

IN THE HIGH COURT OF JUDICATURE AT PATNA

Anil Kumar

v

The Union of India & Others

Letters Patent Appeal No. 1107 of 2018

In

Civil Writ jurisdiction Case No. 2963 of 2008

17 April 2025

**(Hon'ble Mr. Justice P.B. Bajanthir and Hon'ble Mr. Justice
S.B.PD. Singh)**

Issue for Consideration

- Whether the appellant was denied a fair opportunity to cross-examine prosecution witnesses and to adduce evidence through defence witnesses during the departmental enquiry.
- Whether the penalty of removal from service was proportionate and sustainable under the law.

Headnotes

Appellant has not been provided ample opportunity to cross-examine six witnesses on behalf of the prosecution. (Para 4)

Appellant has not been provided ample opportunity of adducing evidence before the Inquiring Officer. It is to be noted that major penalty of removal from service has been imposed. In such circumstance authorities should have examined as to whether the appellant has been provided ample opportunity of adducing evidence and cross-examining the witnesses. (Para 6)

Charges were not proved in the manner to the extent that adducing of evidence and cross-examination which are all mandatory requirement in a departmental enquiry. (Para 9)

Order of the learned Single Judge is set aside. (Para 11)

Case Law Cited

State of Karnataka v. Umesh, (2022) 6 SCC 563

List of Acts

Departmental Inquiries (Enforcement of Attendance of Witnesses and Production of Documents) Act, 1972; Code of Civil Procedure, 1908

List of Keywords

Departmental Enquiry; Natural Justice; Cross-Examination; Defence Witnesses; Procedural Lapse; Compulsory Retirement; Judicial Review; Proportionality of Punishment; CISF; Cook

Case Arising From

Order dated 02.07.2018 in CWJC No. 2963 of 2008

Appearances for Parties

For the Appellant: Mr. Shashi Shekhar Tiwary, Advocate

For the Respondents: Mr. Awadhesh Kumar Pandey, Sr. CGC; Mr. Ram Tujabh Singh, CGC; Mr. Lokesh, Advocate; Ravinder Kumar Sharma, Advocate and Mr. Abhishek Kumar Verma, Advocate

Headnotes prepared by: Amit Kumar Mallick, Advocate

Judgment/Order of the Hon'ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1107 of 2018
In
Civil Writ Jurisdiction Case No.2963 of 2008

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Anil Kumar, No. 904490116 son of Sri Vijay Kumar resident of village and post Terra, P.S. - Karpi, District - Jehanabad.

... .. Appellant/s

Versus

1. The Union Of India through Secretary, Ministry of Home Affaris, New Delhi
2. The Inspector General of ES, Central Industrial Security Force, Boring Road, Patliputra, Patna.
3. The Deputy Inspector General, CISF, Eastern Zone, Headquarters, Patna.
4. The Commandant CISF, CISF Unit, PPT Paradeep, District - Jagatsinghpur, Orrisa.

... .. Respondent/s

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Appearance :
For the Appellant/s : Mr.Shashi Shekhar Tiwary, Advocate
For the Respondent/s : Mr. Awadhesh Kumar Pandey, Sr. CGC
Mr. Ram Tujabh Singh, CGC
Mr. Lokesh, Advocate
Mr.Ravinder Kumar Sharma, Advocate
Mr. Abhishek Kumar Verma, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE S. B. PD. SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 17-04-2025

Appellant has assailed the order of the learned Single Judge dated 02.07.2018 passed in CWJC No. 2963 of 2008.



2. Brief facts of the case are that the appellant was appointed as a Cook with the respondent-CISF Unit, NTPC, Barh, Bihar on 30.03.1990. During the pendency of departmental enquiry, he has been transferred to CISF Unit PPT, Paradip, Orissa. The charges are serious in nature insofar as abusing his higher officials and threatening them. In the departmental enquiry six witnesses have been examined on behalf of the prosecution on 23.07.2005. The appellant was asked to cross-examine those prosecution witnesses on 24.07.2005. The appellant sought two days time and the same was refused as is evident from the records. Further, on 24.09.2005 petitioner expressed that he wanted to lead evidence through defence witnesses two are constables namely, Pramod Kumar and B.N. Singh and four are private citizens namely, Sanjay Singh, Jai Singh, Suman Singh and Arun Kumar Gupta. However, they refused to participate in the inquiring proceedings. In this backdrop, perusal of the ordersheet maintained by the inquiring officer it is evident that the Inquiring Officer hurriedly proceeded to conclude the departmental enquiry within few days.

3. In this regard, it is necessary to reproduce ordersheet maintained by the inquiring officer dated 23.07.2005,



24.07.2005 and 24.09.2005.

