

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.688 of 2019

In
Civil Writ Jurisdiction Case No.10309 of 2014

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Awdhesh Kumar Singh Son of Late Ram Kripal Singh Resident of Village-
Raghunathpur, P.S.- Kudhni, District- Muzaffarpur.

... .. Appellant/s

Versus

1. The State of Bihar Bihar.
2. The Director General of Police Bihar, Patna.
3. The Inspector General of Police Patna Zone, Patna.
4. The Deputy Inspector General of Police Central Range, Patna.
5. The Superintendent of Police Nalanda.
6. The Superintendent of Police Railway, Muzaffarpur, Bihar.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Jagannath Singh, Adv. Mr. Deepak Kumar, Adv. Mr. Padmanabh Kashyap, Adv.
For the State	:	Mr. Saroj Kumar Sharma, AC to AAG-3

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

Date : 16-05-2024

The appellant has assailed the order of the learned Single Judge dated 13.02.2019 passed in CWJC No. 10309 of 2014.

2. After hearing at length a detailed order was passed on 02.05.2024 and it reads as under:-

The appellant has assailed the order of the learned Single Judge dated 13.02.2019 passed in CWJC No.10309 of 2014. The appellant



was serving as a constable, he was subjected to disciplinary proceeding and it was concluded in imposition of penalty of withholding of two increments on 30th July, 2008. It is learnt that Director General of Police took suo moto review of order of the disciplinary authority who had imposed the penalty of withholding of two increments and proceeded to issue show cause notice to the petitioner on 11.11.2013. Petitioner had submitted explanation on 17.12.2013. Thereafter, Director General of Police proceeded to impose the penalty of dismissal from service on 25.02.2014 which is the subject matter of CWJC No.10309/2014.

2. Learned Single Judge proceeded to dismiss the CWJC No. 10309/2014. Learned counsel for the appellant submitted that initially the penalty imposed is withholding of two increments by the disciplinary authority on 30th July, 2008 thereafter, at the behest of Director General of Police suo moto power has been exercised in reviewing the order of the disciplinary authority and it was not within a reasonable period of time. On the other hand, after lapse of about eight years, Director General of Police proceeded to issue notice and seeking explanation and thereafter, proceeded to modify the penalty of withholding of two increments to that of dismissal. In this regard, detail explanation has been submitted however, in the dismissal order there is no iota of material considered with reference to explanation submitted to the notice. In other words,



procedure for issuance of dismissal order was empty formality like issuing notice and seeking explanation, the same has not been appreciated by the learned Single Judge.

*3. Per contra, learned counsel for the appellant resisted the contention and submitted that the appellant has suppressed certain material information relating to approaching this court on earlier occasion with reference to initiation of enquiry and suffered an order. Be that as it may, the Hon'ble Supreme Court in the case of **ORYX Fisheries Private Limited Vs. Union of India and Others** reported in (2010) 13 SCC 427 in para 40 held as under:-*

40. In Kranti Associates reported in (2010) 9 SCC 496 this Court after considering various judgments formulated certain principles in SCC para 47 of the judgment which are set out below: (SCC pp. 510-12)

"(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 Harv. L. Rev. 731-37.)

- (n) Since the requirement to record reasons emanates from the broad b 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, EHRR at p. 562, para 29 and Anya v. University of Oxford, 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'."*

4. The principle laid down by the Hon'ble Supreme Court in the cited decision is that quasi-judicial authority was required to consider explanation to the notice and it is mandatory. The Hon'ble Supreme Court elaborately discussed in respect of passing quasi-judicial orders. Taking note of the aforementioned decision read with the fact that dismissal order is dearth of consideration of appellant's explanation to the notice dated 11.11.2013 read with explanation submitted on 02.12.2013. Thus, the appellant has made out a prima facie case for interference with the orders of learned Single Judge and order of dismissal.

6. At this juncture, learned counsel for the respondent seeks time. In order to



give one more opportunity. Re-list this matter on 09.05.2024. If there is no material or any other information on behalf of the respondent, matter would be decided in the above terms.

