

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14386 of 2016

Ashish Kumar Mishra son of Sri Abhiram Mishra Resident of Village
Kharawo, P.O. - Kharawo, P.S.- Khaira, Dist-Jamui

... .. Petitioner/s

Versus

1. The Union Of India
2. The General Manager, North Eastern Railway, Gorakhpur
3. The C.M.D., North Eastern Railway, Gorakhpur
4. The Divisional Railway Manager, North Eastern Railway, Varanasi
5. The Sir Divisional Personal Officer, North Eastern Railway, Varanasi
6. The Chief Medical Superintendent, North Eastern Railway, Varanasi
7. The Senior Divisional Medical Officer, North Eastern Railway, Varanasi
8. The Divisional Medical Officer, North Eastern Railway, Varanasi

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Akshansh Ankit, Advocate
For the Railway : Mr. Abhay Shankar Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 03-01-2023

Heard learned counsels for the parties.

2. In the instant petition, petitioner has assailed the order of the Central Administrative Tribunal dated 24th May, 2016 passed in O.A. No. 906 of 2012.

3. Petitioner while working as Group-D employee in the medical wing of the Railway Department, is alleged to have involved in illegal demand and acceptance of gratification a sum of Rs. 100/- from one Mr. Ori in order to get sickness certificate from a Railway Departmental-doctor. After completion of trap



proceedings, petitioner was also subjected to disciplinary proceedings and it was concluded in imposition of penalty of compulsory retirement on 08.09.2008. Feeling aggrieved and dissatisfied with the order of the disciplinary authority, petitioner invoked remedy of appeal before the appellate authority and appellate authority affirmed the order of the disciplinary authority on 21.09.2012. Thereafter, petitioner invoked remedy under Section 19 of the Administrative Tribunal Act, 1985 in filing O.A. No. 906 of 2012 before the Central Administrative Tribunal, Patna Bench, Patna (For short 'CAT'). Original Application No. 906 of 2012 was dismissed on 24th May 2016. Hence, the present writ petition.

4. Learned counsel for the petitioner submitted that CAT has not appreciated the contention regarding not following the Vigilance Manual's para 704 and 705. It is further submitted that Brij Kishore- shadow witness has not been examined and cross-examined. It is further submitted that both disciplinary and appellate authorities orders are not speaking orders. Aforesaid issues have not been appreciated by the CAT. Hence order of the Tribunal is to be set aside while allowing O.A. No. 906 of 2012.

5. *Per contra*, learned counsel for the respondent resisted the aforesaid contentions and submitted that there is no infirmity in the orders of the disciplinary, appellate authority and CAT. Para 704 and 705 of Vigilance Manual has been strictly



adhered by the vigilance team and further Brij Kishore was not examined as he died during pendency of the enquiry proceedings. However, his statement has been taken into consideration. It is further submitted that other witnesses' statement suffice even though Brij Kishore was not examined in the enquiry, that does not vitiate enquiry proceedings. It is also submitted that disciplinary and appellate authority need not pass elaborate order in considering each and every issue.

6. Heard learned counsels for the respective parties.

7. Petitioner is involved in the alleged illegal demand and acceptance of illegal gratification from one Sri Ori in the guise of getting sickness certificate from a Railway Departmental-doctor. In this regard, he was trapped by the vigilance team and it was subject matter of disciplinary proceedings. Disciplinary proceedings were concluded in imposition of penalty of compulsory retirement and it was affirmed by the appellate authority. CAT rejected petitioner's O.A. No. 906 of 2012.

8. Vigilance Manual para 704 and 705 has been adhered by the concerned authority or not is required to be examined by the disciplinary and appellate authority. In so far as examination and cross-examination of Brij Kishore (shadow witness) is concerned, he died during pendency of the enquiry. Therefore, it was impossible to examine and cross-examine him.



Therefore, what is required to be examined is in respect of evidence of other witnesses and material evidences. Therefore, enquiry will not vitiate merely due to non-examination of dead person.

9. Learned counsel for the petitioner submitted that disciplinary authority's order is not a speaking order. At the same time, if the petitioner has filed his explanation to the enquiring officer's report and in not considering explanation by the disciplinary authority in such an event it would be a non-speaking order.

