

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(S) No. 3442 of 2022

Sanjay Kumar Sinha son of Parmanand Prasad, resident of Flat No.201,
Krishna Shree Apartment Anantpur, PO PS Chutiya, District Ranchi.

... **Petitioner**

-versus-

1. The State of Jhrkahand through the Chief Secretary, Government of Jharkhand, Project Building, Dhurwa, Ranchi.
2. The Secretary, Road Construction Department, Government of Jharkhand, Project Building, Dhurwa, Ranchi.
3. The Joint Secretary, Road Construction Department, Government of Jharkhand, Project Building, Dhurwa, Ranchi.
4. The Additional Secretary, Road Construction Department, Government of Jharkhand, Project Building, Dhurwa, Ranchi.
5. The Under Secretary, Road Construction Department, Government of Jharkhand, Project Building, Dhurwa, Ranchi.
6. The Accountant General (A&E), Jharkhand, Ranchi, Office at Doranda, Ranchi.

... **Respondents**

CORAM : HON'BLE MR. JUSTICE ANANDA SEN

For the Petitioner : Mr. Rahul Kumar, Advocate

For the Respondents : Mr. Sharabhil Ahmed, AC to SC(Mines) I
Mr. Amit Kumar Verma, Advocate

4/ 04.01.2023 Heard learned counsel for the petitioner and learned counsel for the respondents.

2. Petitioner has challenged the order contained in Memo No.347(S) dated 03.02.2020, whereby punishment of 'Censor' has been imposed upon the petitioner. He has also challenged the order dated 24.03.2022 contained in Memo No.1176(S) issued by the Additional Secretary, Road Construction Department, Government of Jharkhand, Ranchi, whereby the appeal preferred by the petitioner has been dismissed.

3. After hearing the parties at length and going through the record, I find that the petitioner is Superintending Engineer. A show cause notice was issued to the petitioner. Allegation against the petitioner is that he had to furnish Rate Justification Report in respect of several construction works within three days, but he delayed the same by 15-20 days. Petitioner filed a detailed reply on 14.11.2019, justifying the delay. The Disciplinary Authority rejected his clarification and imposed a punishment of '**Censure**' vide impugned order dated 03.02.2020. Appellate Authority also dismissed the appeal.

4. After going through the show cause notice, which is Annexure 3, I find that petitioner was asked to explain as to why the delay was caused in

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furnishing the Rate Justification Report. It was mentioned that he should file a suitable reply within 15 days or else appropriate disciplinary proceeding will be initiated against the petitioner. After receiving the reply, no regular departmental proceeding was initiated against the petitioner, may be on the ground that a minor punishment of '**Censure**' was being considered to be imposed, which did not call for initiation of a full-fledged departmental proceeding. The fact, which cannot be lost sight of is that the impugned order of punishment is a one line order without giving any reasons or even considering the reply filed by the petitioner while imposing the punishment. When any delinquent officer is being show caused and pursuant thereto he files a reply and punishment is being imposed solely based on the reply itself, it is incumbent upon the Disciplinary Authority to at least deal with the defence of the delinquent officer while passing the order imposing punishment. In this case, the Disciplinary Authority has not dealt with the defence of the petitioner nor even considered the same. Merely writing the word '**considered**' is not sufficient and will not even suggest that the defence has been dealt with. The word '**consider**' has been explained by the Hon'ble Supreme Court in the case of **Chairman, Life Insurance Corporation of India & Others versus A. Masilamani** reported in **(2013) 6 SCC 530**. In paragraph 19 of the said judgment, the Hon'ble Supreme Court has held that an opinion has to be formed by the statutory authority, which should be reflected on the records itself. Paragraph 19 of the said judgment reads as under: -

19. The word "consider" is of great significance. The dictionary meaning of the same is, "to think over", "to regard as", or "deem to be". Hence, there is a clear connotation to the effect that there must be active application of mind. In other words, the term "consider" postulates consideration of all relevant aspects of a matter. Thus, formation of opinion by the statutory authority should reflect intense application of mind with reference to the material available on record. The order of the authority itself should reveal such application of mind. The appellate authority cannot simply adopt the language employed by the disciplinary authority and proceed to affirm its order. (Vide India Oil Corpn. Ltd. v. Santosh Kumar and Bhikhubhai Vithalbai Patel v. State of Gujarat).

5. Further, Rule 19 of the Jharkhand Government Servants (Classification, Control & Appeal) Rules, 2016 provides procedure for imposing minor punishment. Said Rule 19 reads as follows:-

19. Procedure for imposing minor penalties :- (1) Subject to the provisions of sub rule (3) of rule 18, no order imposing on a

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Government Servant any of the penalties specified in clauses (i) to (iv) of rule 14 shall be made except after-

- a) informing the Government Servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehavior on which it is proposed to be taken, and giving him reasonable opportunity of making such representation as he may wish to make against the proposal;*
- b) considering the representation, if any, submitted by the Government Servant under clause (a);*
- c) recording a finding on each imputation of misconduct or misbehavior.*

6. As per Rule 19(a), the Government Servant should be informed in writing of the proposal to take action against him and of the imputations of misconduct or misbehavior on which it is proposed to be taken. In this case, after going through the show cause, I find that proposed action was to initiate a proceeding and not of imposing any punishment. Further Rule 19(c) mandates recording of finding on each imputation of misconduct or misbehavior. This ingredient is missing in the impugned punishment order. In a mechanical manner, petitioner has been imposed with a punishment of '**Censure**'. Though the punishment is minor, yet it is a punishment which affects the service career of the petitioner. This punishment order is not in consonance with the procedure laid down in Rule 19 of the Jharkhand Government Servants (Classification, Control & Appeal) Rules, 2016. The order of punishment should reflect the application of mind and the Authority cannot simply in one line without considering the reply to the show cause, pass the order of punishment.

7. In view of what has been held above, the order contained in Memo No.347(S) dated 03.02.2020 is hereby set aside. Consequentially, the order dated 24.03.2022 contained in Memo No.1176(S) issued by the Additional Secretary, Road Construction Department, Government of Jharkhand, Ranchi is also hereby set aside.

8. This writ petition is, accordingly, allowed.

(Ananda Sen, J.)