

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.23625 of 2019

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Akhilesh Kumar Sharma son of Late Kedar Nath Sharma resident of Village-
Gorhna, P.O. Neora, P.S. Bihta, District- Patna, presently residing at Flat No.
405, Surya Laxmi Vila Apartment, Ram Jaipal Path, Bailey Road, P.O.
Danapur, P.S. Rupaspur, District- Patna, the retired Executive Engineer,
Building Construction Department, Government of Bihar, Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Building Construction Department, Government of Bihar, Patna.
3. The Joint Secretary, Building Construction Department, Government of Bihar, Patna.
4. The Treasury Officer, Bishweshwaraiya Bhawan, Bailey Road, Patna.
5. The Accountant General, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S. B. K. Manglam, Advocate. Mr. Awnish Kumar, Advocate.
For the State	:	Mr. Dinesh Maharaj, AC to AAG-11.
For A. G. Bihar	:	Mr. Bindhyachal Rai, Advocate.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 04-09-2023

Heard Mr. S. B. K. Manglam, learned counsel
along with Mr. Awnish Kumar, learned counsel appearing on
behalf of the petitioner; Mr. Dinesh Maharaj, learned AC to
AAG-11 for the State and Mr. Bindhyachal Rai, learned counsel
for the Accountant General, Bihar.

2. Petitioner is aggrieved by the manner in which
the departmental proceeding has been initiated against him and
several orders have been passed one after another even after



intervention of this Court. Finally, the present writ petition has been filed against the order dated 15.10.2019 contained in Memo No. 9267 dated 17.10.2019. The operating part of the order is reproduced hereinafter:

“4. श्री शर्मा द्वारा माननीय उच्च न्यायालय, पटना में दायर सी0डब्ल्यू0जे0सी0 [सं0-2015/2015](#) में माननीय न्यायालय द्वारा दिनांक-06.02.2017 को पारित आदेश के आलोक में विभागीय अधिसूचना सं0-9009-सह-पठित ज्ञापांक-9010 दिनांक-06.10.2017 एवं शुद्धि पत्र सं0-3152 दिनांक-02.04.2018 द्वारा श्री शर्मा को संसूचित बर्खास्तगी दण्डादेश को विभागीय अधिसूचना सं0-11451 (भ0) दिनांक-11.11.2014 से निरस्त कर दिया गया एवं बिहार पेंशन नियमावली 1950 के अंतर्गत पुनः विभागीय संकल्प ज्ञापांक-4038 (भ0) दिनांक-15.05.2017 द्वारा विभागीय कार्यवाही संस्थित की गयी एवं इस मामले में संचालन पदाधिकारी से प्राप्त जॉच प्रतिवेदन के आलोक में विहित प्रक्रिया पूर्ण करते हुए बिहार पेंशन नियमावली 1950 के आलोक में विभागीय अधिसूचना सं0-8308 दिनांक-03.08.2018 द्वारा पूर्ण पेंशन जब्त करने का दण्ड संसूचित किया गया।

5. माननीय उच्च न्यायालय के आदेश के आलोक में श्री शर्मा का बर्खास्तगी दण्डादेश निरस्त किये जाने के उपरान्त श्री शर्मा के विरुद्ध प्रत्यानुपातिक धनार्जन के मामले में विभागीय संकल्प ज्ञापांक-8139 (भ0) दिनांक-05.08.2014 द्वारा संस्थित विभागीय कार्यवाही को पुनः प्रारम्भ करने का निर्णय लिया गया एवं विभागीय संकल्प ज्ञापांक-3941 (भ0) दिनांक-11.05.2017 द्वारा उक्त विभागीय कार्यवाही को बिहार पेंशन नियमावली 1950 के तहत पुनः संचालित किया गया। जिसमें विभागीय जॉच आयुक्त को संचालन पदाधिकारी नामित किया गया।

6. जॉच आयुक्त-सह-सचिव, परिवहन विभाग, बिहार, पटना के पत्रांक-62 दिनांक-20.11.2018 द्वारा समर्पित जॉच प्रतिवेदन में आरोपित पदाधिकारी के विरुद्ध सभी दो आरोपों को प्रमाणित होने का मंतव्य दिया गया।

