

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL WRIT JURISDICTION CASE No.11524 of 2014

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Dr. Nawal Prakash Deepak, S/o- Sri C. Jai Prakash, IMO, Grade-II (Pediatric), E.S.I.,
Model Hospital, Phulwari Sharif, Patna.

.... Petitioner

Versus

1. The Union of India through Secretary, Labour and Employment-cum-Chairman, Standing Committee, ESIC, Government of India, New Delhi.
2. The Secretary, Labour and Employment, Government of India, New Delhi.
3. The Director General, Employees State Insurance Corporation, Panchdeep Bhawan, Headquarter Office, C.I.G. Marg, New Delhi.
4. The Director (Vigilance), E.S.I. Corporation, Headquarter Office, C.I.G. Marg, New Delhi.
5. The Medical Superintendent, ESIC, Model Hospital, Phulwari Sharif, Patna.

.... Respondents

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Appearance :

For the Petitioner : Mr. Subodh Kumar Jha, Advocate.
Mr. Pranav Kumar Jha, Advocate.

For the ESIC : Dr. Anshuman, Advocate.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 30-03-2016

The challenge in the present writ application is to an order passed by the learned Central Administrative Tribunal, Patna Bench, Patna on 11th of March, 2014 in O.A. No. 513 of 2011, whereby the learned Tribunal has not interfered with the order of punishment of stoppage of three increments with cumulative effect.

2. The petitioner while working as IMO Grade II (Pediatric), ESIC Model Hospital, Phulwarisharif, Patna was charge-sheeted on 17th of February, 2009 in respect of his conduct in the written test for appointment of Staff Nurse and Paramedical Staff in ESIC Model Hospital, Phulwarisharif, Patna (for short “the Corporation”). The allegation was that the petitioner did not disassociate himself from the examination though his brother was also an applicant in the aforesaid examination.

3. The petitioner submitted his reply on 24th of February, 2009. The Inquiry Officer appointed, submitted his report on 14th of August, 2009. The Inquiry

Officer exonerated the petitioner from the charges levelled against him.

4. However, the Disciplinary Authority did not agree with the findings in the Inquiry Report and recorded a Disagreement Note on 16th of February, 2010. The same was sent to the petitioner. The concluding paragraph of the note reads as under:-

“Hence the Disciplinary Authority has disagreed with the findings of the Inquiry Officer and held that the charge is fully proved against the charged officer. Dr. N.P. Deepak is hereby given an opportunity to submit his representation, if any, within 15 days against these observations in disagreement and also on Inquiry Report dated 14.08.2009 copy of which is also enclosed.

This issues with the approval of Director General.”

5. The petitioner submitted detailed reply to the said show-cause notice and after considering the reply filed, the Director General of the Corporation passed an order of withholding of three increments with cumulative effect. The petitioner filed an appeal against the said order before the Secretary, Labour and Employment, Government of India. The same was dismissed on 25th of April, 2011. It is thereafter, the petitioner invoked the jurisdiction of the Tribunal. The Tribunal vide its order dated 11th of March, 2014 dismissed the Original Application.

6. Learned counsel for the petitioner has raised the following arguments:

- (i) That since the Inquiry Officer has exonerated the petitioner from the charges, therefore, the petitioner was required to be served with the reasons of disagreement before serving show cause notice to him. In support of the argument, petitioner placed reliance upon the judgment of the Supreme Court reported as Punjab National Bank and others Vs. Kunj Behari Misra (1998) 7 SCC 84.
- (ii) While communicating the reasons of disagreement with the show-cause notice, the department has proposed a punishment which shows that it was pre-determined mind with which the show-cause

notice was served, thus it violates the principles of natural justice.

(iii) The notice of show-cause along with Disagreement Note has been issued by Director (Vigilance) although Director General is the Appointing and Punishing Authority. Therefore, such Disagreement Note has been served by an authority lower in rank, vitiating the process of imposing punishment.

