

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.837 of 2023
In
Civil Writ Jurisdiction Case No.986 of 2023

1. The State of Bihar represented through the Additional Chief Secretary, Home Department (Police Wing), Government of Bihar, Patna.
2. The Additional Chief Secretary, Home Department (Police Wing), Government of Bihar, Patna.
3. The Director General of Police, Bihar, Patna.
4. Deputy Secretary of the Home Department (Police Wing), Government of Bihar, Patna.

... .. Appellants

Versus

1. Arun Kumar Dubey Son of Late Kaushal Kishor Dubey, Resident of Flat No. 304, Sonal Raj Complex, Nehru Nagar Main Road, Near Forest Office, Post Office-Patliputra, Police Station-Patliputra, District and Town-Patna, PIN-800013, Bihar.
2. The Bihar Public Service Commission through its Secretary Address-15, Jawahar Lal Nehru Marg (Bailey Road), Patna-800001.

... .. Respondents

Appearance :

For the Appellant/s	:	Mr. Manish Kumar, GP-4 Mr. Manoj Kumar, A.C. to GP-4
For the Respondent/s	:	Mr. Mrigank Mauli, Sr. Advocate Mr. Kumar Ravish, Advocate
For the BPSC	:	Mr. Vijay Shankar Upadhyay, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)

Date : 08-04-2024

Heard the parties.

2. The challenge in the present Letters Patent Appeal is made to an order of this Court dated 24.04.2023 passed by the learned Single Judge in C.W.J.C. No. 986 of 2023, whereby the learned Court has set aside the impugned orders of penalty and its affirmance by the Reviewing Authority, after having found



those orders to be suffering from the vice of arbitrariness, being bad in law and further directed to ensure the consequential benefits to the writ-petitioner/respondent 1st set herein.

3. The appellants/State Officials being aggrieved by the afore-noted order, have preferred the Letters Patent Appeal, on the ground that the learned Single Judge has not considered the facts in the right perspective that the alleged negligence, dereliction in duty and irregularities committed by the writ-petitioner in course of discharge of his duties was thoroughly examined on the basis of the charges, defence statements and materials available on record, leading to penalty of deduction of 10% pension for a period of five years under rule 43(b) of the Bihar Pension Rules, 1950 (for short “the Rules, 1950”), which order of penalty has also been affirmed in review.

4. It is further contended that the learned Single Judge did not appreciate the fact that the Conducting Officer of the departmental proceeding submitted his findings with his opinion vide letter no. 642/A dated 31.07.2021 that the charges of negligence and dereliction in duty, besides dubious conduct of the writ-petitioner, which tarnishes the image of police force against the delinquent stand proved. The inquiry report of the Conducting Officer along with his findings and the materials



available on record, have been duly considered by the State Government. Having accepted the findings of the Conducting Officer, the State Government has resolved to impose punishment of deduction of 10% pension for five years in terms of the Rules, 1950 against the writ-petitioner. The afore-noted punishment order has also been accorded the consent of Bihar Public Service Commission.

5. It was also argued on behalf of the appellants/State Officials that this Hon'ble Court is not and cannot act as a second Court of First Appeal while exercising its power under Article 226/227 of the Constitution of India. However, in the present matter, the learned Single Judge ventured into appreciation of the evidence, which was not legally permissible.

6. On the other hand, learned Senior Counsel representing the writ-petitioner/respondent 1st set, while submitting in support of the judgment passed by the learned Single Judge, has vigorously contended that besides the factually incorrect charges against the delinquent, the allegation contained in the charges, even if it is taken to be true for the sake of argument, it would be hardly a case of negligence and, by no stretch of imagination can it be said to be a misconduct and thus the order of penalty imposed by the appellants/State



Officials was *per se* illegal and unsustainable in law as well as on facts. In this regard, reliance has also been placed on a judgment rendered by the Hon'ble Apex Court in **Union of India And Others v. J. Ahmed [(1979) 2 SCC 286]**.