7. संचालन पदाधिकारी से प्राप्त जॉच प्रतिवेदन के आलोक में विभागीय पत्रांक-58 (भ0) दिनांक-03.01.2019 द्वारा श्री शर्मा से द्वितीय कारण पृच्छा की गयी। इस संदर्भ में श्री शर्मा द्वारा उनके पत्रांक-शून्य दिनांक-15.01.2019 द्वारा समर्पित आयावेदन में प्रमाणित आरोपों को खंडित करने के संबंध में कोई स्पष्ट तथ्य प्रस्तुत नहीं करने के कारण सक्षम प्राधिकार द्वारा श्री शर्मा का पूर्ण पेंशन जब्त करने का निर्णय लिया गया। जिस पर उनसे पुनः दण्ड के बिन्दु पर कारण पृच्छा (Quantum of



Punishment) की गयी। श्री शर्मा के पत्रांक-शून्य दि०-27.06.2019 द्वारा समर्पित कारण पृच्छा (Quantum of Punishment) में उनके द्वारा कोई नया साक्ष्य/तथ्य प्रकाश में नहीं लाया गया। जिससे यह प्रमाणित हो कि ये निर्दोष है। फलतः उनके द्वारा समर्पित अभ्यावेदन को अस्वीकार कर दिया गया।

8. श्री शर्मा के विरुद्ध उक्त अनुमोदित दण्ड प्रस्ताव पर विभागीय पत्रांक-5115 (भ०) दि०-06.06.2019 द्वारा बिहार लोक सेवा आयोग से सहमति/परामर्श उपलब्ध कराने का अनुरोध किया गया। जिसपर बिहार लोक सेवा आयोग के पत्रांक-1577 दि०-26.09.2019 द्वारा सहमति व्यक्त की गयी।

9. श्री शर्मा के विरुद्ध प्रत्यानुपातिक धनार्जन के मामले में संचालित विभागीय कार्यवाही में संचालन पदाधिकारी से प्राप्त जाँच प्रतिवेदन एवं श्री शर्मा से प्राप्त द्वितीय कारण पृच्छा-उत्तर प्रतिवेदन के समीक्षोपरान्त इसे अस्वीकार करते हुए बिहार पेंशन नियमावली, 1950 के तहत इनका पूर्ण पेंशन जब्त करने का दण्ड संसूचित किया जाता है। यदि माननीय न्यायालय/किसी सक्षम प्राधिकार द्वारा ट्रेप मामले में पूर्ण पेंशन जब्त करने संबंधी दण्ड स्थगित/निरस्त/संशोधित किया जाता है तो इस प्रत्यानुपातिक धनार्जन के मामले में संसूचित दण्ड प्रभावी हो जाएगा।”

3. Petitioner was initially proceeded departmentally and as per the vigilance report and the basis of inquiry so conducted in the departmental proceeding, an order of dismissal from service was passed vide memo no. 11452 dated 11.11.2014 by the State Government in its Building Construction Department issued under the signature of the Joint Secretary-cum-Officer on Special Duty-cum-Chief Vigilance Officer. The said order was challenged by the petitioner in C.W.J.C. No. 2015 of 2015 and this Court found that the disciplinary authority while holding disciplinary proceeding had ignored the settled position of law. Hence, the order of dismissal dated 11.11.2014



together with the inquiry report was quashed by order dated 06.02.2017. It is relevant to mention here that the petitioner during the pendency of the earlier writ application being C.W.J.C. No. 2015 of 2015 had retired on 31.03.2016. A liberty was given to the State Government to take a decision whether to proceed against the petitioner in accordance with law and under the provisions of Bihar Pension Rules, 1950 within a period of six months from the date of receipt/production of the copy of the order dated 06.02.2017. It was, however, made clear that failure on the part of the State Government to take decision to continue the proceeding against the petitioner as well as to pass a final order within a period of six months from the date of receipt/production of the copy of the order for reasons not attributable to the petitioner, would result in revocation of the said liberty. The order passed by this Court in C.W.J.C. No. 2015 of 2015 was communicated to the authorities by the petitioner to the Principal Secretary, Building Construction Department on 28.02.2017, which has been annexed as Annexure-P/13 to the writ petition. A departmental proceeding under the Pension Rules was to be concluded within six months from the date of receipt/production of the copy of the order i.e. by 28.08.2017 as per the time frame as directed by this Court.