23.07.05 आरोपी बल सदस्य आ. (नि.) अनिल कुमार आज दिनांक 23.07.2005 को जांच अधिकारी के समक्ष आया एवं बताया कि वह जांच की आगे की प्रक्रिया में भाग लेना चाहता है। अतः आ. अनिल कुमार को इजाजत दी गई। प्रारम्भिक सुनवाई में आ. अनिल कुमार ने आरोप पत्र का जवाब दिया है या नहीं के प्रश्न के उत्तर में एक लिखित जवाब (Preliminary written statement of defence) दिनांक 23.07.2005 के औ सु ब ई पी पी टी पारादीप के नाम प्रेषित किया है। प्रारम्भिक सुनवाई के दौरान नि. एम बिस्वाल (पी.ओ.) उपस्थित रहे एवं सूचीबद्ध दस्तावेजों को प्रस्तुत किया जो रिकार्ड में लाया गया। आ. राजेश कुमार (अभियोजन पक्ष गवाह) का परीक्षण किया गया एवं उनका प्रति परीक्षण आरोपी बल सदस्य द्वारा किया गया। आरोपी बल सदस्य को यह सूचित किया गया कि दिनांक 20.07.05 से दिनांक 22.07.2005 तक उनकी अनुपस्थिति में एक तरफा जांच कार्यवाही किया गया है जिसमें निम्न अभियोजन गवाहों का परीक्षण किया गया है। बयान रिकार्ड किया गया है।

1. नि. व्ही एम झा
2. उप नि. आलोक लगुन
3. प्र आ. आर एन सिंह
4. आ. हरेन्द्र सिंह
5. आ. जयराम
6. आ. एम के सिंह

आरोपी बल सदस्य को यह सूचित किया गया कि दिनांक 24.07.



2005 को समय 0900 बजे आगे की जांच हेतु के औ सु.ब.ई. पी पी टी पारादीप के अग्निशमन केन्द्र पर निश्चित की गई है। आ. अनिल कुमार को यह भी सूचित किया गया कि दिनांक 24.07.05 को उस समय उपरोक्त अभियोजन साक्षी (गवाह) के ब्यान पुनः पढ़कर सुनाया जायेगा एवं आ. अनिल कुमार उन गवाहों को प्रतिपरीक्षण कर सकते हैं। अतः आ. अनिल कुमार को यह निर्देश दिया गया कि उन्होंने दिनांक 24.07.05 को समय 0900 बजे उपरोक्त निर्धारित स्थान पर जांच हेतु उपस्थिति रहें अन्यथा आगे की जांच प्रक्रिया एक तरफा की जा सकती है।

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Presenting officer (आ. अनिल कुमार) (नि. अ. सुधीर कुमार)

आरोपी बल सदस्य

जांच अधिकारी

24.07.05 आज दिनांक 24.07.05 को आरोपी आ (नि0) अनिल कुमार दिनांक 23.07.05 के निर्देशानुसार जांच हेतु प्रस्तुतकर्ता अधिकारी की उपस्थिति में उपस्थित हुआ एवं नि. व्ही एम झा के बयान को पढ़कर सुनाया गया एवं आरोपी को नि. व्ही एम झा से बयान के सन्दर्भ में प्रतिपरीक्षण का मौका दिया गया। आ. अनिल कुमार को यह कहा गया कि उनको नि. व्ही.एम.झा का बयान पढ़कर सुनाया गया है अतः उसको जांच की कार्यवाही के रिकार्ड हेतु, नि. व्ही.एम.झा के बयान के उपर पढ़कर हस्ताक्षर करें, कि उन्होंने बयान पढ़ लिया है और उनको बयान पढ़कर सुनवाया भी गया है लेकिन आरोपी आ. अनिल कुमार ने बयान के उपर हस्ताक्षर करने से इन्कार कर दिया। आ. अनिल कुमार को नि. व्ही एम झा से तुरन्त



प्रतिपरीक्षण करने के लिए मौका दिया गया लेकिन उन्होंने तुरन्त प्रतिपरीक्षण करने से मना कर दिया एवं कहा कि दो दिन के पश्चात (एवं ब्यान की प्रति प्राप्ति के बाद) वह प्रतिपरीक्षण करेंगे। आ. अनिल कुमार को यह बताया गया कि आज दिनांक 24.07.05 को तुरन्त उनको जांच की कार्यवाही में शामिल हुए (दिनांक 20.07.05 से 22.07.05 तक) सभी अभियोजन पक्ष के ग्वाहों का ब्यान (जो कि एक तरफा जांच कार्यवाही में रिकार्ड किया गया है, आरोपी बल सदस्य के उपस्थित न होने के कारण) दिया जा रहा है। अतः आरक्षक अनिल कुमार को यह कहा गया कि उनको प्रतिपरीक्षण हेतु दो दिन का समय नहीं दिया जा सकता इसलिए उनको तुरन्त बिना देरी के प्रतिपरीक्षण करने को कहा गया लेकिन आरक्षक अनिल कुमार ने अविलम्ब प्रतिपरीक्षण करने में असमर्थता जताते हुए प्रतिपरीक्षण से मना कर दिया।

