IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.712 of 2016

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Chandra Deo Singh, S/o Late Baij Nath Singh Ex-Sr. Accountant, O/o Accountant General A and E, Bihar, Patna, at present resident of A - 319, A.G. Colony, Sheikhpura, P.S. - Shastrinagar, P.O. - Ashiyana Nagar, Distt. - Patna.

... ... Petitioner

Versus

1. The Union Of India, through Ministry of Finance Deptt. Of Expenditure E.G. Branch, New Delhi.
2. The Comptroller and Auditor General of India, 10 Bahadur Shah Zafar Marg, New Delhi - 2.
3. The Principal, Director of Staff, Comptroller and Auditor General of India, 10 B.S. Zafar Marg, New
4. The then Principal A.G. (A & E), Bihar, Ranchi.
5. The Principal A.G. (Audit), Bihar, Patna.
6. A.G. O/o the Accountant General, A and E - II, Bihar, Patna.
7. The Dy. A.G. Admin, O/o the A.G. Audit, Bihar, Patna.
8. Smt. Reema Prakash, the then Deputy Accountant General (Admin.) O/o the Accountant General/II, Bihar
9. Sri Manish Kumar, the then Deputy Accountant General (Admin.) O/o the Accountant General/II, Bihar,

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Namrata Mishra, Advocate

For the Respondent/s : Mr. Arun Kumar Arun, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 21-12-2022

The petitioner Chandra Deo Singh feeling aggrieved and dissatisfied with the orders of the Central Administrative Tribunal dated 15.11.2011 and 27.08.2012 passed in O.A. No. 597 of 2006 and Review Application No. 32 of 2012, respectively, presented this writ petition.

2. The petitioner was initially appointed as Upper Divisional Clerk (U.D.C) in the year 1970 and he has earned promotion to the post of Senior Accountant in the year 1991. He was President of the Employees' Association. In order to support the case of Sri Chandrika Singh, Sr. Accountant, who was placed under suspension on the alleged charges relating to corruption and asking the head of the Department to revoke the suspension, the petitioner had threatened the head of the department and also disrupted the office and with the help of Police officials head of the department could climbed down from first floor to ground floor to that extent petitioner and others threatened the head of the department, namely, Mr. A.K. Singh- Accountant General and Mr. P.K. Tiwary-Dy. Accountant General. Arising out of the aforesaid alleged misdeeds committed by the petitioner, he was subjected to departmental inquiry in framing article of charges on 19.02.1998 and it was concluded in imposition of penalty of removal from service on 20.02.2004.

3. Feeling aggrieved and dissatisfied with the order of removal, he had exhausted the remedy of Appeal and Revision in which proceedings he has suffered orders. In the result, he had invoked remedy under Section 19 of the

Administrative Tribunal Act in filing O.A. No. 597 of 2006 and R.A. No. 32 of 2012 and they were decided against him. Hence, the present writ petition.

4. Learned counsel for the petitioner, vehemently, contended that among three charges, inquiring officer held that charge Nos. 1 and 2 are proved partly and charge No.3 is proved. Disciplinary authority held that charge Nos. 1 and 2 not proved and charge No.3 is proved. It is further submitted that author of the removal order is not competent authority as petitioner was appointed by Principal Accountant General. It is further submitted that Accountant General was party to the disciplinary proceedings, therefore, through C.A.G., Ad hoc Disciplinary Authority was appointed, it is further submitted that two witnesses namely Mr. A.K. Singh- Accountant General and Mr. P.K. Tiwary-Dy. Accountant General were examined and it is further submitted that Disciplinary Authority order dated 20.02.2004 and Appellate Authority order dated 29.07.2004 and Revisional Authority order dated 29.07.2005 are not speaking order. Therefore, the same has not been appreciated by the C.A.T. in O.A. No. 597 of 2006 and R.A. No. 32 of 2012. Consequently, all the impugned orders in the Original Application are to be set aside.

5. Per contra, learned counsel for the respondent resisted the aforesaid contention and submitted that having regard to the alleged charges, which are serious in nature, petitioner being Sr. Accountant and President of the Employees Association, threatening head of the department and creating nuisance and paralyzed the office on entire day on 14.03.1997. Taking the help of Police to control the situation itself suffice to understand the seriousness of the charge. It is further submitted that Accountant General was party to the disciplinary proceeding, therefore, Ad hoc Disciplinary Authority has been appointed through C.A.G.. Therefore, there is no infirmity. It is further submitted that Mr. P.K. Tiwary, Dy. Accountant General was not examined. Mr. A.K. Singh, Accountant General was examined, however, his signature has not been obtained. Thereafter, from the removal order till rejection of Revision as well as order of the C.A.T. both in O.A. No. 597 of 2006 and R.A. No. 32 of 2012 are in order, hence no interference is warranted.

6. Heard the learned counsels for the respective parties.

7. Perusal of Article-III - charge, it is crystal clear that there is a serious allegation levelled against the petitioner.

