

(2019) 07 JH CK 0205

In the Jharkhand High Court

Case No : Writ Petition(S).No. 1054 Of 2019

Murari Bhagat

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 11-07-2019

Acts Referred:

Jharkhand Government Servant (Classification, Control And Appeal) Rules, 2016 — Rule 14, 14(i), 14(1), 17, 17(1), 17(2), 17(3), 17(4), 17(5), 17(6), 17(23), 18(1), 18(2), 18(3) 18(5), 19

Citation : (2019) 07 JH CK 0205

Hon'ble Judges : Dr. S.N.Pathak, J

Bench : Single Bench

Advocate : Jitender Singh, Piyush Lall, Amrita Sinha, Yash Singh, Anoop Kumar Agarwal

Final Decision : Allowed

Judgement

Dr. S.N. Pathak, J

1. Heard the parties.

2. The instant writ petition has been preferred by the petitioner for the following reliefs:-

(I) For holding and declaring that the departmental proceeding initiated against the petitioner vide resolution bearing memo No. 4488(S) dated 04.08.2017 of the Road Construction Department, Govt. of Jharkhand, Ranchi (Annexure-4) is in violation of Rule 17 of the Jharkhand Govt. Servant (Classification, Control and Appeal) Rules, 2016 and thus void ab initio and consequently for issuance of a writ in the nature of certiorari/direction/ order quashing and setting aside the said resolution bearing memo No. 4488 dated 04.08.2017.

(II) For holding and declaring that the second show-cause notice issued to the petitioner under letter No. 2544(S) dated 02.05.2018 (Annexure-11) by the Road Construction Department, Govt. of Jharkhand, Ranchi in the above impugned

departmental proceeding initiated vide resolution No. 4488(S) dated 04.08.2017 is in violation of the above said Rule 17 of the Jharkhand Govt. Servant (Classification, Control and Appeal) Rules, 2016 and consequently for issuance of a writ in the nature of certiorari/ direction/ order quashing and setting aside the said letter No. 2544(S) dated 02.05.2018.

(III) For issuance of a writ in the nature of certiorari/ direction/ order quashing and setting aside the notification bearing No. 845(S) dated 06.02.2019 (Annexure-14) of the Road Construction Department, Govt. of Jharkhand, Ranchi by which punishment of censure has been imposed on the petitioner under Rule 14(1) of the Jharkhand Govt. Servant (Classification, Control and Appeal) Rules, 2016 in the departmental proceeding initiated against the petitioner under the above said impugned resolution No. 4488(S) dated 04.08.2017 (Annexure-4) of the said Department.

(IV) For holding and declaring, in the facts and circumstances of this case, particularly the initiation of departmental proceeding, the manner and contents of second show-cause notice, the unexplained abnormal delay in passing the impugned order of punishment of censure in violation of the direction of the Hon'ble Court vide order dated 14.03.2018 passed in L.P.A. No. 110 of 2017 (Annexure-21) and promoting in the meantime juniors to the petitioner while withholding promotion of the petitioner to the post of Chief Engineer, Road Construction Department, Jharkhand by not disposing of the departmental proceeding vitiates the said proceeding as well as the order of punishment being accentuated with malic in law.

(V) For, as a consequent to the above, a writ in the nature of mandamus/ direction/ order commanding and directing the respondents to grant promotion to the petitioner to the post of Chief Engineer, Road Construction Department, Govt. of Jharkhand w.e.f. 24.12.2018 with consequential benefits as granted to the admitted juniors to the petitioner vide notification bearing memo No. 8624 dated 24.12.2018 (Annexure-16) by opening the sealed cover in which the recommendation to grant the said promotion to the petitioner was taken by the Departmental Promotion Committee in its meeting held on 04.12.2018 in terms of mandate of the law laid down in Union of India and Ors. Vs. K.V. Jankiraman and Ors. reported in (1991) 4 SCC 109 and accordingly kept in the sealed cover on account of the pendency of the departmental proceeding initiated against the petitioner under the impugned resolution No. 4488 (S) dated 04.08.2017.