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(अस्पष्ट)	(अस्पष्ट)	(अस्पष्ट)	(जांच अधिकारी)

24.07.05 आरोपी बल सदस्य आ. अनिल कुमार को दिनांक 20.07.05 से दिनांक 22.07.2005 तक के ब्यान जो निम्न बल सदस्यों के थे एवं एक तरफा रिकार्ड किया गया था, (आरोपी की अनुपस्थिति के कारण) पढ़कर सुनाये गये एवं जब आ. अनिल कुमार को प्रतिपरीक्षण के लिए कहा गया तो उन्होंने बताया कि उनकी अनुपस्थिति में जिस अभियोजन पक्ष का ग्वाहों का ब्यान रिकार्ड किया गया है वह उनको प्रतिपरीक्षण नहीं चाहते हैं क्योंकि उनको बयान की प्रति देने के बाद 02 दिन का समय नहीं दिया जा रहा है। पढ़कर सुनाये व दिखाये गये ब्यान के उपर आ.





आरक्षक अनिल कुमार का बचाव पक्ष का गवाह नहीं बनना चाहते हैं। इसकी सूचना आज दि. 24.9.05 को जांच कार्यवाही के दौरान आरोपी आरक्षक अनिल कुमार को दिया गया। आ० अमरेश कुमार जो कि कै औ सु.ब. इकाई IOC बरौनी में तैनात हैं, उनको जांच के दौरान बचाव पक्ष का गवाह के रूप में उपस्थित होने के लिए सम्बन्धित को सूचना दिया गया था। लेकिन कै औ सु ब इकाई एन टी पी बार से सम्पर्क करने पर यह पता चला कि आ० अमरेश कुमार कै ओ सु ब इकाई बरौनी से कै ओ सु बल इकाई बी सी सी एल धनबाद को स्थानांतरण पर जा चुके हैं। अतः कै ओ सु ब इकाई बी सी सी एल धनबाद को अनुरोध किया जायेगा कि दि० 28.9.05 को आ. अमरेश कुमार को जांच के दौरान उपस्थित होने के लिए भेजे।

श्री संजय सिंह, श्री जय सिंह, श्री सुमन सिंह एवम् श्री अरुण कुमार गुप्ता जो कि सिविलियन हैं उनको बचाव पक्ष के गवाह के रूप में आ. अनिल कुमार प्रस्तुत करना चाहते थे। लेकिन जांच के संबंध में उन लोगों का कोई ताल्लुकात नहीं लगता है। अतः उपरोक्त सिविलियन लोगों को जांच के लिए नहीं बुलाया जायेगा। इसकी सूचना आरोपी आ० अनिल कुमार को दिया गया। जांच की अगली तिथि दि० 28.9.05 को समय 1000 बजे कमान्डेन्ट के औ सु. ब. इकाई, पी पी टी पारादीप के कार्यालय में (भंडारपाल कक्ष) में निर्धारित किया गया, जिसकी सूचना आ० अनिल कुमार को दिया गया।

ह०/—	(आ० अनिल कुमार)	ह०/—
प्रस्तुतकर्ता अधिकारी	आरोपी आरक्षक	जांच अधिकारी
आरोपी आ० अनिल कुमार ने इस order sheet में हस्ताक्षर करने से		



इन्कार किया

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प्रस्तुतकर्ता अधिकारी

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जांच अधिकारी

4. No doubt the learned Single Judge has rejected the appellant's writ petition having regard to the seriousness of the charge. Insofar as travelling from Orissa to Bihar to participate in the departmental enquiry learned Single Judge has recorded that appellant cannot dictate terms to the management or the employer in conducting departmental proceedings at which place. Learned Single Judge has failed to take note of the fact that the appellant has not been provided ample opportunity to cross-examine six witnesses on behalf of the prosecution. On the other hand, six witnesses have been examined on 23.07.2005 and he was asked to cross-examine on 24.07.2005. Having regard to the status of the petitioner that he was a Cook and he was required to cross-examine his higher officials-witnesses on the same day may not be feasible. In fact the Inquiring Officer should have provided ample opportunity to the appellant insofar as taking assistance of retired official of the CISF Department to assist in the departmental enquiry having regard to the qualification and status of the appellant that he is only a Cook and to cross-examine his superiors.

5. The defence witnesses names were provided to the



Inquiring Officer, however, it was the bounden duty of the Inquiring Officer to summon defence witnesses to defend the appellant's case while invoking relevant provisions of law insofar as summoning those witnesses, like Departmental Inquiries (Enforcement of Attendance of Witnesses and Production of Documents) Act, 1972. Under Section 4 authorized inquiring authority shall have the same powers as are vested in a Civil Court under CPC, 1908 (5 of 1908). Obviously, Pramod Kumar and B.N. Singh are constables they may be afraid to adduce evidence against the department/management and that too before the higher officials who were witnesses.