7. We have heard learned counsel for the parties and find no merit in the writ application. The Disagreement Memo dated 16th of February, 2010 has been communicated by Director (Vigilance) after approval of the Director General, the Appointing Authority. The petitioner is not disputing the fact that the findings of the Inquiry Officer could be disagreed by the Disciplinary Authority. The argument is that Disagreement Note was required to be communicated separately before serving a show-cause notice to the petitioner as to whether any action should be taken against an employee or not. The issue has been examined in a judgment referred to by learned counsel for the petitioner in Kunj Behari Misra's case [supra]. It has been held that the Disciplinary Proceeding breaks into two stages. The first stage ends when the Disciplinary Authority arrives at its conclusion on the basis of the evidence, the Inquiry Officer's report and the delinquent employee's replies to it. The second stage begins when the Disciplinary Authority decides the imposed penalty on the basis of its conclusions. It is the second stage which has been taken away by the 42nd Amendment but the right of the charged officer to receive the report of the Inquiry Officer was an essential part of the first stage itself. The Court has said to the following effect :

“The Court explained that the disciplinary proceedings break into two stages. The first stage ends when the disciplinary authority arrives at its conclusions on the basis of the evidence, the enquiry officer's report and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. It is the second right which was taken away by the 42nd Amendment but the right of the charged officer to receive the report of the enquiry officer was an essential part of the first stage itself. This was expressed by the Court in the

following words:

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19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.”

8. A perusal of the aforesaid judgment shows that whenever a Disciplinary Authority disagrees with the Inquiry Officer, then before it records its finding on such charge, it must record its tentative reasons or disagreement and give to the delinquent officer an opportunity to represent before it records his findings. It is all part of the stage of disciplinary proceedings. The argument is based upon the expression “before it record his finding”. We do not find that any such conclusion that disagreement note and findings are to be communicated separately can be drawn from the reading of the said judgment.

9. The disciplinary authority is required to conduct inquiry himself or through an Inquiry Officer appointed in terms of the rules governing the disciplinary proceedings. In the present case, the Inquiry Officer was appointed who submitted a report exonerating the petitioner. The disciplinary authority recorded Disagreement Memo and supplied copy of the Inquiry Report and Disagreement Memo to the delinquent including its tentative proposed punishment as well.



10. The argument that after conveying the Disagreement Note, the disciplinary authority was required to serve another show-cause notice is untenable. Once the Disciplinary Authority has disagreed with the finding of the Inquiry Officer, there is no requirement of serving another show-cause notice as the notice itself is to the effect that the Disciplinary Authority is not agreeing with the findings of the Inquiry Officer. The argument is based on hair splitting of the words used. Once the disagreement note is recorded, it is required to be communicated. Does it mean that it is only a communication, where the Disciplinary Authority is not expected to say anything more than sending disagreement note? Once disagreement note has been recorded, the Disciplinary Authority has found no merit in the findings of the inquiry officer. Therefore, the communication that the officer is found guilty is the only inference, which is possible after recorded disagreement note. This is exactly, what has been done by the punishing authority.

11. The proposed punishment is only to seek response of the delinquent so that he can point out any mitigating circumstance. The requirement is of a show-cause notice, which requirement has been satisfied when the disciplinary authority issued a show-cause notice along with Inquiry Report and Disagreement Memo. The natural consequence of recording of disagreement with the report of the Inquiry Officer exonerating the petitioner means a finding against the petitioner. As a consequence thereof, the Disciplinary Authority was in fact justified in law to propose punishment so as to give opportunity to the delinquent to submit response to the proposed punishment as well to point out any mitigating circumstance against the proposed punishment.