3. The factual exposition as has been delineated in the writ petition is that the petitioner was appointed to the post of Assistant Engineer in the Road Construction Department, Govt. of Bihar, Patna vide Notification No. 2199 dated 16.06.1987 of the said Department as per the provisions of the Bihar Engineering Class II Service Rules, 1939, pursuant to a selection process undertaken by the Bihar Public Service Commission. Thereafter, the petitioner was promoted to the post of Executive Engineer w.e.f. 15.06.1995 vide notification No. 6325 dated 27.08.1996 read with letter No. 7107 dated

04.12.1997 of the said Department as per the provisions of the Bihar Engineering Service Class I Rules, 1939. On bifurcation of the erstwhile State of Bihar, the services of the petitioner was allocated to the State of Jharkhand. Petitioner, thereafter, joined as Superintending Engineer in Building Construction Department in his own pay-scale till further orders. Vide several notifications, petitioner continued to work as Superintending Engineer in Building Construction Department and on 17.07.2007, he was given the additional charge of the post of Chief Engineer, Building Construction Department, Jharkhand and further to the post of Director, Monitoring-cum-Evaluation-cum-Purchase, Ranchi of the said Department. Vide notification No. 5089 (S) dated 08.07.2014, as contained in memo No. 5097 dated 08.07.2014 of the Road Construction Department, Jharkhand regular promotion to the petitioner was granted to the post of Superintending Engineer and thereafter, petitioner was transferred and posted to the post of Technical Secretary to the Chief Engineer, National Highway Wing, Road Construction Department, Jharkhand with additional charge of the post of Chief Engineer, National Highway Wing, Road Construction Department, Jharkhand.

4. The Road Construction Department vide resolution dated 04.08.2017, initiated departmental proceeding against the petitioner on the charges as contained in the article of charge dated 03.08.2017 regarding the so-called indiscipline action committed by the petitioner while posted as Incharge Chief Engineer, National Highway Wing of the said Department and consequently, Enquiry Officer and Presenting Officer were also appointed and petitioner was asked to ensure appearance. The charge of unauthorized absence was levelled against the petitioner for remaining absent from 14.05.2015 to 30.08.2015 i.e. for a total period of 109 days without leave being sanctioned by the competent-authority and out of which he had submitted application for sanction of leave for 33 days only for the period from 14.05.2015 and 15.05.2015 and thereafter, asked for extension of leave till 19.05.2015 and further extension of leave till 31.05.2015 but he has not submitted any application for the remaining period of 76 days and the same was treated by the respondent-authorities as indiscipline and dereliction of duties on his part. On 16.11.2017, petitioner filed his written statement of defence to the article of charge before the Enquiry Officer denying the charge of unauthorized absence. The Enquiry Officer, after going through the evidences and the reply of the petitioner, submitted his report holding the charge to be not proved and thus, the petitioner was fully exonerated in the enquiry proceeding.

5. Thereafter, the Road Construction Department vide letter dated 02.05.2018, issued a second show-cause notice to the petitioner recording therein that the Enquiry Officer had found all the charges against the petitioner as not proved, however, deferring with the same, it was under consideration of the State Govt. that the petitioner's taking charge of the post of Chief Engineer, National Highway Wing, Jharkhand, Ranchi without order of any competent-authority along with charge of the post of Technical Secretary in light of order bearing

memo No. 7660 dated 06.11.2015, should be treated as an indiscipline and punishment under Rule 14 of the Jharkhand Govt. Servant (Classification, Control and Appeal) Rules, 2016 (for short 'CCA Rules, 2016') be imposed and accordingly, by the said letter dated 02.05.2018, the petitioner was directed to submit his written explanation on the said issue of differing with the enquiry report. The petitioner filed his reply to the second show-cause notice denying the allegation contained in it. It is the specific case of the petitioner that the reply to the second show-cause notice was never considered and impugned notification of punishment of censure has been issued vide order dated 06.02.2019 (Annexure-14 to the writ petition).

6. It would be also relevant to mention here that petitioner was promoted to the post of Executive Engineer w.e.f. 15.06.1995 and to the post of Superintending Engineer on 08.07.2014. The petitioner filed W.P.(S). No. 822 of 2018, praying to rearrange/ amend the seniority list dated 02.02.2018, whereunder he had been wrongly placed at seniority list No. 62 and accordingly to grant him his due seniority in terms of the earlier seniority list dated 20.06.2008. The said writ petition was disposed of directing the respondent-State to consider the case of the petitioner for promotion to the post of Chief Engineer on the basis of concession made by the State to the effect that notwithstanding the petitioner being placed at Sl. No. 62 of the seniority list dated 02.02.2018, as he was the senior most Superintending Engineer in the reserved category of Scheduled Tribe and therefore, he would also be considered for the said promotion. Aggrieved by the above order, petitioner preferred L.P.A. No. 566 of 2018, which is still pending consideration before the Hon'ble Division Bench. In the meeting of the Departmental Promotion Committee held on 04.12.2018, the case of the petitioner for promotion was considered and its recommendation was kept in sealed cover. Pursuant thereto four other juniors were promoted to the post of Chief Engineer vide notification contained in memo No. 8624 dated 24.12.2018 (Annexure-16 to the writ petition).