3. Today, learned counsel for the respondents submitted that in the counter affidavit at para-6 it was pointed out that appellant has suppressed relating to pendency of criminal case bearing Kudhani P.S. (Muzaffarpur) Case No. 101 of 1985 dated 16.09.1985 in which charge sheet no. 18/1986 dated 28.02.1986 under Sections 302, 201, 34 of the IPC was filed against the appellant. Further, he was holding offices at two places namely at Purnea and Sitamarhi and it is in violation of Rule 67(d) of Bihar Service Code. These two materials are not relevant for the purpose of the present case for the reasons that in the criminal case appellant was acquitted on 24.09.1993 whereas the charge memo was issued against the appellant in the present case on 15.02.2007. Therefore, there is no relevancy. In fact, it is a misleading statement on behalf of the respondents to the extent that appellant had suppressed the pendency of criminal case. Further it was contended that he was holding two offices at different places namely, Purnea and Sitamarhi and it is in violation of Rule 67(d) of Bihar Service Code whereas no material has been placed on record to the extent who has made



such arrangement whether *suo motu* appellant has arranged himself and assume the other post then officially he was posted or both the posts were manned by the appellant in official capacity. These information are not forthcoming. That apart there is no crystal clear in the charge memo.

4. It is necessary to reproduce Para 853A of Bihar Police Manual under which *suo motu* action has been taken by the authority to dismiss the appellant from service. Para 853A reads as under:-

853A. (a) *Inspector-General may call for the file in any case even when no appeal lies and pass such order as he may deem fit. The Deputy Inspector-General may call for any file but he should refer it to the Inspector-General with his recommendation for his order. The above action should be taken within a reasonable time from the date of final order in departmental proceeding.*

(b) *Notwithstanding anything contained in these rules the State Government may call for the proceedings in any disciplinary case even when no appeal or memorial lies, and pass such order as it may deem fit.*

(c) *When an appeal has been filed and the Inspector-General on applying his mind thinks that he should enhance the punishment,*

[underline supplied]



he can dismiss the appeal but must simultaneously mention in that order that as per powers given in the rule 853A (a), he has decided to review it for enhancement and take action for obtaining a show cause, etc.. where necessary.

Reading of the aforementioned provision, it is crystal clear that action under 853A should be taken within a reasonable time from the date of final order in a departmental proceedings. It is to be noted that in the present case, disciplinary authority imposed penalty of withholding of increment on 30.07.2008. The same was interfered by the author of the dismissal order after about eight years on 25.02.2014. One cannot draw inference that eight years would be a reasonable period of time. Even on this count, Rule 853A is not at all attracted in the present case.

5. These issues have not been apprised by the learned Single Judge while deciding the CWJC No. 10309 of 2014. Therefore, in not taking note of the legal issue read with the factual aspect of the matter, order of the learned Single Judge is bereft of material information and incorrect order has been passed.

7. Accordingly, order of the learned Single Judge dated 13.02.2019 passed in CWJC No. 10309 of 2014 stands set aside. CWJC No. 10309 of 2014 allowed. Dismissal order



dated 25.02.2014 contained in Memo No. 756/L-1 passed by Director General of Police, Bihar, Patna as also consequential Nalanda District Order No. 525/14 dated 25.02.2014 and 10.03.2014 stands set aside. The concerned authority/respondent is hereby directed to regulate the intervening period from the date of dismissal till in the normal course retirement of the appellant and settle all dues including increments during the intervening period and, ACP, if any. After re-fixation of pay and pension, difference of pay shall be calculated and disbursed in favour of the appellant. The above exercise shall be undertaken within a period of six months from the date of receipt of this order, failing which the appellant is entitled to litigation cost and it is quantified at Rs. 25,000/- (Rs. twenty five thousand only) and it would be recoverable from the concerned Respondent/appointing authority or State Government.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

shahzad/-

AFR/NAFR	NAFR
CAV DATE	NA.
Uploading Date	18.05.2018
Transmission Date	N.A.

