

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.589 of 2014

Arising out of

Civil Writ Jurisdiction Case No. 19048 of 2012

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Arvind Kumar Sharma Son of Late Tapeswar Nath Sharma Resident of 11/B,
Jagat Ajanta Apartment, Naya Tola, Opp. P.N. Anglo Sanskrit School, Patna.

.... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Health Department, Govt. of Bihar, Patna.
2. The Director in Chief, Health Services, Govt. of Bihar, Patna.
3. The Superintendent, P.M.C.H., Patna.
4. The Superintendent, Sri Krishna Medical College And Hospital, Muzaffarpur.
5. The Deputy Director, Health Services, Govt. of Bihar, Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ray Saurabh Nath, Advocate
For the Respondent/s : Mr. M.N.H. Khan, SC-1 with
Mr. Irshad, AC to SC-1.

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CORAM:

HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 16-11-2016

Heard learned counsel for the parties.

2. The challenge in the present intra Court appeal is to
the order dated 22.08.2013 passed by the learned Single Bench by
which C.W.J.C. No. 19048 of 2012 filed by the appellant has been
dismissed.

3. The appellant was Speech Pathologist and Audiologist in the ENT Department of Patna Medical College and Hospital, Patna. On 18.09.2006, one Ms. Sushila Devi made a complaint in the Janta Darbar of the Chief Minister alleging corruption against the appellant for denying her a certificate of hearing disability. The Investigation Bureau of the Cabinet Vigilance Department submitted a report on 12.04.2007. The Director-in-Chief, Health Services, Bihar suspended the appellant by order dated 16.10.2007. On 06.05.2008, charges were framed and the appellant was asked to show cause. He did the same on 28.05.2008. On 17.01.2009, the Inquiry Officer submitted his report. Under letter dated 21.04.2009, the petitioner was issued second show cause notice. The said show cause not only spelled out the issues which were to be replied by the appellant, but also indicated that in the Joint Mobile Court of the Chief Commissioner for Persons with Disabilities, Government of India and Commissioner, Disabilities, Government of Bihar, had also found him guilty, copies of which had been provided to the appellant and, thus, the charges against the appellant stood proved. The appellant filed his reply on 31.05.2010. Upon considering the reply by the appellant, the Director-in-Chief, Health Services passed order dated 07.03.2011 awarding three punishments, namely, stoppage of three increments with cumulative effect,



withholding of any promotion in future and no payment beyond the subsistence allowance paid during the period of suspension for which proceeding was to be conducted separately under Rule 11(5) of the CCA Rules, 2005. The appellant filed appeal, which was disposed off by the Principal Secretary, Health Department by order dated 10.10.2011 with slight modification of removing the punishment of withholding of any promotion in future. The appellant moved this Court in C.W.J.C. No. 1689 of 2012 against the appellate order dated 10.10.2011 which was allowed by order dated 10.05.2012 quashing the appellate order and directing the Principal Secretary-cum-Appellate Authority to pass a speaking order in accordance with law. Pursuant to such remand, the Principal Secretary, Health, by order dated 21.08.2012, has modified the earlier order of punishment to that of stoppage of three increments with cumulative effect and payment of only subsistence allowance during the suspension period. The appellant being aggrieved by the same again moved this Court in C.W.J.C. No. 19048 of 2012 and dismissal of the same by the learned Single Bench by order dated 22.08.2013 has given rise to the present Letters Patent Appeal.

4. Learned counsel for the appellant submitted that he was not given proper opportunity during the enquiry. It was further submitted that the second show cause did not disclose any reasons for



differing with the enquiry report, since in the enquiry he had been found not guilty. For such proposition learned counsel relies on the decision of the Hon'ble Supreme Court in the case of **Punjab National Bank v. Kunj Behari Misra** reported as **AIR 1998 SC 2173**. Learned counsel submitted that the Principal Secretary has relied upon a report of an enquiry in which the appellant had not participated and, thus, the order of punishment stands vitiated.