4. A second supplementary counter affidavit has been filed on behalf of the respondent nos. 1 to 4 stating therein at para-7 that a M.J.C. No. 2863 of 2017 was filed for extension of time for completing the proceedings under Pension Rules, 1950 which was withdrawn by the concerned advocate on 16.05.2018. This shows that no extension of time was allowed by this Court for compliance of the order passed in the earlier writ application.

5. However, an order forfeiting 100% pension was passed by the State Government under the signature of the Joint Secretary, Building Construction Department on 03.08.2018 much beyond the time given by this Court even though the delay was not attributable to the petitioner neither the order mentions any delay on the part of the petitioner. From the plain reading of the impugned order dated 03.08.2018 as contained in Annexure-P/17 from para-8 onwards, it is evident that the departmental proceedings were converted under the Pension Rules, 1950 on 15.05.2017 and a second show cause notice was issued to the petitioner on 30.10.2017 i.e. much beyond the period of six months allowed by this Court vide order dated 06.02.2017.



6. The discussions made in the order dated 06.02.2017 finds bearing on the facts of the present writ petition and its adjudication. The detail facts and discussions based on law are as follows:

“Facts of the case briefly stated is that a charge memo was served on the petitioner vide resolution bearing Memo No.2345 dated 20.2.2008 of the State Government and whereunder two charges were framed against the petitioner, namely:

(a) On transfer from the Building Division, Patna the petitioner despite handing over the charge to Ram Newaj Dubey, Executive Engineer on 14.3.2007 retained some files projecting himself as the Executive Engineer, Patliputra Building Division and made back dated entries therein, which files were seized by the vigilance team on 17.3.2007; and

(b) The petitioner was caught red-handed while accepting bribe of Rs.18,500/- on 17.3.2007 at his residence, from the Contractor Bharat Bhushan Prasad, by the vigilance team.

The charge rests on the vigilance report dated 5.4.2007 together with its enclosures. The petitioner was subjected to enquiry under the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as „the Rules“) as amended from time to time and the Commissioner of Departmental Enquiry was made the Enquiry Officer while the Under Secretary, Road Construction Department was appointed the Presenting Officer. The petitioner filed his reply to the charges vide Annexure-5.

Annexure 6 is an order of the Departmental Enquiry Commissioner pointing out the infirmities in the initiation of disciplinary proceeding against the petitioner vide Annexure-3 as is manifest from paragraph 6 of the order dated 25.2.2008 passed by the Departmental Enquiry Commissioner; a copy of which is present at Annexure-6. The Departmental Enquiry Commissioner after holding enquiry submitted his report on 25.4.2014, a copy of which was enclosed with the letter of Additional Commissioner of Departmental Enquiry enclosed at Annexure „A“ to the counter affidavit of the State.

A second show cause was served on the petitioner



on 9.5.2014 vide Annexure-16 and was duly replied by the petitioner vide Annexures 17 and 18 raising various issues including the issue that the finding of the Enquiry Officer was resting on no evidence, since no evidence was adduced by the department during the enquiry.

Mr. Manglam, learned counsel appearing for the petitioner has invited the attention of this Court to the order dated 20.12.2013 of the Additional Departmental Enquiry Commissioner present at Annexure-11 in which the Enquiry Officer has taken note of the fact that the witnesses have to be examined but on their absence the matter was adjourned to 20.3.2014. The order dated 20.3.2014 is present at Annexure-14 and the Enquiry Commissioner taking note of the stand of the department that the documents on record were sufficient to uphold the charges has concluded the enquiry for submission of report. He submits that this was the serious lacuna in the proceeding and the charges were yet to be proved and although this issue has been raised by the petitioner in the reply to the second show cause present at Annexures 17 and 18 but it was ignored and a mechanical order of termination has resulted vide Annexure-19 which is founded on no reasons.