Article-III reads as under:

> **"That the said Shri C.D. Singh, while functioning as Sr. Acctt acted in a manner which is unbecoming of a Govt. Servant as he repeatedly abused the Accountant General (A&E) II and Dy. Accountant General (Admn) during office hours on 13.03.97 and 14.03.97 in most indecent language. He also shouted filthy and abusive slogans and made inflamatory speeches inciting others to disrupt the functioning of the office.**
>
> **The behaviour of the said Shri C.D. Singh was insulting and was subsersive to office decorum and discipline and caused disruption in the working of the office. These acts of Shri C.D. Singh were unbecoming of a Govt. Servant.**
>
> **Thus the said Shri C.D. Singh, Sr. Acctt violated Rule 3(I)(ii) and 3(i)(iii) of C.C.S (Conduct) Rules 1964 as amended from time to time".**

8. However, perusal of the records, it is made clear that it has not been proved in the manner known to the law. In other words, the Accountant General Mr. A.K. Singh and the Dy. Accountant General Mr. P.K. Tiwary, who are prime witnesses with reference to the alleged charge have not been examined and cross-examined. Even though Mr. A.K. Singh was examined and cross-examined, however, his signature is not forthcoming. Therefore, such examination and cross-examination of Mr. A.K. Singh is not an authenticated document. The same cannot be taken note of.

9. Ad hoc Disciplinary Authority has been appointed by the C.A.G for the obvious reason that Accountant General, who has been cited as a witness in the present

disciplinary proceeding, there is no infirmity in appointing Ad hoc Disciplinary Authority through C.A.G. However, perusal of the Disciplinary Authority order and Appellate Authority order, it is a crystal clear that they are not speaking order for the reasons that Disciplinary Authority has not considered the petitioner's explanation to the second Show-Cause-Notice. Further, Appellate Authority order is also non-speaking order.

10. Rule-27 of the C.C.S (C.C.A) Rules provides for consideration of appeal. Rule-27 reads as under:-

"27. Consideration of appeal

(1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of rule 10 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.

(2) In the case of an appeal against an order imposing any of the penalties specified in rule 11 or enhancing any penalty imposed under the said rules, the appellate authority shall consider-

(a) whether the procedure laid down in these rules have been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe;

and pass orders-

(i) confirming, enhancing, reducing, or setting aside the penalty; or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case :

provided that-

(i) The Commission shall be consulted in all cases where such consultation is necessary;

(ii) If such enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of rule 11 and in inquiry under rule 14 has not already been held in the case, the appellate authority shall, subject to the provisions of rule 19, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of rule 14 and thereafter, on a consideration of the proceedings of such inquiry and make such orders as it may deem fit:

(i) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of rule 11 and an enquiry under rule 14 has been held in the case, the appellate authority shall make such orders as it may deem fit after the appellant has been given a reasonable opportunity of making a representation against the proposed penalty; and

(ii) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be, in accordance with the provisions of rule 16, of making a representation against such enhanced penalty.

(3) In an appeal against any other order specified in rule 23, the appellate authority shall consider all the circumstances of the case and make such orders as it may deem just and equitable.”

11. The Appellate Authority has not considered the petitioner’s appeal in terms of Rule-27. Further, the same has not been appreciated by the Revisional Authority. The C.A.T has not appreciated the aforesaid infirmities in the inquiry and its proceedings. The Apex Court in the case of **“*i) Secretary and***

Curator, Victoria Memorial Hall vs. Howrah Ganatantrik Nagrik Samity and Others reported in **(2010) 3 SCC 732**

ii) Kranti Associates (P) Ltd. v. Masood Ahmed Khan reported in **(2010) 9 SCC 496, Para 47** elaborately considered as how the judicial, quasi-judicial and other orders should be. Para 47 reads as under:

> **"47.** Summarising the above discussion, this Court holds:
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> (*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."

12. In the light of the aforesaid principle laid down by the Apex Court, prima facie Disciplinary Authority and Appellate Authority have not considered the grievance of the petitioner in the light of C.C.A. provisions.

13. No doubt, it is a case for remand to commence the inquiry from the defective stage. However, we feel that only to remand the matter to the Disciplinary Authority to modify the penalty from removal to that of compulsory retirement. In view of the fact that removal order is dated 20.02.2004 and the fact that in the event of he being in service in the normal course he would have attained the age of superannuation and retired from service in August, 2008 and we are in the year of 2022. Therefore, the Disciplinary Authority order dated 20.02.2004, Appellate Authority order dated 29.07.2004, orders dated 15.11.2011 and 27.08.2012 passed in O.A. No. 597 of 2006 and Review Application No. 32 of 2012, respectively, are set aside and matter is remanded to the Disciplinary Authority to re-examine the whole thing and impose the penalty of compulsory retirement with effect from 20.02.2004. Since, once again

commencing the inquiry from the defective stage after lapse of 18 years, it is not appropriate.

14. The Disciplinary Authority is hereby directed to pass a fresh order while imposing the penalty of compulsory retirement with effect from 20.02.2004 and extend all monetary and service benefits as if he has retired from service with effect from 20.02.2004. Such order shall be passed and service and monetary benefit shall be extended within a period of six months from the date of receipt of the order.

15. Writ petition is allowed in part and accordingly disposed of.

(P. B. Bajanthri, J)

(Purnendu Singh, J)

Manish/
Mantreshwar

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.12.2022
Transmission Date	