

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19320 of 2015

=====

=====

Rakesh Kumar S/o Late Yogendra Lal Das resident of village -
Sundarban Navtolia, P.S. Bahadurpur Laheria Sarai, District -
Darbhanga at present residing at Mahila Port Area, New Hasanpur,
P.S. and District - Lakhisarai.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. In the High Court of Judicature at Patna through its Registrar General.
3. The Registrar General, the Hon'ble High Court of Judicature at Patna.
4. The Principal District and Sessions Judge, Munger.
5. The District and Sessions Judge, Lakhisarai.
6. The Incharge Judge Administration Civil Court, Munger.
7. The Incharge Judge, Administration Civil Court, Lakhisarai.

... .. Respondent/s

=====

=====

Appearance :

For the Petitioner/s : Mr.Pranav Kumar Jha
For the Respondent/s : Mr.Aag2-D.K. Sinha

=====

=====

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 18-10-2022

In the instant petition, petitioner has prayed for the
following reliefs:-

**" That this writ application is
being filed for issuance of an appropriate
writ in the nature of certiorari for quashing
of the order no. 14 dated 07.01.2015 issued
under the signature of the learned District
and sessions Judge, Lakhisarai by which the**



learned District and session Judge, Lakhisarai has been pleased to dismiss the petitioner from service from the post of office clerk from the Judgeship of Lakhisarai with immediate effect and further for consequential order passed in appeal, so preferred by the petitioner dated 16.10.15 under Rule 20 of Bihar Civil Court Staff (Class III and Class IV) Rules-2009 so preferred by the petitioner against the said order of dismissal dated 07.01.2015 and further for issuance of an appropriate writ in the nature of mandamus directing and commanding the respondents to pay all the legal, consequential and financial benefits to the petitioner from the date of dismissal till the date of joining for the ends of justice and equity and further for any other appropriate relief or reliefs for which the petitioner is entitled in the facts and circumstances of this case."

Petitioner was subjected to disciplinary proceedings in framing article of charges 22.04.2013. The Inquiring Officer furnished Inquiry Report to the disciplinary authority. Disciplinary Authority after perusal of the records proceeded to impose the penalty of dismissal from service on 07.01.2015 and it was subject matter appear before the appellate authority and appellate authority rejected the petitioner's appeal on 16.10.2015, hence, the present petition.

Learned counsel for the petitioner submitted that appellate authority communication dated 16.10.2018 is in the form of communication. In other words, petitioner's memorandum of



appeal and its contents have not been considered before reading the petitioner's appeal. It is also submitted that in order to support appellate authority communication dated 16.10.2015. Respondents have furnished Annexure-C to the counter affidavit.

In the light of Annexure-17 and Annexure-C to the counter affidavit. Annexure-17 to the writ petition read with Annexure-C. The same is not in terms of Bihar Civil Courts Staff Rules, 2009, Rule (20) , it is violation of Rule 20.

Per contra, learned counsel for the respondent resisted the aforesaid contention and submitted that no doubt decision of the appellate authority has not been enclosed along with Annexure-17 communication dated 16.10.2015 and the same has been placed on record along with counter affidavit Annexure-C. The petitioner is permitted to take additional ground if he intends too.

Heard learned counsel for the respective parties.

Undisputed, facts are that petitioners are subjected in framing article of charges and it was dismissal from service on 17.01.2015. The appellate authority has confirmed order of dismissal on 01.12.2015 and further the same was communicated to the petitioner by means of communication dated 16.10.2015.



Learned counsel for the petitioner for time being restrict is remanded that appellate authority's order in terms of Annexure-17 to the writ petition read with Annexure-C to the counter affidavit is not in terms of Rule 20 of Bihar Civil Courts Staff Rules (Class III and IV) Rules-2009. It is necessary to reproduce Rule 20 of Rules, 2009. Rule 20 reads as under:-

Appeal. (1) *Any employee aggrieved by imposition of any minor/major punishment upon him by the disciplinary authority may prefer an appeal to the High Court within a period of 30 days from the date of receipt of copy of the said order and/or from the date of communication of the said order upon the concerned employee.*

(2) *Such memorandum of appeal shall be forwarded by the District Judge concerned to the Registrar of the High Court together with his comments thereon, if any, within two weeks from the date of receipt of such memorandum of appeal.*

(3) *The Standing Committee of the High Court shall, dispose of such appeal as expeditiously as possible and preferably within a period of three months from the date of receipt of the memorandum of appeal, if the same has been preferred against an order imposing a major penalty and by the Judge Administrative Department No. 1 in case of minor penalty.*



(4) All procedure for holding Departmental proceeding, imposition of penalty, disposal of appeal etc, shall be governed by such statutory Rules as are applicable for the employees concerned.

Annexure-C to the counter affidavit reads as under:-

Agenda

To consider the memorandum of appeal preferred by Sri Rakesh Kumar, the then Bench Clerk-cum-office Clerk of the Court of S.D.J.M., Lakhisarai (Since dismissed from Service) against the order of punishment dated 07.01.2015 passed by District and Sessions Judge, Lakhisarai. (IV-41-2015) (A.D. Misc. Section)

Resolution

Resolved that in view of the concurrent findings by the Inquiry Officer, as accepted by the District and Sessions Judge, Lakhisarai, appeal is rejected.

**Sd/- I.A. Ansari,
A.C.J**

**Sd/-V.N. Sinha, J.A.D
I**

**Sd/-Navaniti Prasad
Singh, J.A.D. II**



**Sd/-Kishore Kumar
Mandal, J.
Sd/-Dr. Ravi Ranjan,
J.
Sd/-Anjana Prakash,
J.
Sd/-Gopal Prasad, J.**

The aforesaid decision of the appellate authority is not in terms of Rule 20 of Rules, 2009.

The appellate authority is exercising judicial function under Rules, 2009. Therefore, it is necessary to examine to consider each of the contention raised by the concerned person in the memorandum of appeal is order of the appellate authority would be subjected to judicial review. Apex Court in the case of ***Kranti Associates (P) Ltd. v. Masood Ahmed Khan*** reported in ***(2010) 9 SCC 496, Para 47***. Para 47 reads as under:

“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-makers 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 731-37] .)



(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 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 a part of “due process.”

In the light of the aforesaid principle laid down by the Apex Court read with the fact that appellate authority decision is not in terms of Rule 20 ingredients of Rule 20 of Rules, 2009, hence, the petitioner has made out a prima facie case appellate authority decision *vide* Annexure-17 read with Annexure-C to the counter affidavit.

Accordingly, Annexure-17 is set aside. It is to be noted Annexure-17 is passed on Annexure-C to the counter affidavit. Therefore, once Annexure-17 is set aside. In the result, Annexure-C to the counter affidavit stands set aside. The appellate authority is requested to decide the petitioners memorandum of appeal dated 01.12.2015 afresh.



In the light of Rule 20 of Rules, 2009 read with principle laid down by the Apex Court's decision cited (supra). Such decision taken by the appellate authority within a period of four months from the date of receipt by this order.

(P. B. Bajanthri, J)

shoaib/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	09.11.2022.
Transmission Date	N/A