12. Learned counsel for the petitioner refers to a judgment reported as H.L. Trehan Vs. Union of India (1989) 1 SCC 764 as also another judgment of the Supreme Court reported as Rup Singh Negi Vs. Union of India and others (2009) 2



SCC 570. We do not find that any of the judgments is helpful to the arguments raised by the petitioner. In H.L. Trehan's case a circular issued by an Oil Company, which was since nationalized, was the subject matter of challenge. By virtue of the said circular the terms and conditions of the services of the employees of the Oil Company were substantially and adversely altered to their prejudice. In these circumstances, it was found that the circular affects the civil rights of the employees, therefore, post decisional hearing does not sub serves the rules of natural justice. In Rup Singh Negi's case the statement made before the police under Section 161 Cr.P.C. was relied upon without proof of such statement in any manner. In these circumstances, the Court held that the principles of natural justice have not been followed. But in the present case the petitioner has been associated at all stages of inquiry proceedings. Even after the Inquiry Officer exonerated the petitioner, the Disagreement Note was recorded and sent by the disciplinary authority. Considering the reply, the order of punishment has been passed by the Disciplinary Authority.

13. Still further, the Supreme Court in Haryana Financial Corporation and another Vs. Kailash Chandra Ahuja (2008) 9 SCC 31 examined the question when the Inquiry Officer exonerated the delinquent but certain defects were pointed out by the Managing Director of the Corporation and the matter remitted to the Inquiry Officer. It is thereafter, the Inquiry Officer submitted a report holding the delinquent guilty. A notice was thereafter issued by the Punishing Authority to show cause as to why the delinquent should not be dismissed from service. After considering the reply, an order of punishment was passed. The High Court allowed the writ application holding that supply of the report of the Inquiry Officer was an essential requirement and non-supply thereof resulted in violation of the principles of natural justice. Considering the judgment in ECIL Vs. B. Karunakar (1993) 4 SCC 727 the Court held as follows:

“21. From the ratio laid down in B. Karunakar (1992) 1 SCC

709 it is explicitly clear that the doctrine of natural justice requires supply of a copy of the inquiry officer's report to the delinquent if such inquiry officer is other than the disciplinary authority. It is also clear that non-supply of report of the inquiry officer is in the breach of natural justice. But it is equally clear that failure to supply a report of the inquiry officer to the delinquent employee would not ipso facto result in the proceedings being declared null and void and the order of punishment non est and ineffective. It is for the delinquent employee to plead and prove that non-supply of such report had caused prejudice and resulted in miscarriage of justice. If he is unable to satisfy the court on that point, the order of punishment cannot *automatically* be set aside.

25. It is settled law that principles of natural justice have to be complied with. One of the principles of natural justice is audi alteram partem (hear the other side). But it is equally well settled that the concept of "natural justice" is not a fixed one. It has meant many things to many writers, lawyers, jurists and systems of law. It has many colours, shades, shapes and forms. Rules of natural justice are not embodied rules and they cannot be imprisoned within the straitjacket of a rigid formula.

36. The recent trend, however, is of "prejudice". Even in those cases where procedural requirements have not been complied with, the action has not been held ipso facto illegal, unlawful or void unless it is shown that non-observance had prejudicially affected the applicant.

39. In B. Karunakar (1993) 4 SCC 727 this Court considered several cases and held that it was only if the court/tribunal finds that the furnishing of the report "would have made a difference" to the result in the case that it should set aside the order of punishment. The law laid down in B. Karunakar (1993) 4 SCC 727 was reiterated and followed in subsequent cases also (vide *State Bank of Patiala v. S.K. Sharma*, (1996) 3 SCC 364, *M.C. Mehta v. Union of India* (1999) 6 SCC 237).

44. From the aforesaid decisions, it is clear that though supply of report of the inquiry officer is part and parcel of natural justice and must be furnished to the delinquent employee, failure to do so would not automatically result in quashing or setting aside of the order or the order being declared null and void. For that, the delinquent employee has to show "prejudice". Unless he is able to show that non-supply of report of the inquiry officer has resulted in prejudice or miscarriage of justice, an order of punishment cannot be held to be vitiated. And whether prejudice had been caused to the delinquent employee depends upon the facts and circumstances of each case and no rule of universal application can be laid down."