7. The learned Senior Counsel, further submitted that the learned Single Judge has set aside the order of penalty after taking into consideration the show-cause reply/defence of the writ-petitioner to the charges levelled against him, which was neither considered by the Inquiry Officer in his report nor by the Disciplinary Authority while passing the order of penalty. A similar mistake had been committed by the Reviewing Authority, where the grounds raised by the writ-petitioner were not addressed.

8. This Court has carefully given anxious consideration to the rival submissions and also perused the order passed by the learned Single Judge.

9. It would be worth noting that the writ-petitioner joined the service of the State Government in the Police Department in the year 1990 as Sub Inspector of Police and after serving at many places in different capacities, he submitted his joining as a Sub Divisional Police Officer, Rosera, Samastipur, on 21.02.2019. Subsequently, vide Memo No. 2226



dated 08.08.2019, the Inspector General of Police (Headquarters), Bihar, Patna forwarded a copy of Memo No. 6258 dated 02.08.2019 of the Home Department (Police Wing), Bihar through the Commandant, Bihar Military Police-14, by which the writ-petitioner was served with a Memo of Charge. The Memo of Charge contains eight charges. The misconduct alleged in the charges relate to his period of posting as a Sub Divisional Police Officer, Rosera, Samastipur, w.e.f. 21.02.2019 till 23.07.2019. Along with the aforesaid charges, five letters were appended in order to prove the proposed charges. The list of witnesses enclosed with the memo of charges, discloses the name of three witnesses. However, from the reading of the name of witnesses, it would be evident that only the designation of the officer was mentioned and the name of the witnesses were not disclosed.

10. In response to the memo of charges, a detailed statement of defence has been submitted on behalf of the delinquent writ-petitioner, giving complete facts and figures.

11. After going through the statement of defence, which is part of the writ petition, this Court finds that a plausible explanation has been offered to each and every charge(s). However, when this Court perused the inquiry report,



it finds that the Inquiry Officer has failed to discuss any of the statement of the defence, submitted by the writ-petitioner. It also appears that none of the authors of the letters, which were the documentary evidence proposed, were produced as witnesses on behalf of the department. Neither did they appear before the Inquiry Officer to prove the contents of the document nor even produced and marked it in the enquiry proceeding.

12. It is trite that mere tendering of documents would not be treated as evidence, unless the contents of the documents are proved by oral evidence. In this regard, the decision of the Hon'ble Apex Court in the case of **Roop Singh Negi v. Punjab National Bank [(2009) 2 SCC 570]** can be relied on.

13. The learned Single Judge has rightly taken note of the fact that the Inquiry Officer has though taken note of the defence, but towards the fag end of the inquiry report, he has directly reached a conclusion without giving his reasoning as to why the statement of defence is not fit to be accepted. Similarly, the Disciplinary Authority accepting the inquiry report, had issued second show-cause notice to the writ-petitioner, which was categorically responded by him, but to the utter surprise and dismay, the Disciplinary Authority failed to consider the reply to the second show-cause of the writ-petitioner and the statement



of defence and without considering it, the Disciplinary Authority proceeded to pass the impugned order.

14. On being aggrieved by the order of penalty, the writ-petitioner though preferred review by way of an appeal, but the same met with similar conclusion and was rejected without any deliberation on the statement of defence/show-cause reply of the writ-petitioner.

15. From the materials discussed hereinabove, there is no escape from the conclusion that the order of penalty was passed by the appellants/State Officials without complying with the basic principles regulating a disciplinary proceeding. The requirement of recording reasons by every quasi-judicial or even an administrative authority entrusted with the task of passing an order adversely affecting an individual and communication thereof to the affected person is one of the recognized facets of the rule of natural justice and violation thereof has the effect of vitiating the order passed by the authority concerned.

16. Non-consideration of the points taken in the reply to the show-cause notice, would certainly lead to violation of the principles of natural justice rendering the impugned order of penalty *per se* illegal. The order of penalty passed by the



Disciplinary Authority as well as the order of the Reviewing Authority, reflect total non-consideration, as there is neither any consideration nor discussion of the writ-petitioner's statement of defence/reply/stand taken by him.