5. Learned counsel for the respondents submitted that the basic charge against the appellant was that, despite the hearing of the complainant Ms. Sushila Devi being impaired, the appellant being the person who had physically carried out the test, had not given a report for issuance of certificate of hearing disability and lateron, in the test carried out by the All India Institute of Medical Sciences, New Delhi, it was found that the complainant did suffer such disability and, thus, certificate was also issued. It was submitted that due to the said act of the appellant, the complainant had also lost the opportunity of employment at the relevant time. Learned counsel submitted that the reasons have been mentioned in the second show cause notice and the order by the Principal Secretary is well considered and also reasoned.

6. Having considered the contentions of learned counsel for the parties, we do not find any merit in the present appeal. The



appellant did not find the complainant i.e. Ms. Sushila Devi fit for being issue a certificate for hearing disability. The same has been found to be incorrect as the All India Institute of Medical Sciences, New Delhi, after carrying out the requisite test has found the complainant to be having substantial hearing impairment and allowed issuance of certificate for hearing disability. Thus, it becomes obvious that the appellant, either for extraneous consideration refused to issue such certificate or it was sheer incompetency on his part not to have detected such glaring handicap of the complainant. If benefit of doubt is given to the appellant that he knows his job and is proficient in the same, then obviously non recommendation for issuance of hearing disability clearly indicates extraneous consideration and in that light, the allegation of having demanded illegal gratification appears to be correct. The demand of gratification, as alleged was between the complainant and the appellant, and no third party being present, it is only the word of the appellant verses the word of the complainant and, thus, in the admitted background that the complainant was not recommended for issuance of certificate of hearing impairment by the appellant whereas, the All India Institute of Medical Sciences, New Delhi, finding that the complainant's suffering from substantial hearing impairment is a strong circumstantial evidence against the appellant. The contention of learned counsel for the appellant the



second show cause notice did not disclose the reason for differing is misconceived. Perusal of the second show cause notice dated 21.04.2009 indicates that the Disciplinary Authority has mentioned the charges as well as the reasons why action should not be taken against the appellant in which the report of the Cabinet Vigilance Department as well as that of the Joint Mobile Court has been referred stating therein that all the connected evidence materials have already been provided to the appellant. Thus, the appellant was aware of all the materials on which the disciplinary authority proposed to rely and no prejudice has been caused to him in any manner as he knew what had come against him, and accordingly was required to give his defence. Further, we may add, that in the first round of litigation when the appellant has approached this Court in C.W.J.C. No. 1689 of 2012, the appellate order dated 10.10.2011, though was set aside, but the matter was not remanded to the stage of issuance of second show cause notice, meaning thereby, that the Court had not found substance in the contention of the appellant that the second show cause was infirm in law. The remand by the learned Single Bench earlier by order dated 10.05.2012 in C.W.J.C. No. 1689 of 2012, to the Principal Secretary-cum-Appellate Authority, for passing a fresh order would thus preclude the appellant from re-agitating the issue that the second show cause notice itself is

unsustainable in law. Moreover, we have also gone through the second show cause notice and find that it does not suffer from any illegal infirmity.

7. Learned counsel for the appellant has also not been able to show any procedural infirmity in the disciplinary proceeding. The law being settled that disciplinary proceedings can be interfered with under judicial review on the ground of there being either procedural irregularities or violation of the principles of natural justice or incompetence of the authority, in the present case, we do not find any such infirmity. The scope of judicial review over the orders passed by the authorities has been considered by the Hon'ble Supreme Court in the case of **Union of India v. Narain Singh** reported as (2002) 5 SCC 11 wherein, at paragraph-7 it was held to the following effect:

“7. This Court has, in the case of Union of India v. Sardar Bahadur held that there are limits to the powers which can be exercised by a Single Judge under Article 226 of the Constitution and, similarly, there are limits to the powers of a Division Bench while sitting in appeal over the judgment of a Single Judge. This Court has held that where there are relevant materials which support the conclusion that the officer is guilty, it is not the function of the High Court to arrive at an independent finding. It has been held that if an enquiry has been properly held the question of adequacy or reliability of evidence cannot be canvassed before the High Court.”

8. For the reasons aforesaid, we do not find any error in the order passed, either by the authorities or the learned Single Bench which may warrant interference by this Court.

9. Accordingly, the Letters Patent Appeal, stands dismissed.

(Ahsanuddin Amanullah, J)

Hemant Gupta, ACJ *I agree*

(Hemant Gupta, ACJ)

P. Kumar

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