by the petitioner, including issuance of Orders from time to time for carrying out the responsibility entrusted by the Principal Secretary.

5. More than one year thereafter, Respondent No.4 rejected the petitioner's reply and recommended initiation of Departmental Proceedings against the petitioner. The Charge Memo dated 28.04.2014 came to be issued containing altogether 8 charges.

- Charge Nos. 1 to 3 alleged that the petitioner's report did not contain reference to specific dates on which he had taken action, nor did he produce the proof of correspondence in support of his assertion that he had taken adequate steps for discharging the responsibility entrusted on him by the Principal Secretary.
- Charge Nos. 4 and 5 alleged that the petitioner did not seize the illegally mined stones and that he did not submit the required detail regarding quantity of illegally mined stones and calculation of penal-cum-mining revenue.
- Charge Nos. 6 and 7 alleged failure on part of the petitioner to conduct raids with respect to illegal mining.
- Charge No. 8 alleged non-supply of challan and that petitioner was not taking steps for disposal of judicial matters as per directions of the Principal Secretary. There was also an allegation that he did

not submit report with respect to inspection of the District Mining Office, Rohtas. The Authorities, therefore, alleged failure to discharge petitioner's duty and responsibility which is indicative of his insubordination and indiscipline.

6. Proceedings were conducted under the Bihar Government Servants C.C.A. Rules, 2005. The Commissioner, Departmental Enquiry, was appointed as the Conducting Officer. The petitioner, had already filed the instant writ petition assailing the initiation of proceedings, however, he participated in the proceedings without prejudice to his rights and contentions herein. The Enquiry/Conducting Officer submitted his enquiry report holding the charges not established against the petitioner. The Disciplinary Authority, under communication dated 05.06.2015 bearing Memo No. 1932 (Annexure-11), communicated disagreement with findings of the enquiring officer, to the petitioner. The points of disagreement are stated to be enumerated as required under Rule 18(3) of the Bihar C.C.A. Rules.

7. Learned counsel for the petitioner has drawn the attention of the Court to petitioner's reply to the Charge Memo (Annexure-9). The same contains reply giving details of the action taken by the petitioner in discharge of his responsibilities as per direction of the Principal Secretary. The copy of enquiry report is Annexure-10 to the writ proceedings.

8. Learned counsel for the petitioner further submits that it is evident from the Enquiry report that on the written statement, filed by the petitioner in response to the charge memo, opinion was sought from the Department. Departmental opinion dated 21.01.2015 was not point wise. The opinion of the Department, as contained in communication dated 21.01.2015, reads as follows:-

> "श्री साहू से प्राप्त स्पष्टीकरण पर विभाग द्वारा सम्यक विचारोपरांत यह पाया गया कि आरोपित पदाधिकारी श्री साहू द्वारा विभागीय आदेश की सर्वथा अवहेलना की गयी है, अवैध खनन की रोकथाम में इनकी रुचि का अभाव रहा है तथा राजस्व क्षति का आरोप भी प्रथम द्रष्टया प्रमाणित होता है।"

9. The enquiry officer thus was of the opinion that instead of filing a point wise comments, the Department has chosen to submit a general opinion that the petitioner's response is not satisfactory, and that he had not taken due interest for containing illegal mining, which has led to loss of revenue. The enquiry officer found that the responsibility of preventing/stopping illegal mining primarily was of the local officers and not of the petitioner. He has also considered the fact that the Departmental opinion contained in communication dated 21.01.2015 also did not allege any particular instance of ommission or commission by the petitioner which led to loss of revenue. The Enquiry Officer has thus rightly found the charges not proved.

10. Conclusions of the Disciplinary Authority Holding the charges proved are contrary to the procedural prescription in Rules 17 & 18 of the CCA Rules. The order of punishment is thus legally unsustainable.

11. The Learned Counsel for the Mines Department and Learned Counsel for the State, however, have submitted that the petitioner has failed to carry out the departmental instructions and take any steps for checking illegal mining, causing huge loss to the State Exchequer. The Department has thus proceeded against the petitioner in a duly constituted proceedings based on a Charge Memo. After conducting an enquiry the finding has been recorded and punishment of dismissal, which is due having regard to the gravity of the allegations, has been imposed on the petitioner. The same stands affirmed by the Appellate Authority since rejection of petitioner’s appeal has been communicated under letter dated 20.04.2016 under R.T.I. Act. The same, therefore, does not require any interference in exercise of writ jurisdiction.