Mr. Manglam has also invited the attention of this Court to the specific statement present at paragraph 30 of the writ petition to submit that this specific statement that no witness was examined has gone unanswered.

I have heard learned counsel for the parties and I have perused the records. There is no dispute that the disciplinary proceeding is resting on the institution of the vigilance case which yet remains pending. It is also not in dispute that the charges were founded on the vigilance report which is the only evidence mentioned in the charge memo at Annexure-4. The two orders referred to by Mr. Manglam present at Annexures 11 and 14 again go to confirm that no evidence either oral or documentary was adduced rather it is on the basis of the allegations on record of the vigilance report which has satisfied the Enquiry Officer to his conclusion.

Mr. Jha, learned Assisting Counsel to Standing Counsel 18 is also not in a position to contest the factual position. Meaning thereby it is simply on the basis of the allegation which is yet to be tested before a competent court that the Enquiry Officer proceeds to uphold the charges and equally mechanically the Disciplinary Authority has proceeded to terminate the petitioner without assigning any



reason rather by simply rejecting the reply as unsatisfactory.”

The writ petition is fit to be allowed on each of the two issues raised:

“(a) The finding of the Enquiry Officer is resting on no evidence; and

(b) The endorsement by the Disciplinary Authority is mechanical and is without any reason.

*In so far as the relevance of evidence is concerned, a similar issue fell for consideration before this Court in a case arising from **CWJC No.280 of 2016 (Anil Kumar vs. The State of Bihar)** which was a case of departmental proceeding resting on the vigilance report in which the petitioner was caught red-handed while accepting bribe. In the departmental proceeding so ensued, it is simply on the basis of the vigilance report that the charges were upheld leading to the imposition of a major penalty. This Court taking note of the opinion of the Supreme Court in the case of **Roop Singh Negi vs. Punjab National Bank** since reported in **(2009)2 SCC 570** where a similar issue fell for consideration, allowed the writ petition. Just like in the present case, even in the case of Anil Kumar (supra), no witness had been examined and neither the vigilance officer was examined to prove the report nor the complainant had been examined. The opinion expressed by this Bench in the case of Anil Kumar (supra) squarely applies to the issue raised herein and for the sake of convenience the relevant extract is reproduced hereinbelow:*

“The argument of Mr. Ranjeet Kumar that no evidence was led to bring home the charges is correct because neither the complainant nor the In-charge of the Vigilance Team which arrested the petitioner nor the witnesses to the alleged recovery have been led as witness or examined by the department. The enquiry report exclusively rests on the allegation made in the vigilance F.I.R. and nothing beyond.

The issue would be whether the allegation in the F.I.R. in absence of any witnesses proving the same and in absence of any witness supporting the charge of demand of bribe money/ illegal gratification by the petitioner and in absence of any witness confirming recovery, ipso facto can be sufficient to uphold charges.

*A similar issue came up for consideration in the case of **Roop Singh***



Negi v. Punjab National Bank & ors., reported in (2009)2 SCC 570, and the conclusion of the Supreme Court recorded in paragraphs 14, 15 and 23 of the judgment would squarely apply to the case in hand and are being reproduced hereinbelow for ready reference:

"14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.

15. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the enquiry officer was the purported confession made by the appellant before police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. The appellant being an employee of the Bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a matter that no evidence was left.

23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons



should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable to a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof."

*As in the present case, even in the case of **Roop Singh Negi** (supra), the only evidence available with the disciplinary authority was the confession of the delinquent and the F.I.R. No witness was examined in the said case to prove the documents, rather the management witnesses merely tendered the documents as in the present case. The Supreme Court held this exercise to be insufficient to uphold the charge and also held that the allegation made in the F.I.R. simplicitor unless proved by leading evidence, by itself can not be treated as evidence.*

As I have said, the factual position is not disputed and the Presenting Officer except for relying upon two documentary evidence referred to above, led no evidence to prove the charge or to confirm the allegations. Apparently the decision impugned, is resting on no evidence. The same view expressed by the disciplinary authority is mechanically endorsed by the appellate authority rendering the two orders unsustainable.