Order of disciplinary authority dated 08.09.2008
(Annexure-4) reads as under:-

"पूर्वोत्तर रेलवे

फार्म सं.-1

रेल कर्मचारी अनुशासन एवं अपील नियमावली 1968 के नियम 6
(VII) के अन्तर्गत रेल सेवा से अनिवार्य सेवानिवृत्ति का आदेश ।

कार्यालय

मुख्य चिकित्सा अधीक्षक, वाराणसी

दिनांक 08.09.2008

सं 2007/ मेड/कान/ 207/2/33

सेवा में,

नाम : श्री आशीष कुमार मिश्र	पिता का नाम : श्री अभिराम मिश्र
पद नाम: चिकित्सालय अनुचर	विभाग : चिकित्सा
स्टेशन: वाराणसी	वेतनमान 2550-3200
नियुक्ति तिथि : 25-08 2001	मूल वेतन : 2900/-
विषय : दीर्घ आरोप पत्र सं	2007 / मेड / कान / 207/2
दिनांक 23/24.04.2007	



संदर्भ : आप का बचाव प्रतिवेदन दिनांक 11/13.08.2008

1 श्री आशीष कुमार मिश्र, चिकित्सालय अनुचर, वाराणसी को सूचित किया जाता है कि उनके विरुद्ध आरोपों की जाँच करने के लिए नियुक्त जांच अधिकारी ने अपनी रिपोर्ट प्रस्तुत कर दी है, जिसकी प्रति दिनांक 01.08.2008 को कर्मचारी को प्राप्त करा दिया गया है।

2- जांच रिपोर्ट पर अधोहस्ताक्षरी ने सावधानी पूर्वक विचार किया है और जांच अधिकारी की जांच रिपोर्ट व निष्कर्ष से सहमत है

3- अतः अधोहस्ताक्षरी इस निष्कर्ष पर पहुंचा है कि श्री आशीष कुमार मिश्र सेवा में रखने योग्य नहीं है और उन पर रेल सेवा से अनिवार्य सेवा निवृत्ति किये जाने की शास्ति आरोपित करने का निर्णय लेता है।

अतः श्री आशीष कुमार मिश्र, चिकित्सालय अनुचर को तत्काल दिनांक 08.09.2008 को रेल सेवा से अनिवार्य सेवा निवृत्त किया जाता है।

4. रेल कर्मचारी अनुशासन एवं अपील नियम 1968 के नियम 18 (11) के अधीन इस आदेश के विरुद्ध मुख्य चिकित्सा अधीक्षक, वाराणसी को अपील की जा सकती है।

बशर्ते

- 1- अपील आदेश प्राप्त होने के 45 दिनों के अन्दर मुख्य चिकित्सा अधीक्षक, वाराणसी को की जाय
- 2- अपील में अनुचित तथा अशिष्ट भाषा का प्रयोग न हो ।
- 3- कृपया इसकी पावती दे ।"

Similarly, order of the appellate authority dated 21.09.2012

(Annexure-8) reads as under:-

" पूर्वोत्तर रेलवे

कार्यालय
मुख्य चिकित्सा अधीक्षक
वाराणसी
दिनांक 21.09.2012



श्री आशीष कुमार मिश्र
द्वारा श्री अशोक कुमार झा
गाँव. बसौनी, पत्रालय धरहरा
जनपद लखीसराय, बिहार 811212

विषय: श्री आशीष कुमार मिश्र का
अपील दिनांक 22.09.2008

संदर्भ : ओ ए सं 575/2012 में
पटना केन्द्रीय प्रशासनिक अधिकारण द्वारा जारी
आदेश जो श्री राजन कुमार झा, एडवोकेट के पत्र
दिनांक 20.07.2012 द्वारा भेजा गया है तथा इस
कार्यालय द्वारा दिनांक 30.07.2012 को प्राप्त हुआ
है।

मैंने आप की अपील जो
अनुशासनिक अधिकारी द्वारा दिए गए दण्ड "श्री
आशीष कुमार मिश्र, चिकित्सालय अनुवार को
तत्काल दिनांक 08.09.2008 को रेल सेवा से
अनिवार्य सेवा निवृत्त किया जाता है" एवं पत्रावली
पर उपलब्ध समस्त अभिलेखों (जांच अधिकारी
की रिपोर्ट, आरोपित कर्मचारी द्वारा दिया गया
बचाव, सभी गवाहों द्वारा जांच के समय दिया
गया बयान एवं उनका प्रतिउत्तर) का पूर्ण रूप से
अवलोकन एवं मंथन किया।