Hence, this writ petition has been filed.

7. Assailing the impugned order, Mr. Jitender Singh, learned senior counsel assisted by Ms. Amrita Sinha, learned counsel appearing for the petitioner submits that order of punishment at Annexure-15 is not at all tenable in the eyes of law and further, petitioner is entitled for promotion from retrospective date i.e. from the date juniors have been considered and granted promotion. The main contention of the learned Senior counsel throwing challenge to the order of punishment are as follows:-

(I) The enquiry held pursuant to resolution dated 04.08.2017, initiating departmental proceeding against the petitioner was without jurisdiction and in violation of Rule-17 of the CCA Rules, 2016 and thus, vitiating the departmental proceeding against the petitioner as also the punishment of censure imposed under Resolution dated 06.02.2019

(II) The second show-cause notice dated 02.05.2018 is also without jurisdiction and in violation of Rule 18 (2) and (3) of the CCA Rules, 2016, thus, vitiating the same as well as consequently the punishment imposed vide resolution dated 06.02.2019.

(III) The impugned punishment vide resolution dated 06.02.2019, is a non-speaking order containing no reason to hold the petitioner guilty of the above allegation (as contained in the Statement of Allegation and not on the sole charge in the Article of Charge) and as such, it is in violation of principles of natural justice and also of Rule-18(5) of CCA Rules.

(IV) As the departmental proceeding itself as well as impugned order dated 06.02.2019 are bad in law and facts (more so when the petitioner has been punished for an event which did not take place) therefore, once the same are so held by the Hon'ble Court then as a consequent thereupon, the petitioner is also entitled to be promoted to the post of Chief Engineer w.e.f. 24.12.2018 with all consequential benefits i.e. salary and seniority as per the law laid down by the Hon'ble Supreme Court in case of Union of India Vs. K.V. Jankiraman, reported in (1991) 4 SCC 109.

8. In support of his contention, learned senior counsel draws the attention of this Court towards different provisions of the CCA Rules, 2016, particularly, Rule 17(1) to (6) and argues that jurisdiction of the disciplinary authority to decide and order for holding an enquiry once article of charge is issued arises only when it receives and considers the written statement of defence and not at any time before its receipt much less simultaneously with the decision initiating departmental proceeding by issuance of article of charge. The disciplinary authority not calling before itself the written statement of defence of the petitioner to the article of charge vide resolution dated 04.08.2017 and also appointing enquiry officer as well as presenting officer simultaneously thereunder, with a direction to the petitioner to appear before the Enquiry Officer to conduct the enquiry shows a clear pre-disposition and pre-determination on the part of the disciplinary authority to hold enquiry against the petitioner without even waiting for his defence. It was further argued that even if the petitioner has submitted his reply before the enquiry officer, it is settled principle of law that parties by their consent cannot confer jurisdiction on a Court/ quasi-judicial body, where it has none under the law. The plea of lack of jurisdiction till conclusion of the departmental proceeding against him neither precludes the petitioner nor constitutes a waiver for him to raise the above plea of lack of jurisdiction of the disciplinary authority and the proceeding being void ab initio before the Hon'ble Court, as above, as it is a settled law that the plea of lack of jurisdiction can be raised at any time and consent of parties cannot clothe a tribunal, in the present case, being a quasi-judicial proceeding by the disciplinary authority) with jurisdiction which it does not posse in law and neither can a mandatory procedure be waived by a party for which plea in opposition of test of prejudice is not applicable. Learned senior counsel further argues that under Rule

18(2) of the CCA Rules, 2016, the disciplinary authority on receipt of the enquiry report with findings of the enquiry officer on each charge as per Rule 17(23), if it disagrees with the said finding(s) then it is obliged to record its reason for such disagreement and also record its own finding(s) on such a charge if the evidence on record is sufficient for the same.