17. It would be worth observing that both under Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (for brevity "the Rules, 2005"), under which the disciplinary proceeding against the writ-petitioner was initiated and the Bihar Pension Rules, 1950, under which the disciplinary proceeding has been converted under rule 43(b) thereof and punishment has been imposed because of superannuation of the writ-petitioner in the midst of disciplinary proceeding, warrant strict compliance of the principles of natural justice.

18. A Disciplinary Authority is under obligation to provide consideration of the entire circumstances of the case in order to decide the nature and extent of penalty to be imposed. The delinquent is entitled to the consideration of the show-cause by the Disciplinary Authority and the application of mind of said authority is imperative, before imposing any punishment. Thus, where no reason is assigned as to why the reply is found unsatisfactory and punishment is imposed thereupon, it only becomes apparent that there has been no application of mind by



the authority for giving of reasons in support of an order, which effects a person's basic need of the principles of natural justice.

19. The Hon'ble Apex Court in the case of **Barium Chemical Limited and Another v. A.J. Rana and Others** [AIR 1972 SC 591], while highlighting the merit of the word "Considers" has observed as follows:-

"14. The words 'considers it necessary' postulate that the authority concerned has thought over the matter deliberately and with care and it has been found necessary as a result of such thinking to pass the order. The dictionary meaning of the word 'consider' is to attentively survey, examine, inspect (arch), to look attentively, to contemplate mentally, to think over, mediate on, give heed to, take note of, to think deliberately, to think oneself, to reflect, (vide shorter Oxford Dictionary). According to words and phrases-permanent Edn. Vol.8-A to 'consider' means to think with care. It is also mentioned that to 'consider' is to fix the mind upon with a view to careful examination, to ponder, study; mediate upon think or reflect with care".

20. This Court is also conscious of the fact that in case of non-compliance of the principles of natural justice or if the order of punishment vitiates on account of some technical infirmities, it must be relegated to the authorities concerned to



proceed with the inquiry from the stage, from which the disciplinary proceeding stood vitiated because of such error. However, in the case in hand, the writ-petitioner has already superannuated in the midst of disciplinary proceeding and thus the proceeding is converted under rule 43(b) of the Bihar Pension Rules, 1950 and the punishment has been imposed under rule 43(b) thereof.

21. That apart, this Court also finds substance in the contention of the learned Senior Counsel, representing the writ-petitioner/respondent 1st set, that the entire allegation even if accepted in its totality, speaks only about the negligence in performance of duty or inefficiency in discharge of duty on the part of the writ-petitioner, lacking the ingredients of misconduct. Thus, the reliance placed on **Union of India And Others (supra)** also, fortifies the arguments of the learned Senior Counsel. The Apex Court, in the above noted case, succinctly observed that *“It is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would ipso facto constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in*



discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence. Carelessness can often be productive of more harm than deliberate wickedness or malevolence.”

22. It would be worth noting that under Articles 226/227 of the Constitution of India, the High Court shall not re-appreciate the evidence and go into the adequacy and reliability of the evidence, if the disciplinary proceeding is conducted in accordance with law. However, if there is violation of the principles of natural justice and the authorities have allowed themselves to be influenced by irrelevant and extraneous consideration and/or erroneously failed to consider admit the admissible and material evidence, the High Court, while exercising the power of judicial review may interfere and set aside the disciplinary proceeding and its outcome. In the present case, there were no witnesses examined and the contents of the communications, which was the foundation of the allegations, were never brought in evidence. The allegations



levelled were also of with respect to number of cases pending investigation, increase of cases and so on, which cannot strictly lead to an allegation of misconduct and there is no specific allegation of dereliction of duty. The Inquiry Officer, the Disciplinary Authority and the Reviewing Authority were very casual in their approach, did not discuss any evidence and did not advert to the defence proffered by the delinquent employee; the petitioner herein.

23. In view of the aforesaid discussions, this Court does not find any infirmity in the order/judgment passed by the learned Single Judge. Accordingly, the Letters Patent Appeal stands dismissed.

24. There shall be no order as to cost(s).

(Harish Kumar, J)

(K. Vinod Chandran, CJ)- I agree.

(K. Vinod Chandran, CJ)

rohit/-

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