मैंने आरोप पत्र एवं उनके संलग्नकों
का भी अवलोकन किया। श्री ए के मिश्र के उपर
आरोप है कि उन्होंने दिनांक 01.12.2005 को
रेलवे चिकित्सालय, देवरिया सदर में श्री ओरी,
सतर्कता खलासी को सिक/फिट प्रमाण पत्र जारी
कराने हेतु रिश्वत की मांग की तथा रुपया
100/- रिश्वत के रूप में स्वीकार किया जो बाद
में सतर्कता दल द्वारा श्री आशीष कुमार मिश्र से
बरामद किया गया। श्री मिश्र ने बरामदगी के
तुरन्त बाद अपने लिखित बयान आर यू डी / 3
दिनांक 01.12.2005 में स्पष्ट रूप से रुपया
100/- वास्ते सिक सर्टिफिकेट जारी कराने हेतु
लिया जाना स्वीकार किया है एवं यह भी
स्वीकार किया है कि उसके पास से जांच दल
द्वारा रुपया 100/- बरामद किया गया है।
कालान्तर में अपने बयान एवं बचाव पत्र में यह



कहना कि यह रुपया 100/- सिक/फिट जारी कराने हेतु नहीं लिया गया था और श्री मिश्र सतर्कता खलासी श्री ओरी जिनसे सिकफिट देकर रुपया 100/- स्वीकार किया, उनसे यह रुपया 100/- पूर्व में दिए गए देशी घी के बकाये के रूप में लिया गया है, यह पत्रावली पर उपलब्ध साक्ष्यों से गलत प्रतीत होता है तथा यह कालान्तर में सोच समझ कर दिया गया बयान है जो सत्यता से परे है तथा इसे सिद्ध करने हेतु श्री मिश्र द्वारा किसी तरह का साक्ष्य प्रस्तुत नहीं किया गया है।

जांच अधिकारी ने अपने जांच के विवेचना 7.01 03 में सभी गवाहों एवं साक्ष्य का एवं बचाव द्वारा पूछे गए प्रश्नों एवं उत्तर का स्पष्ट रूप से विवेचना करते हुए यह निष्कर्ष निकाला है कि आरोपी पर लगाए गए आरोप की पुष्टि होती है। आरोपी द्वारा कहीं से भी यह बात नहीं सिद्ध किया गया है कि उसने सिक/फिट जारी कराने के अलावे रुपया 100/- की प्राप्ति किसी अन्य मद में किया है।

मैं जांच अधिकारी की जांच रिपोर्ट एवं निष्कर्ष से पूर्ण रूप से सहमत हूँ। मेरी राय में अनुशासनिक अधिकारी द्वारा दिया गया दण्ड उचित है, अतः इसमें किसी तरह के बदलाव न करते हुए दिए गए दण्ड को यथावत रखा जाता है।

मुख्य चिकित्सा अधीक्षक
वाराणसी

From perusal of the aforesaid orders of the disciplinary and appellate authority, it is evident that there is non-application of mind by both the authorities. Disciplinary authority in not considering petitioner's explanation on the enquiring officer's report would defeat the very object of providing second show cause notice along with enquiring officer's report seeking



explanation of the petitioner. Further, appellate authority has not adhered to Rule 22 of *Railway Servants (Discipline and Appeal) Rules, 1968*.

Rule 22 of Railway Servants (Discipline and Appeal) Rules, 1968 reads as under:-

"R.22. 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 5 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 6 or enhancing any penalty imposed under the said rule appellate authority shall consider –

(a) whether the procedure laid down in these rules has 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 order –

(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 directions 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 the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of Rule 6 and an inquiry under Rule 9 has not already been held in the case, the appellate authority shall, subject to the provisions of Rule 14, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 9 and thereafter, on a consideration of the proceedings of such inquiry pass such orders as it may deem fit;

(iii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of sub-rule (1) of Rule 6 and an inquiry under Rule 9 has already been held in the case, the appellate authority shall, make such orders as it may deem fit, and

(iv) subject to the provisions of Rule 14, the appellate authority shall –

(a) where the enhanced penalty which the appellate authority proposes to impose, is the one specified in clause (iv) of Rule 6 and falls within the scope of the provisions contained in sub-rule (2) of Rule 11; and

(b) where an inquiry in the manner laid down in Rule 9, has not already been held in the case, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 9 and thereafter, on a consideration of the proceedings of such inquiry, pass such orders as it may deem fit; and



(v) 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 11 of making a representation against such enhanced penalty.

(3) In appeal against any other order specified in Rule 18, the appellate authority shall consider all the circumstances of the case and make such orders as it may deem just and equitable."