In the result, the order dated 17.3.2015 of the Director, Dairy Development Directorate, Bihar, Patna, impugned at Annexure 4, together with the order dated 16.3.2016 of the disciplinary



authority, impugned at Annexure 12, and the order dated 15.7.2016 of the appellate authority, impugned at Annexure 14, cannot be upheld and are, accordingly, quashed and set aside.

The writ petition is allowed.

The petitioner stands reinstated and would be entitled for consequential benefit.

The records produced by Mr. Roy is being returned to him for his custody.”

*Even the second issue raised by Mr. Manglam in reference to the finding of the Disciplinary Authority in paragraph 4 of the notification of termination impugned at Annexure-19 is fit to be upheld in the light of the law settled by the Supreme Court in a catena of decisions summarized in the case of **Kranti Associates Private Limited vs. Masood Ahmed Khan** reported in (2010) 9 SCC 496, paragraph 47 which runs as follows:*

“Summarising 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.

(e) 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 Candor³²).

(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 Ruiz Torija vs. Spain³³ EHRR, at 562 para 29 and Anya v. University of Oxford³⁴, 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".

7. It is relevant to reproduce the relevant part of the



order dated 06.02.2017 passed in CWJC No. 2015 of 2015:

“It is rather unfortunate that even though law is well settled in a catena of judgments as to the obligation/duty cast upon the Disciplinary Authority while holding disciplinary proceeding in a fair and impartial manner but the view has remained in the text books, with the Disciplinary Authorities feigning ignorance to the settled position, resulting in such outcomes.

In view of the uncontested position discussed above the order impugned has to go but the fact is that the petitioner has superannuated in the meanwhile. Under deeming fiction a remand of the proceeding would qualify as a pending proceeding on the date of superannuation and thus liberty is available to the Disciplinary Authority to take a decision whether or not they wish to continue the proceeding against the petitioner under the Bihar Pension Rules, 1950 on the basis of the charges already framed.

In the circumstances discussed above, the notification bearing Memo No.11452 dated 11.11.2014 of the State Government impugned at Annexure-19 together with the enquiry report impugned at Annexure ‘A’ to the counter affidavit cannot be upheld and are accordingly quashed and set aside.

I would now leave it open at the discretion of the State Government to take a decision whether or not they intend to proceed against the petitioner in accordance with law and considering that the petitioner has since superannuated let the State Government take positive decision in this regard and conclude the proceeding in accordance with law expeditiously and preferably within a period of six months from the date of receipt/production of a copy of this order.

It is made clear that a failure on the part of the State Government to take a decision to continue the proceeding against the petitioner as well as to pass a final order within a period of six months from the date of receipt/production of a



copy of this order for reasons not attributable to the petitioner, would result in revocation of this liberty.

*The writ petition is allowed with the liberty
aforementioned.”*

8. Thereafter, the petitioner filed CWJC No. 10754 of 2018 which was heard along with M.J.C. No. 940 of 2019 after disciplinary proceeding not completed/ initiated within six months. This Court passed *inter alia* following orders on 14.05.2019:

“Considering the submissions of the parties and the order passed by this Court in C.W.J.C. No. 2015 of 2015 for continuance and conclusion of the departmental proceeding within six months which was not complied by the State Government. Under such circumstances, the order of punishment of forfeiture of 100% of pension passed by the State Government as contained in Annexure-P/17 is quashed. The respondent no. 2, the Principal Secretary, Building Construction Department, Government of Bihar is directed to make payment of all retiral benefits of the petitioner within a period of three months from the date of receipt/production of the copy of this order treating the retirement of the petitioner as 31.03.2016 with all the benefits as if he was in service till the date of his retirement.”