12. This Court would find from the enquiry report it is obvious that proceeding in the enquiry was not conducted on any single date. After receipt of the petitioner's written statement, straight away opinion was sought from the Department and on receipt of departmental opinion the enquiry officer has recorded his findings/opinion on the allegations and held the charges not proved. No Presenting Officer had appeared before the Enquiry Officer, to place the case on behalf of the Department along with any evidence whatsoever, in support thereof. Not even a single witness was examined by any Presenting Officer. It is obvious that the procedure which led to finding of the charges not being proved favourable to the petitioner was because the Authorities took no steps to bring home the charge as per the procedural prescription as contained in Rule 17 (14) of the C.C.A. Rules, which reads as follows:-

> *"**17**(14). On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the*

disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the Government Servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses, as it thinks fit."

13. The Disciplinary Authority, however, has disagreed with the findings of the Enquiry Officer under communication dated 05.06.2015 (Annexure-11). The Disciplinary Authority under this communication purporting to communicate the points of disagreement, has in fact not communicated any point of disagreement. He has merely reiterated the charges, and the departmental opinion in respect of the charges. The Disciplinary Authority has not assigned any reason of his own for disagreement with the conclusions of the Enquiry Officer. It has not recorded its own finding on the charges with reference to any evidence on record. The communication, in the opinion of this Court is thus contrary to the procedure prescribed under Rule 18(2) of the CCA Rules, which reads as follows:-

> *"**18.**(2) The disciplinary authority, after receipt of the enquiry report as per Rule 17 (23)(ii) or as per sub-rule (1), shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own finding on such charge, if the evidences on record is sufficient for the purpose. (emphasis mine)"*

14. The petitioner thereafter has requested for some documents to enable him to submit his reply, which were not supplied to the petitioner. He, therefore, submitted his detailed written representation to the Disciplinary Authority vide letter dated 27.06.2015. The petitioner's representation is containing his response to all the eight charges.

15. Having received the response submitted by the petitioner, the Bihar Public Service Commission (Commission, for brevity) was requested to concur with the proposed punishment of dismissal against the petitioner. The Commission vide letter dated 11.09.2015, specifically communicated disagreement with the proposed punishment since the Commission has noticed the above noted procedural lapses in the enquiry.

16. The Disciplinary Authority thereafter awarded the petitioner the punishment of dismissal from service, which shall be a disqualification for any future employment in the Government, under order dated 20.01.2016. This Order (Annexure-15) is also suffering from another major infirmity, being the non-assigning of any reasons in support of the conclusion. The Disciplinary Authority has only taken note of the stepwise sequence of events from the time the inspection was conducted by the Principal Secretary on 09.07.2011 till submission of opinion by the Commission on 11.09.2015. Having taken note of the sequence of events, the Disciplinary Authority, in Para-7 of the Order, has proceeded to conclude that petitioner was responsible for dereliction of duty and disobedience of the Orders passed by the then Principal Secretary for stopping/preventing illegal mining.

17. The Disciplinary Authority has also proceeded to quantify the resultant loss to be an amount of Rs.37,41,000/-. It would be relevant to take note of the fact here that the charge memo did not allege any quantified loss occasioned by any specific act of ommission or commission by the petitioner. The petitioner, thus had no opportunity to submit his defense to allegation of any quantified loss. Such finding of quantified loss is thus clearly unsustainable as it was not preceded by compliance of principles of natural justice. The conclusion contained in Para-7 of the Order of punishment is also a glaring example of an order *sans* reasons, and relevant extract is being reproduced for ease of reference:-