9. In support of his second contention, learned senior counsel submits that as per Rule 18(1) to 18(3) of the CCA Rules, 2016, on receipt of enquiry report if it disagrees with any of the findings of the enquiry office on any article then it is mandatory to record reasons for the disagreement and record its own findings on the and then, along with a copy of the enquiry report, call upon the government servant to submit his defence by way of second show-cause notice and in the instant case, the same has been violated. Thus, very issuance of second show-cause notice was without jurisdiction making it as well as punishment order dated 06.02.2019 vitiated and bad in law. In support of third contention, learned senior counsel submits that quasi-judicial order is required to contain reasons in support of it and the same cannot be supplanted later on by relying on file notings or by assigning reasons in counter-affidavit based thereon. The impugned order dated 06.02.2019, shows that it is bereft of any finding by the disciplinary authority assigning no reason for holding the reply of the petitioner to be unsatisfactory and not acceptable and how the aforesaid allegations were proved, which is clear violation of principles of natural justice and hence, void.

10. Regarding his fourth contention for promotion to the post of Chief Engineer, it was argued that in terms of the recommendation vide notification dated 24.12.2018, four juniors to petitioner were promoted to the post of Chief Engineer and in the case of petitioner, because of the departmental proceeding initiated against him was pending and final order thereon had not been passed till then though he had filed reply to the second show cause notice dated 02.05.2018 on 09.05.2018 i.e. more than 7 months ago therefore, his said recommendation was kept in a sealed cover and his said juniors were granted promotion on 24.12.2018. It was argued that respondents deliberately delayed the completion of departmental proceeding against the petitioner so as to deny the above promotion, which is in complete violation of the order of the Hon'ble Court in L.P.A. No. 110 of 2017, preferred by the petitioner, in which this Court was pleased to direct the State to expedite the departmental proceeding as early as possible. Learned senior counsel further argues that Hon'ble Supreme Court in case of Union of India Vs. K.V. Jankiraman (supra) obliges the State to keep recommendation in sealed cover on account of pendency of a departmental proceeding and in case of government servant not being found guilty in the said proceedings the sealed cover be opened and he be granted the recommended promotion from the due date with consequential benefits.

Summing-up his arguments, it was argued that impugned order of punishment is not tenable in the eyes of law and even the entire departmental proceeding is to be quashed and set aside and the petitioner be granted promotion from the date

his juniors have been considered and granted the said promotions.

11. To buttress his arguments, learned senior counsel relied on the following judgments:-

(I) Roop Singh Negi Vs. Punjab National Bank & Ors. [(2009) 2 SCC 570];

(II) Union of India and Ors. Vs. K.V. Jankiraman and Ors. [(1991) 4 SCC 109];

(III) Rama Shankar Chaudhary Vs. State of Bihar & Ors. [(2018) 1 PLJR 91];

(IV) Mohinder Singh Gill Vs. Union of India [AIR 1978 SC 851];

(V) Oryx Fisheries P. Ltd. Vs. Union of India & Ors. [(2010) 13 SCC 427]; & (VI) Chief Engineer, Hydel Project & Ors. Vs. Ravindra Nath and Others [(2008) 2 SCC 350].

12. Per contra, counter-affidavit has been filed. Mr. Anoop Kumar Agarwall, AC to learned GA-V appearing for the respondent-State vehemently opposes the contention of the learned senior counsel appearing for the petitioner. Learned counsel justifies the impugned order on the following grounds:-

(I) Additional charge is there and as such, the order cannot be held to be without jurisdiction.

(II) Reasons have been fully assigned in the impugned order and also in the second show-cause notice deferring with the findings of the Enquiry Officer.

(III) The impugned order dated 06.02.2019 is fully justified.

13. It was further argued that punishment of censure is a minor punishment and the effect of which goes after a year and as such, if the petitioner's case is fit for consideration, it can be considered after effect of the punishment is over and no ground has been made out for considering the case of the petitioner from retrospective effect. Learned counsel emphatically argued that once the petitioner has submitted to the jurisdiction of the respondent-authorities, it is not open for him to challenge the jurisdiction. The judgments relied upon by the petitioner is of no help as the same are distinguished on facts and is not applicable in the instant case and as such, the writ petition is devoid of any merit and is fit to be dismissed.