9. It is evident that the departmental proceedings were converted under the Pension Rules, 1950 on 15.05.2017 and a second show cause notice was issued to the petitioner on 30.10.2017 i.e. much beyond the period of six months allowed



by this Court in the earlier round of litigation. Specific direction was given to the State Government in C.W.J.C. No. 2015 of 2015 to take a decision and conclude the proceedings within six months from the date of receipt of the said order and if not done within the said period would amount to revocation of the said liberty. But the order passed was much beyond the period of time granted by this Court.

10. The jurisdiction of the High Court under Article 226 of the Constitution is very limited. The Apex Court in catena of judgments has held that while exercising jurisdiction under Article 226 of the Constitution, the High Court does not act as an appellate authority. Its jurisdiction is circumscribed by limit of judicial review to correct error of law or procedural error leading to manifest injustice or violation of principle of natural justice. Judicial review is not akin to adjudication of the case on merits as an appellate authority.

11. Vide judgment and order dated 06.02.2017 passed in Case No. 2015 of 2015, the Respondents were granted liberty to proceed against the petitioner under Bihar Pension Rules, if they so desire but conclude the proceeding within 6 months. By resolution contained in memo no.3941 dated 11.05.2017, the departmental proceeding which was initiated



against the petitioner for the charges of earning disproportionate assets during his service and which was consigned because of his dismissal in the departmental proceeding initiated against the petitioner was revived. In view of the liberty granted by this Hon'ble Court, a Resolution was issued under the signature of the Respondent no.4 under memo no.4038 dated 15.05.2017 and a proceeding under Rule-43(b) of Bihar Pension Rules, 1950 was initiated against him for the same set of charges which were earlier levelled against him and which has resulted in his dismissal. After the expiry of 6 months, the Respondent Authorities passed an illegal order vide memo no. 8308 dated 03.08.2018 to withhold the full pension of the petitioner. The order dated 03.08.2018, of withholding full pension of petitioner was challenged before this Hon'ble Court in C.W.J.C. No.10754 of 2018 which was allowed and vide judgment and order dated 14.05.2019, the order withholding full pension of the petitioner which was Annexure -P-17 in that writ petition was quashed and the Respondents were directed for payment of all retiral benefits of the petitioner within a period of three months treating the retirement of the petitioner on 31.03.2016 with all benefits as if he was in service till the date of his retirement. Respondents were served with a copy of the aforesaid order on 21.05.2019.



After the petitioner had succeeded in the aforesaid C.W.J.C. No.10754 of 2018, the Respondents proceeded with the enquiry which they had earlier consigned and which was revived by the Respondent vide resolution contained in memo no.3941 dated 11.05.2017. Vide order contained in memo no.1478 dated 11.10.2017, the petitioner was called upon to file his show-cause before Additional Departmental Enquiry Commissioner-cum-Principal Secretary, Labour Resources Department, Government of Bihar, Patna. The petitioner responded to the aforesaid letter of the Additional Departmental Enquiry Commissioner and filed his show-cause on 02.11.2017. However, the petitioner was never served the copy of the opinion of the department on the show-cause filed by him as directed vide memo no.41 dated 26.09.2018, and after 12.10.2018 no date of hearing in the departmental proceeding was fixed. Without giving proper opportunity to the petitioner, the Additional Departmental Enquiry Commissioner concluded the proceeding on 12.10.2018 in absence of the petitioner, prepared his enquiry report on 22.10.2018 itself and forwarded it to the department vide his letter no.62 dated 20.11.2018. On receipt of the enquiry report from the Enquiry Commissioner, second show-cause notice was issued to the petitioner vide letter no.58 dated 03.01.2019 issued



under the signature of the Additional Secretary, Building Construction Department, calling upon the petitioner to show-cause against the enquiry report. After receipt of the reply of the petitioner against the second show-cause notice, again second show-cause notice was issued by the Additional Secretary, Building Construction Department vide his letter no.5126 dated 07.06.2019, whereby the petitioner was called upon to show-cause against the proposed punishment of withholding of his full pension in terms with the provisions of the Bihar Pension Rules, 1950. Notwithstanding the show-cause dated 27.06.2019 filed by the petitioner clearly indicating illegality committed by the Departmental Enquiry Commission in conducting the departmental proceeding together with the impugned order contained in memo no.9267 dated 17.10.2019 passed by the Disciplinary Authority withholding the full pension of the petitioner can be said to have been concluded without complying with the requirements of Rule-17 and 18 of the Bihar CCA Rules, 2005 as well as contrary to the provisions of Rule 43 of the Bihar Pension Rules, 1950 shows complete non-application of mind and have been passed without arriving at a definite finding is fit to be set aside and quashed.

