

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10124 of 2023

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Dharmendra Kumar, aged about 47 years, Male, Son of Late Brahmdeo Prasad, Resident of Mohalla- Patel Sewa Nagar, Road No. 6, Kumhrar, P.S.- Agamkuan, Kankarbagh, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Home Department, Govt. of Bihar, Patna.
2. The Additional Chief Secretary, Home Department, Govt. of Bihar, Patna.
3. The Director General of Police, Bihar, Patna.
4. The Additional Director General of Police (Headquarter), Bihar, Patna.
5. The Inspector General of Police, Patna Zone, Patna.
6. The Deputy Inspector General of Police, Magadh Range.
7. The Superintendent of Police, Arwal.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dhananjay Kumar Tiwary, Advocate.
For the Respondent/s : Mr. Md. Nadim Seraj, GP-5.

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL ORDER

5 23-02-2024 Heard learned counsel for the parties.

2. The present Writ Petition has been filled for the following reliefs:-

“(i) To issue a writ in the nature of Certiorari for quashing the order contained in Memo No. 8/M.3-10-08/2022 6809 dated 06.06.2023 whereby and whereunder the Memorial Appeal application filed by the petitioner has been dismissed by the Respondent No. 2 without considering the representation filed by the petitioner.

(ii) To issue a writ in the nature



of Certiorari for quashing the Memo No. P/2/07/09-17- 2020/877, Patna dated 07.07.2022 issued under the signature of respondent No. 3 whereby and whereunder the petitioner has been dismissed from service.

(iii) To issue a writ in the nature of Certiorari for quashing the Memo No. 1606 dated 23.10.2018 issued under the signature of Respondent No. 5 whereby and whereunder the appeal preferred by the petitioner has been dismissed.

(iv) For quashing the order of punishment contained in Memo No. 1635 dated 26.06.2018 issued under the signature of Respondent No. 7 whereby and whereunder the petitioner has been awarded the punishment of one black mark and the petitioner shall not be paid anything which has been paid during the period of suspension.

(v) Consequent upon quashing of above orders and report, to issue a writ in the nature of mandamus commanding the respondents to reinstate the petitioner in the service and to pay all the consequential monetary benefits to the petitioner.”

3. It is the case of the petitioner that based on a complaint made by one Pradip Kumar @ Upendra Yadav. The authority have initiated disciplinary proceedings against the petitioner and the petitioner was initially suspended on 27.06.2017 and, thereafter, he was directed to report to the headquarters during



the period of suspension. A disciplinary proceeding was initiated against the petitioner and the Deputy Superintended of Police (Headquarter), Arwal was appointed as Enquiry Officer and one Ms. Gayatri Kumari, Sub-Inspector of Police, Police Centre, Arwal was appointed as Presenting Authority. That vide Memo No. 33 dated 26.07.2017, the Enquiry Officer directed the petitioner to make available the copy of the charge and submit his explanation with respect to the memo of charge. Thereafter, the petitioner submitted his defence statement on 20.02.2018 and the enquiry was completed. That the Enquiry Officer vide Memo No. 43 dated 11.06.2018 submitted the enquiry report with a finding that the charges levelled in the memo of charge has been proved against the petitioner. Thereafter, the disciplinary authority, without supplying the copy of the enquiry report or issuing any second show cause notice to the petitioner, has passed the order of punishment inflicting the punishment of one black mark vide Memo No. 1635 dated 26.06.2018. That aggrieved by the inflictment of punishment by the disciplinary authorities, the petitioner has preferred an appeal to the Deputy Inspector General of Police, Magadh Range raising several grounds. However, the appellate authority without considering the grounds raised by the petitioner has confirmed the order passed by the disciplinary authorities vide order dated 23.10.2018 in Memo No. 1606. That



subsequently the Inspector General of Police, Patna Zone reviewed the order of punishment of the petitioner vide Letter No. 521 dated 09.02.2019 and recommended for passing appropriate order of punishment under Rule 853 (A) of the Bihar Police Manual. Thereafter, the petitioner was issued a show cause notice vide Memo No. 561 dated 01.07.2019 seeking his explanation as to why the punishment inflicted upon the petitioner should not be enhanced. The petitioner has submitted his explanation to the said show cause notice on 22.03.2022 to the Superintendent of Police, Jehanabad. That the Director General of Police without considering the explanation submitted by the petitioner has passed an order of enhancement of the punishment to one of dismissal from service vide order dated 07.07.2022 contained in Memo No. 877. That aggrieved by the above order of enhancement of punishment passed by the Director General of Police, the petitioner has preferred a Memorial before the Principal Secretary, Home Department, Government of Bihar, who vide order dated 06.06.2023 in Memo No. 8/M.3-10-08/2022 has confirmed order of removal passed by the Director General of Police. Learned counsel has stated that both the appellate authority i.e. the Director General of Police and also the Home Secretary while passing the impugned order have not taken into consideration the fact that the petitioner has not been submitted the copy of the enquiry report