14. In the present case, the copy of the Inquiry Officer's report and the disagreement note was supplied to the petitioner along with the proposed punishment. Such procedure does not violate any principle of natural justice as the petitioner was made aware of the fact that he stands exonerated by the Inquiry Officer and that Disciplinary Authority has disagreed with such findings and after disagreeing, the disciplinary authority has proposed a punishment. Even if there is any irregularity, but the petitioner has not shown any prejudice which alone can confer some cause of action to the petitioner to dispute the punishment imposed.

15. In respect of the last argument that the reasons of disagreement were conveyed by an authority lower in rank than the Punishment Authority, suffice it to state that the Disagreement Note has been communicated by Director (Vigilance) but it is approved by Director General. Therefore, the order of communication is by the competent authority though only the communication was signed by Director (Vigilance). It cannot be thus said that any action has been taken against the petitioner by an incompetent authority.

16. Learned counsel for the respondent pointed out that in fact the Tribunal has called for the original file and verified the recording of reasons of disagreement and proposed punishments. The same were found to be approved by the Director General. The petitioner has not raised any such objection in his reply as well. Therefore, it cannot be said that there is any violation of law or petitioner has suffered any prejudice which may entitle him to challenge the punishment imposed.

17. In the writ application, the stand of the petitioner is that the charge-sheet was issued under the signature of Sri Prabhat C. Chaturvedi, Director General on 17th of February, 2009 and the appeal of the petitioner has also been rejected by the same person, namely, Sri Prabhat C. Chaturvedi, who was at that point of time was posted as Secretary, Labour & Employment, Government of India,

Chairman, Standing Committee, ESIC. But in the written submissions, the assertion of the petitioner is that the order of punishment was passed by Dr. C.S. Kedar, who was subsequently made the Secretary, Labour and the same Dr. C.S. Kedar has passed the final order of punishment in departmental proceedings. In other words, the person who acted as Disciplinary Authority also acted as the Appellate Authority.

18. Though the written synopsis is not signed but keeping in view the fact that it has been handed over by the counsel for the petitioner, the same is taken into consideration.

19. The written synopsis is in direct contradiction to the pleadings made in the writ application. As a matter of fact, the order of punishment has been passed by Dr. C.S. Kedar whereas the order in appeal has been passed by Sri Prabhat C. Chaturvedi, Secretary, Labour & Employment, Government of India, Chairman, Standing Committee, ESIC. Thus, the order in appeal has not been passed by the same authority that has passed the order of punishment.

20. Though the charge-sheet was issued by Sri Prabhat C. Chaturvedi and the appellate order has been passed by the same officer acting as Secretary, Labour & Employment, it cannot be said that it is an illegal order, as it is a doctrine of necessity as the appeal lies only before the Secretary, Labour & Employment. There was no option for the Secretary, Labour & Employment but to hear and decide the appeal. Still further, even if the appellate order is not taken into consideration, we do not find any illegality or irregularity in the decision making process or in the order of punishment which may warrant interference in exercise of the power of judicial review.

21. In the matter of disciplinary proceedings the role of the Tribunal or of this Court is to examine the decision making process and not the ultimate decision thereof. In this connection, reference may be made to the three Judge Bench

judgment in Chairman-cum-Managing Director, Coal India Ltd. and another Vs. Mukul Kumar Choudhuri and others (2009) 15 SCC 620, where the court held as under:-

“13. It has been time and again said that it is not open to the High Court to examine the findings recorded by the inquiry officer as a court of appeal and reach its own conclusions and that power of judicial review is not directed against the decision but is confined to the decision-making process. In a case such as the present one where the delinquent admitted the charges, no scope is left to differ with the conclusions arrived at by the inquiry officer about the proof of charges. In the absence of any procedural illegality or irregularity in conduct of the departmental enquiry, it has to be held that the charges against the delinquent stood proved and warranted no interference.”

22. In view thereof, in the absence of any illegality or irregularity in the decision making process, we do not find any error in the order passed by the Tribunal, which may warrant interference in the writ jurisdiction of this Court.

23. The Writ Application is, thus, dismissed.

(Hemant Gupta, J)

Navaniti Prasad Singh, J I agree.

(Navaniti Prasad Singh, J)

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