14. Be that as it may, having gone through the rival submissions of the parties, this Court is of the considered view that the case of the petitioner needs consideration. From perusal of Rule 17 of the CCA Rules, 2016 it appears that,

(a) The disciplinary authority is to frame or get framed definite and distinct article of charge containing the substance of imputation of misconduct or misbehavior as also statement of allegation containing all relevant facts in support of article of charge as also a list of witnesses and a list of documents;

(b) The disciplinary authority is to serve the article of charge, statement of

allegation, etc. on the government servant and is to call for a written statement of defence thereto from him;

(c) On receipt of the written statement of defense the disciplinary authority is to then consider the same and decide whether to hold enquiry into the article of charge or not and in case, on a consideration it decides to hold enquiry then it could be by itself or through an enquiry officer; and

(d) Once the disciplinary authority after such consideration decides to hold an enquiry through an enquiry officer then it is to transmit the records to the enquiry officer including the article of charge, statement of allegation, written defence of the government servant.

15. Thus, from perusal of the aforesaid rules it is crystal clear that in the instant case mandatory procedure has been violated as the disciplinary authority prior to initiation of the departmental proceeding vide resolution dated 04.08.2017, did not call-upon the petitioner to submit his written defence statement to the article of charge so as to decide whether to proceed further by holding an enquiry or not. It can be comfortably inferred that the disciplinary authority not calling before itself the written statement of defence of the petitioner to the article of charge and also appointing an Enquiry Officer as well as Presenting Officer simultaneously thereunder with direction to the petitioner to appear before the Enquiry Officer, shows a clear predisposition and predetermination on the part of the disciplinary authority to hold enquiry against the petitioner without even waiting for his defence. The disciplinary authority acquiring jurisdiction to order for an enquiry to be held by the Enquiry Officer against the petitioner, the issue of waiver or acquiescence on behalf of the petitioner in the above proceeding does not arise.

16. The Hon'ble Apex Court in case of Chief Engineer, Hydel Project & Ors. Vs. Ravindra Nath and Others (supra), has held as under:-

"25. The Court then proceeded to rely on Bahrein Petroleum Co. Ltd. v. P.J. Pappu (AIR 1966 SC 634) and observed in para 32 that neither consent nor waiver nor acquiescence can confer jurisdiction upon a court, otherwise incompetent to try the suit. The Court further observed that: (Harshad Chiman Lal case [(2005) 7 SCC 791], p. 804, para 32)

"32. ... It is well settled and needs no authority that 'where a court takes upon itself to exercise a jurisdiction it does not possess, its decision amounts to nothing'. A decree passed by a court having no jurisdiction is non est and its invalidity can be set up whenever it is sought to be enforced as a foundation for a right, even at the stage of execution or in collateral proceedings. A decree passed by a court without jurisdiction is a coram non iudice."

26. The Court also relied upon the decision in Kiran Singh v. Chaman Paswan (AIR 1954 SC 340) and quoted (in Harshad Chiman Lal case [(2005) 7 SCC 791], para 33) therefrom: (Kiran Singh case(supra), para 6)

"6. ... It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, ... strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties."

Though in the aforementioned decision these observations were made since the defendants before raising the objection to the territorial jurisdiction had admitted that the court had the jurisdiction, the force of this decision cannot be ignored and it has to be held that such a decree would continue to be a nullity."

17. From the aforesaid interpretation of the Hon'ble Apex Court, it appears that once the original decree itself has been held to be without jurisdiction and hit by the doctrine of coram non judice, there would be no question of upholding the same merely on the ground that the objection to the jurisdiction was not taken at the initial, first appellate or the second appellate stage.

From perusal of the second show-cause notice, it appears that it was a mere formalities and as such, not tenable in the eyes of law. No reasons have been assigned for deferring with the findings of the Enquiry Officer. Further, no reasons have been recorded for disagreement neither findings of the disciplinary authority has been recorded on the charge, which is in complete violation of Rules 18(1) to 18(3) of the CCA Rules, 2016, which mandates the disciplinary authority to record reasons, if it disagrees with any of the findings of the Enquiry Officer. In the instant case, the same has not been done and as such, the second show-cause notice can be said to be a mere formality. The relevant provisions of CCA Rules, 2016 is quoted herein below:-

"18(2). The Disciplinary Authority, after receipt of the enquiry report as per rule 17 (23) (ii) or as per sub rule (1), shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own finding on such charge, if the evidences on record is sufficient for the purpose.

18(3). The Disciplinary Authority shall forward or cause to be forwarded a copy of the inquiry report, together with its own findings, if any, as provided in sub rule (2) to the Government Servant who may submit, if he or she so desires, his or her written representation or submission to the Disciplinary Authority within fifteen days."