and no second show cause notice was issued to the petitioner by the disciplinary authority before passing the order of punishment. Further, it is stated that the authorities ought to not have enhanced the punishment of dismissal from that of the black mark passed by the disciplinary authority and confirmed by the appellate authority. Therefore, prayed this Court to set aside the impugned order.

4. Per contra, the learned counsel appearing on behalf of the Respondents-State has vehemently opposed the very maintainability of the present writ petition and has stated that the orders passed by the disciplinary authority, the appellate authority, the order of enhancement and the orders passed in the appeal are in consonance with the well established principles of law. It is further stated that the allegations against the petitioner were found to be grave in nature and, therefore, the authority has rightly enhanced the punishment against the petitioner from that of black mark to one of dismissal. Further, the learned counsel has stated that the finding of fact arrived by the Enquiry Officer have not been disputed by the petitioner and, therefore, any interference by this Court at this stage is uncalled for.

5. A perusal of the order impugned in the present writ petition shows that the Home Secretary while passing the order has reiterated the facts of the case and thereafter, came to the conclusion that the order of the Director General of Police in



enhancing the punishment inflicted against the petitioner from that of one black mark to one of dismissal does not call for any interference. The order does not give any reasons for coming to the said conclusion. The orders passed by the Home Secretary is bereft of any reasons and absolutely no reasons are given for upholding the order of the Director General of Police enhancing the punishment from one black mark to one of dismissal.

6. This Court as well as the Apex Court, on number of occasions, have held that any authority/Court/quasi judicial authority have to necessarily give reasons in the order passed by them. Unless reasons are given in the order, neither the party nor Courts before whom the order is challenged will be in a position to appreciate as to what has weighed with the said authority either for dismissing or allowing the application/appeal of the party. Though the quasi judicial or administrative authorities are not obligated to give a lengthy or elaborate reasoning as in the case of Judicial order, yet they are expected to give a reasoned order which should be precise, concisely setting out the reason for allowing or dismissing the appeal/application as the case may be.

7. In **Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota vs. Shukla and Brothers**, reported in (2010) 4 SCC, 785, the Hon'ble



Supreme Court has held as under:

“..... while exercising the power of judicial review on administrative action and more particularly the judgment of courts in appeal before the higher court, providing of reasons can never be dispensed with. The doctrine of audi alteram partem has three basic essentials. Firstly, a person against whom an order is required to be passed or whose rights are likely to be affected adversely must be granted an opportunity of being heard Secondly, the authority concerned should provide a fair and transparent procedure and lastly, the authority concerned must apply its mind and dispose of the matter by a reasoned or speaking order.....

..... A litigant who approaches the court with any grievance in accordance with law is entitled to know the reasons for grant or rejection of his prayer Reasons are the soul of orders Non-recording of reasons could lead to dual infirmities; Firstly, it may cause prejudice to the affected party and secondly, more particularly, hamper the proper administration of justice. These principles are not only applicable to administrative or executive actions, but they apply with equal force and, in fact, with a greater degree of precision to judicial pronouncements. The orders of the court must reflect what weighed with the court in granting or declining the relief claimed by the applicant.”

8. Having regard to the above mentioned facts and circumstances, this Court is of the opinion that the order passed by the Additional Chief Secretary, Home Department, Govt. of Bihar, Patna has to be necessarily set aside as the same does not contain any reasons for passing the said order. The order dated 06.06.2023 impugned in the present CWJC is set aside and the matter is remanded back to the Additional Chief Secretary, Home



Department, Govt. of Bihar, Patna for passing orders afresh.

9. It is needless to mention that before passing any order the petitioner shall be put on notice and given an opportunity of hearing. The entire exercise shall be completed as expeditiously as possible preferably within a period of eight weeks from the date of receipt of the copy of this order. Any order passed shall be communicated to the party.

10. With the above directions, the present Writ Petition stands **allowed** to the extent indicated.

(A. Abhishek Reddy, J)

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