> "उपलब्ध तथ्यों से स्पष्ट पाया गया कि आरोपित पदाधिकारी ने अपने कर्त्तव्यों का निर्वहन नहीं किया है। अवैध उत्खनन के विरूद्ध इन्होंने विधि सम्मत कार्रवाई नहीं की। इन्होंने बिहार लघु खनिज नियमावली, 1972 के नियम-40 के तहत प्रदत्त शक्ति का प्रयोग नहीं किया तथा अवैध उत्खनन रोकने का कोई प्रयास नहीं किया। इन्होंने तत्कालीन प्रधान सचिव, श्री के0 पी0 रमैय्या के द्वारा अवैध खनन रोकने का दिये गये आदेश की अवहेलना की। इन्होंने 34,80,000 घन फीट जब्त मेटल, चिप्त, बोल्डर की नीलामी एवं प्राप्त राशि को कोषागार में जमा करने का परामर्श सक्षम प्राधिकार, समाहर्त्ता को नहीं दिया। अवैध खनन में जब्त पत्थरों का निस्तार इन्होंने नहीं किया। फलस्वरूप सरकार को बड़ी

राजस्व की क्षति हुई। जब्त किये गये पत्थर से 8,37,673.50 घन फीट चोरी हो गई। किन्तु श्री साहू ने कोई कानूनी कार्रवाई नहीं की। चोरी गये खनिज का मूल्य एवं रॉयल्टी लगभग ₹3741000.00 (रूपये सैंतीस लाख एकतालीस हजार) है जिसके लिए श्री साहू जिम्मेवार हैं।"

18. The Order shows total lack of consideration of the detailed and elaborate written representation submitted by the petitioner in response to the second show cause notice dated 05.06.2015. The Order of punishment thus, is also suffering from the vice of non-compliance with the procedural prescription contained in Rule 18(4) of the Bihar CCA Rules, which reads as follows:-

*"**18.**(4) The disciplinary authority shall consider the representation or submission, if any, submitted by the Government Servant before proceeding further in the manner specified in sub rules (5) and (6)."*

19. The petitioner has thereafter assailed the order by filing a review in the form of a memorial under Rule 24(2) of the Bihar CCA Rules. Rejection of the same has been communicated to the petitioner on an application made under the Right to Information Act, by reply dated 20.04.2016 (Annexure-26), which reads as follows:-

> "उपर्युक्त विषयक आपके सूचनावेदन दिनांक-18.3.16 जो विभाग को 21.3.16 को प्राप्त द्वारा वांछित सूचना के संबंध में कहना है कि आपके द्वारा प्रस्तुत आवेदन को समीक्षोपरान्त अस्वीकृत कर दिया गया है।"

20. It is the specific assertion of the petitioner that no formal order has ever been communicated to the petitioner. The specific assertion to this effect made in Interlocutory Application No.3 of 2022 has not been denied or disputed by the State respondents by filing any reply or rejoinder.

21. Having taken note of the illegal manner in which the Disciplinary Authority has communicated the points of distinction, failed to consider the petitioner's reply and the non-assigning of reasons in support of his conclusion, the Court has no hesitation in holding that, for the reasons noted above, the Order of the Disciplinary Authority dated 20.01.2016 is thus unsustainable and hereby quashed.

22. In view of quashing of the Order of punishment, the communication of rejection of petitioner's review under letter dated 20.04.2016 is also unsustainable inasmuch as it purports to affirm the illegal conclusions of the Disciplinary Authority. Communication of rejection of petitioner's appeal, without order of the Appellate Authority, if any, is also unsustainable. The remedy of appeal has been rendered futile as there is no order showing consideration of appeal. The respondents cannnot be permitted to rely upon letter dated 20.04.2016 to contend that petitioner's appeal has been rejected and, therefore, petitioner is liable for the consequnces of the illegal order of the Disciplinary Authority dated 20.01.2016.

23. As a consequence of quashing of the impugned order of punishment and order dated 20.04.2016 bearing memo no. 1575 communicating rejection of petitioner's review, the petitioner is found to be entitled to all consequential benefits. This Court thus directs that consequential benefits be made available to the petitioner along with detailed calculation chart. The entire exercise must be completed by the Authorities within three months from the date of receipt/production of a copy of this Order.

24. The writ petition is allowed.

(Madhuresh Prasad, J)

shashank/-

AFR/NAFR	**NAFR**
CAV DATE	**29.09.2022**
Uploading Date	**22.10.2022**
Transmission Date	**NA**