12. In case of ***B.C. Chaturvedi v. Union of India***



[(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44]

the scope of judicial review has been discussed and the Apex court has observed that judicial review of decision-making process and where the findings of the disciplinary authority are based on some evidence, the court or the tribunal cannot reappreciate the evidence and substitute its own finding. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eyes of the Court.

“ The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the court/Tribunal. In Union of India v. H.C. Goel [Union of India v. H.C. Goel, (1964) 4 SCR 718 : AIR 1964 SC 364], this Court held at p. 728 that if the conclusion, upon considering of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.”

13. In another judgment in the case of **Union of India v. P. Gunasekaran**, reported in **(2015) 2 SCC 610**, the Apex Court has held that while re-appreciating evidence the High Court cannot act as an appellate authority in the



disciplinary proceedings. The Court held the parameters as to when the High Court shall not interfere in the disciplinary proceedings. : (SCC p. 617, para 13) “13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

- (i) reappreciate the evidence;*
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*
- (iii) go into the adequacy of the evidence;*
- (iv) go into the reliability of the evidence;*
- (v) interfere, if there be some legal evidence on which findings can be based.*
- (vi) correct the error of fact however grave it may appear to be;*
- (vii) go into the proportionality of punishment unless it shocks its conscience.”*

14. It is a settled proposition of law that the reasons should be recorded as it is incumbent upon to authorities to pass a reasoned and speaking order. The Apex Court in the case of **Kranti Associates (P) Ltd. v. Masood Ahmed Khan (supra)** elaborately considered as how the judicial, quasi-judicial and other orders should be passed.

15. The Apex Court in the case of **Victoria Memorial Hall v. Howrah Ganatantrik Nagrik Samity**, reported in (2010) 3 SCC 732 has reiterated that the decision of the quasi-judicial authorities were to be reasoned one.

16. In the case of **State of NCT of Delhi and**



another v. Sanjeev alias Bittoo reported in **(2005) 5 SCC 181**, the Hon'ble Supreme Court upheld the right of judicial review under Article 226 on the basis of illegality in decision making process coupled with irrationally and perversity. Hon'ble Supreme Court further held in the case of **Sanjeev (supra)** that if the administrative or judicial power has been exercised on non-consideration or non-application of mind to relevant factors, such exercise shall stand vitiated. Relevant portion from the judgment of **Sanjeev (supra)** is reproduced as under : -

“If the power has been exercised on a non-consideration or non-application of mind to relevant factors, the exercise of power will be regarded as manifestly erroneous. If a power (whether legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated.”

17. Considering the entire conspectus of facts and for the reasons recorded, hereinabove, the Disciplinary Authority has not assigned any reason rather the order is non-speaking and cryptic in nature and as I have already quashed the order dated 15.10.2019 contained in Memo No. 9267 dated 17.10.2019, the matter is remanded back to the Disciplinary Authority for passing a fresh order in accordance with law within a period of three months from the date of a copy of this order is served upon him. This Court finds it proper that the



Disciplinary Authorities may abide by the observation made by the Hon’ble Supreme Court referred in the preceding paragraphs of this order.

18. Before parting with this order, the Disciplinary Authority while exercising statutory discretion vested in him should restrain himself from exercising in fanciful manner. In the present case, he has not only committed jurisdictional error, but available records brought along with the writ petition and the counter affidavit reflects that without regard to the facts and law he has passed order giving rise to unnecessary litigation by leaving lacuna, which has resulted into filing of the present writ petition.

19. Accordingly, the present writ petition stands disposed of.

(Purnendu Singh, J)

Mantreshwar/
Niraj

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	26.09.2023
Transmission Date	N.A.