6. Taking note of these infirmities, it is evident that the appellant has not been provided ample opportunity of adducing evidence before the Inquiring Officer. It is to be noted that major penalty of removal from service has been imposed. In such circumstance the inquiring officer/disciplinary authority/appellate authority/revisional authority should have examined as to whether the appellant has been provided ample opportunity of adducing evidence and cross-examining the witnesses. These issues have not been taken note of by the learned Single Judge after summoning the original records relating to departmental enquiry. These are the legal issues



insofar as adducing evidence and non providing ample opportunity to cross examine the witnesses. The Hon'ble Supreme Court in the case of *State of Karnataka Vs. Umesh* reported in (2022) 6 SCC 563 elaborately considered under what circumstances writ court can interfere insofar as judicial review of disciplinary proceedings. Paragraph-22 of the aforesaid Judgment reads as under:-

“22. In the exercise of judicial review, the Court does not act as an appellate forum over the findings of the disciplinary authority. The court does not reappreciate the evidence on the basis of which the finding of misconduct has been arrived at in the course of a disciplinary enquiry. The Court in the exercise of judicial review must restrict its review to determine whether:

(i) the rules of natural justice have been complied with;

(ii) the finding of misconduct is based on some evidence;

(iii) the statutory rules governing the conduct of the disciplinary enquiry have been observed; and

(iv) whether the findings of the disciplinary authority suffer from perversity; and

(v) the penalty is disproportionate to the proven misconduct. [*State of Karnataka v. N. Gangaraj*, (2020) 3 SCC 423 : (2020) 1 SCC (L&S) 547; *Union of India v. G. Ganayutham*, (1997) 7 SCC 463 : 1997 SCC (L&S) 1806; *B.C. Chaturvedi v. Union of India*, (1995) 6 SCC 749 : 1996 SCC (L&S) 80; *R.S. Saini v. State of Punjab*, (1999) 8 SCC 90 :



1999 SCC (L&S) 1424 and *CISF v. Abrar Ali*,
(2017) 4 SCC 507 : (2018) 1 SCC (L&S) 310].”

Underline Supplied.

7. The appellant’s case would fit into the principles laid down by the Hon’ble Supreme Court in the case of *State of Karnataka (cited supra)*. On this count appellant has made out a case so as to interfere with the impugned penalty order dated 25.11.2005 and so also order of the learned Single Judge dated 02.07.2018 passed in CWJC No. 2963 of 2008.

8. At this stage, we have noticed that in the event of quashing of the removal order what would be the consequence in view of the fact that appellant is not entitled for reinstatement for the reason that if he was in service he would have attained age of superannuation and retired from service on 30.11.2023, therefore there is no point of reinstatement. Further, it is not a case of remand to the disciplinary authority after 20 years, having regard to the fact that the Inquiring Officer has committed error in not providing ample opportunity of adducing evidence and not providing opportunity to cross-examine, despite appellant’s request on 24.07.2005 for a period of two days to cross-examine the prosecution witnesses and it has been blatantly refused. On this point the appellant has made out a case.



9. Be that as it may, having regard to the seriousness of charge, it is shocking to conscious of this Court insofar as imposition of penalty of removal from service for the reason that the charges were not proved in the manner to the extent that adducing of evidence and cross-examination, these are all mandatory requirement in a departmental enquiry. Therefore, we proceed to modify the penalty of removal from service dated 25.11.2005, appellate authority order dated 05.05.2006, revisional authority order dated 10.11.2006 to the extent of imposition of penalty of compulsory retirement w.e.f. 25.11.2005. Resultantly, appellant is entitled to consequential service and monetary benefits for the period from 30.03.1990, the date on which he was appointed as a Cook till 25.11.2005, the date on which removal order was passed and it is modified by us to the compulsory retirement.

10. For the aforementioned intervening period, appellant is entitled to consequential monetary benefits and the same shall be calculated and disbursed. If the post held by the appellant is pensionable post, in that event, the concerned authority is hereby directed to fix the pension w.e.f 25.11.2005 and calculate and disburse arrears of pension and continue to pay pension. The above exercise shall be completed within a



period of six months from the date of receipt/production of a copy of this order.

11. Accordingly, the order of the learned Single Judge dated 02.07.2018 passed in CWJC No. 2963 of 2008 is set aside.

12. LPA is allowed in part.

13. Pending I.A., if any, stands disposed of.

(P. B. Bajanthri, J)

(S. B. Pd. Singh, J)

ranjan/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	23.04.2025
Transmission Date	NA