18. It is settled principle of law that quasi-judicial order or even an administrative order has to contain reasons, which can neither be supplied nor supplanted subsequently, on being challenged in the Court of law. Reasons cannot be supplanted by way of noting in the file or by way of counter-affidavit. The Hon'ble Apex Court in case of Commissioner of Police, Bombay vs. Gordhandas Bhanji, reported in AIR 1952 SC 16, has held that,

"9. An attempt was made by referring to the Commissioner's affidavit to show that this was really an order of cancellation made by him and that the order was his order and not that of Government. We are clear that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

The aforesaid decision has also been followed in several subsequent decisions like in the case of Mohinder Singh Gill vs. Chief Election Commissioner, reported in (1976)1 SCC 405, in paragraph-8 which reads as under:-

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji:

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be constructed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older."

The arguments advanced by the learned counsel for the respondent-State that reasons have been mentioned in the counter-affidavit is not acceptable to this Court mainly for the reasons that no reasons can be supplied in the counter-affidavit to justify a thoroughly non-speaking order, otherwise all the non-speaking order will be converted into a well-reasoned and well-speaking order by passage of time, by way of counter-affidavit. Reasons must have been mentioned in the impugned order itself.

19. Similarly, mere holding/ recording in such orders as 'not satisfactory' is no order in the eyes of law. The requirement of law is reflected under Rule 18(5) of the CCA Rules, 2016, which provides that the disciplinary authority having regard to its findings on all or any of the charge is of the opinion that any of the minor penalty as specified in Rule 14 is to be imposed on the government servant then it shall make such an order notwithstanding Rule 19 thereof i.e. it is obliged to record reasons by way of its finding that the charges stood proved.

Rule 18(5) of the CCA Rules, 2016 reads as under:-

"If the Disciplinary Authority having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in clauses (i) to (iv) of rule 14 should be imposed on the Government Servant, it shall, notwithstanding anything contained in rule 19, make an order imposing such penalty."

The Hon'ble Patna High Court in case of Krishna Kanhaiya Prasad Singh Vs. State of Bihar, reported and 2014 (4) PLJR 576 was of the view that even for imposing minor punishment, if procedure for imposing major punishment is followed then it has to be followed in its entirety and violation of such procedure cannot be defended by claiming that because the punishment was minor therefore violation of such procedure will not vitiate minor punishment.

However, the same has not been done in the instant case. The order dated 06.02.2019, imposing punishment of censure under Rule 14(i) of the CCA Rules, 2016 is bereft of any finding by the disciplinary authority. The impugned order dated 06.02.2019 completely fails to justify as to why the punishment of censure was being imposed on the petitioner. In absence of any reason and the order in complete violation of Rules 18(2) and 18(3) of the CCA Rules, 2016, the petitioner cannot be held guilty of the allegations, which, in turn, vitiates the impugned order of punishment vide notification dated 06.02.2019 as being a non-speaking and non-reasoned order and the same is in complete violation of principle of natural justice as well as Rule 18(5) of the CCA Rules and thus, fit to be set aside.

The law is very clear that punishment cannot be imposed beyond the charge. In the instant case, the respondents have proceeded to impose punishment which was not even in the charge.

The Hon'ble Apex Court in case of Roop Singh Negi Vs. Punjab National Bank & Ors. (supra) has held as under:-

"18. In *Narinder Mohan Arya v. United India Insurance Co. Ltd.*² whereupon both the learned counsel relied, this Court held: (SCC p. 724, para 26)

"26. In our opinion the learned Single Judge and consequently the Division Bench of the High Court did not pose unto themselves the correct question. The matter can be viewed from two angles. Despite limited jurisdiction a civil court, it was entitled to interfere in a case where the report of the enquiry officer is based on no evidence. In a suit filed by a delinquent employee in a civil court as also a writ court, in the event the findings arrived at in the departmental proceedings are questioned before it, it should keep in mind the following: (1) the enquiry officer is not permitted to collect any material from outside sources during the conduct of the enquiry. (See *State of Assam v. Mahendra Kumar Das*⁶.) (2) In a domestic enquiry fairness in the procedure is a part of the principles of natural justice. (See *Khem Chand v. Union of India*⁷ and *State of U.P. v. Om Prakash Gupta*⁸.)