Reading of appellate authority and Sub-rule 2 of Rule 22 of Rules, 1968 it is crystal clear that there is non-application of mind on behalf of the disciplinary and appellate authority. Apex Court in the case of *Secretary and Curator, Victoria Memorial Hall vs. Hawrah Ganatantrik Nagrik Samity and Others* reported in (2010)3 SCC 732 held that reasoned order should be passed. Further in the case of *Kranti Associates (P) Ltd. v. Masood Ahmed Khan* reported in (2010) 9 SCC 496, para 47 reads as under:

"47. Summarizing 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 life blood 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 Harward Law Review 731-737).

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 (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to [Article 6](#) of 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".

10. In the light of the aforesaid facts and circumstances, petitioner has made out a case. However, CAT has not appreciated as to whether disciplinary and appellate authority's order are in terms of relevant Rule of Rules, 1968 or not? Accordingly, Disciplinary Authority's order (Annexure-4) dated 08.09.2008, Appellate Authority's order (Annexure-8) dated 21.09.2012 and CAT order dated 24.05.2016 passed in O.A. No. 906 of 2012 are set aside and the matter is remanded to the disciplinary authority to decide the petitioner's case afresh after due consideration of each of the contention raised against the second show cause notice read with enquiring officer's report. Above exercise shall be completed within a period of three months from the date of receipt of this order.



11. Disciplinary authority is hereby directed to take a decision as to whether petitioner shall be placed under suspension or he shall be taken back to duty in the light of Apex Court's decision in the case of ***Managing Director, ECIL V. B. Karunakar*** reported in ***(1993) 4 SCC 727*** read with ***Chairman-cum-Managing Director, Coal India Limited & Ors. V. Ananta Saha & Ors.*** reported in ***(2011) 5 SCC 142*** para 47 to 50 reads as under:

“47. It is a settled legal proposition that the result of the fresh enquiry in such a case relates back to the date of termination. The submissions advanced on behalf of the appellants that the result of the enquiry in such a fact situation relates back to the date of imposition of punishment, earlier stands fortified by a large number of judgments of this Court and particularly in *R. Thiruvirkolam V. Presiding Officer, Punjab Dairy Development Corpn. Ltd. V. Kala Singh and Graphite India Ltd. V. Durgapur Projects Ltd.*

48. In *ECIL V. B. Karunakar and Union of India V. Y.S. Sadhu*, this Court held that where the punishment awarded by the disciplinary authority is quashed by the court/tribunal on some technical ground, the authority must be given an opportunity to conduct the enquiry afresh from the stage where it stood before the alleged vulnerability surfaced. However, for the purpose of holding fresh enquiry, the delinquent is to be reinstated and may be put under suspension. The question of back wages, etc. is determined by the disciplinary authority in accordance with law after the fresh enquiry is



concluded.

49. The issue of entitlement of back wages has been considered by this Court time and again and consistently held that even after punishment imposed upon the employee is quashed by the court or tribunal, the payment of back wages still remains discretionary. Power to grant back wages is to be exercised by the court/tribunal keeping in view the facts in their entirety as no straitjacket formula can be evolved, nor a rule of universal application can be laid for such cases. Even if the delinquent is reinstated, it would not automatically make him entitled to back wages as entitlement to get back wages is independent of reinstatement. The factual scenario and the principles of justice, equity and good conscience have to be kept in view by an appropriate authority/court or tribunal. In such matters, the approach of the court or the tribunal should not be rigid or mechanical but flexible and realistic. (Vide U.P. SRTC V. Mitthu Singh, Akola Taluka Education Society V. Shivaji and Balasaheb Desai Sahakari S.K. Ltd. V. Kashinath Ganapati Kambale.)

50. In view of the above, the relief sought by the delinquent that the appellants be directed to pay the arrears of back wages from the date of first termination order till date, cannot be entertained and is hereby rejected. In case the appellants choose to hold a fresh enquiry, they are bound to reinstate the delinquent and, in case, he is put under suspension, he shall be entitled to subsistence allowance till the conclusion of the enquiry. All other entitlements would be determined by the disciplinary authority as explained hereinabove after the conclusion of the enquiry. With these observations, the appeal stands disposed of. No costs.”



Principle laid down in the case of *Managing Director, ECIL V. B. Karunakar* reported in (1993) 4 SCC 727 has been reiterated in the case of *The State of Uttar Pradesh & Ors. Vs. Prabhat Kumar* reported in 2022 Live Law (SC) 736.

12. The intervening period from the date of compulsory retirement till passing of afresh order by the disciplinary authority is required to be regulated in accordance with relevant provision of law. In this regard, a speaking order shall be passed after passing afresh order in departmental enquiry within a period of two months from the date of passing fresh order.

13. Accordingly, present writ petition stands allowed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

rakhi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.01.2023
Transmission Date	NA