(3) Exercise of discretionary power involves two elements-(i) objective, and (ii) subjective and existence of the exercise of an objective element is a condition precedent for exercise of the subjective element. (See *K.L. Tripathi v. SBI*⁹.) (4) It is not possible to lay down any rigid rules of the principles of natural justice which depend on the facts and circumstances of each case but the concept of fair play in action is the basis.

(See *Sawai Singh v. State of Rajasthan*¹⁰.) (5) The enquiry officer is not permitted to travel beyond the charges and any punishment imposed on the basis of a finding which was not the subject-matter of the charges is wholly illegal. (See *Export Inspection Council of India v. Kalyan Kumar Mitra*¹¹.) (6) Suspicion or presumption cannot take the place of proof even in a domestic enquiry. The writ court is entitled to interfere with the findings of the fact of any tribunal or authority in certain circumstances. (See *Central Bank of India Ltd. v. Prakash Chand Jain*¹² and *Kuldeep Singh v. Commr. of Police*¹.)"

The Hon'ble Apex Court in case of *Oryx Fisheries P. Ltd. Vs. Union of India & Ors.* (supra) has held as under:-

"24. This Court finds that there is a lot of substance in the aforesaid contention. It is well settled that a quasi-judicial authority, while acting in exercise of its statutory power must act fairly and must act with an open mind while initiating a show-cause proceeding. A show-cause proceeding is meant to give the person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice.

31. It is of course true that the show-cause notice cannot be read hypertechnically and it is well settled that it is to be read reasonably. But one thing is clear that while reading a show-cause notice the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show-cause notice and prove his innocence. If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show-cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show-cause notice does not commence a fair procedure especially when it is issued in a quasi-judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence.

34. A somewhat similar observation was made by this Court in *Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant*². In that case, this Court was dealing with a show-cause notice-cum-charge-sheet issued to an employee. While dealing with the same, this Court in para 25 (SCC p. 198 of the Report) by referring to the language in the show-cause notice observed as follows:

"25. Upon consideration of the language in the show-cause notice-cum-charge-sheet, it has been very strongly contended that it is clear that the officer concerned has a mindset even at the stage of framing of charges and we also do

find some justification in such a submission since the chain is otherwise complete."

After para 25, this Court discussed in detail the emerging law of bias in different jurisdictions and ultimately held in para 35 (SCC p. 201 of the Report), the true test of bias is:

"35. The test, therefore, is as to whether a mere apprehension of bias or there being a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom-in the event however the conclusion is otherwise inescapable that there is existing a real danger of bias, the administrative action cannot be sustained:"

(emphasis supplied)

35. Going by the aforesaid test any man of ordinary prudence would come to a conclusion that in the instant case the alleged guilt of the appellant has been prejudged at the stage of show-cause notice itself.

36. The appellant gave a reply to the show-cause notice but in the order of the third respondent by which registration certificate of the appellant was cancelled, no reference was made to the reply of the appellant, except saying that it is not satisfactory. The cancellation order is totally a non-speaking one.

37. Therefore, the bias of the third respondent which was latent in the show-cause notice became patent in the order of cancellation of the registration certificate. The cancellation order quotes the show-cause notice and is a non-speaking one and is virtually no order in the eye of the law. Since the same order is an appealable one it is incumbent on the third respondent to give adequate reasons.

20. As the impugned order dated 06.02.2019 is bad in law as well as on facts, as a consequent thereto, the petitioner is entitled to be promoted to the post of Chief Engineer w.e.f. 24.12.2018 with consequential benefits and salary.

21. As a sequel to the aforesaid observations, rules, guidelines, legal propositions and judicial pronouncements, this Court is of the considered opinion that the punishment of censure vide resolution dated 06.02.2019 is not tenable in the eyes of law as the whole proceeding itself vitiates on the ground that second show-cause notice was mere formalities, as no cogent reasons were assigned for deferring with the findings of the Enquiry Officer. The impugned order also is bereft of any reasons and completely a non-speaking order and thus, it is quashed and set aside.

22. The Respondents are directed to consider the case of the petitioner for promotion taking into account the law laid down by the Hon'ble Apex Court in case of Union of India and Ors. Vs. K.V. Jankiraman and Ors. (supra). Needless to say, if the petitioner is found fit for promotion, as the juniors to him have

already been considered and granted promotion, an order to that effect shall be issued extending him the benefits of promotion to the post of Chief Engineer with all consequential benefits, within a period of eight weeks from the date of receipt/ production of a copy of this order.

23. With the aforesaid observations and directions, the writ petition stands allowed.