

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11222 of 2015

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Haldhar Prasad Chaudhary, son of Bahadur Prasad Chaudhary, resident of Village:
Ranhar, P.O: Karau, District: Deoghar (Jharkhand).

.... Petitioner

Versus

1. The State of Bihar.
2. The Principal Secretary, Health Department, Government of Bihar, Patna.
3. The Director, Health Department, Bihar, Patna.
4. Deputy Director, Health Department, Govt. of Bihar, Agamkuan, District: Patna.
5. Yakshma Pradarshan and Training Centre, Agamkuan, Patna.
6. Civil Surgeon-cum- Chief Medical Officer, Patna.

.... Respondents

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Appearance :

For the Petitioner	:	Mr. Vindhya Keshari Kumar, Senior Advocate Mr. Satyendra Narayan Singh, Advocate
For the State	:	Md. Naseem Mukhtar, A.C. to AAG-12

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 10-08-2016

Heard Mr. Vindhya Keshari Kumar, learned Senior
Counsel appearing for the petitioner and Md. Naseem Mukhtar,
learned A.C. to AAG-12 for the State.

With the consent of the parties, the matter has been
considered on merits and is being disposed of at the stage of
admission itself.

The petitioner is aggrieved by the order dated 27.11.2014
of the Director-in-Chief, Health Services, Bihar, Patna, whereby he
has been dismissed from service. The order of the Disciplinary
Authority is affirmed by the appellate authority who has dismissed the

appeal preferred by the petitioner vide order passed on 23.6.2015. Copies of the order passed by the Disciplinary Authority and the appellate authority are impugned at Annexures 3 and 5 respectively to the writ petition.

Facts of the case briefly stated is that on alleged complaint made by one Sri Niwas Prasad regarding demand of illegal gratification by one Indrashan Prasad Singh, an Upper Division Clerk posted at the T.B. Centre, Agamkuan, Patna for processing his file that a trap was laid by the Vigilance on a complaint made by said Sri Niwas Prasad. Three notes of Rs.500/- of denomination each and one note of Rs.1000/- denomination was handed over to the complainant doused with chemicals which was to be handed over to Indrashan Prasad Singh on his demand. As per the pre-trap memorandum laid by the Vigilance, the complainant along with one constable of the Vigilance Department, namely, Mukesh Kumar approached Indrashan Prasad Singh, who is alleged to have demanded Rs.2500/- for processing the file. The amount was handed over, which was counted by him and kept in his pocket. The allegation is that thereafter said Indrashan Prasad Singh took out one note of Rs.500/- denomination and gave it to the petitioner who is posted as a Peon at the said office. As per the trap laid, the Vigilance officials entered the room and arrested Indrashan Prasad Singh along with the petitioner.



Apart from institution of a criminal case, disciplinary proceeding was initiated and a charge memo was served upon the petitioner for the alleged misconduct of receipt of share in the bribe money. The Enquiry Officer submitted his report not finding the charge true against the petitioner. The copy of the report is present at Annexure-2 to the writ petition. The Disciplinary Authority disagreed with the opinion of the Enquiry Officer and served a show cause notice on the petitioner vide letter no.222 dated 26.3.2014 indicating his tentative reasons for disagreement. A reply was filed by the petitioner to the show cause dated 26.3.2014 on 15.4.2014, which was not found satisfactory. A show cause notice against proposed penalty was served vide letter no.384 dated 18.7.2014 which though was responded by the petitioner but since it was not to the satisfaction of the Disciplinary Authority, he accordingly, vide order bearing Memo No.746 dated 27.11.2014 ordered for dismissal of the petitioner from service and which order stands affirmed by the appellate authority in dismissing the appeal and communicated vide Memo No.542 dated 23.6.2015. The petitioner feeling aggrieved is before this Court.

This matter was earlier heard on 2.8.2016 and when this Court, while directing for production of the records of the departmental proceedings in question, framed issues as to whether the alleged act would constitute a misconduct and whether the charge

which is yet to be established in the vigilance case, the punishment of dismissal could have been imposed. An issue regarding the quantum of punishment was also framed.

Following the order of this Court that the records have been produced and the documents on record completely demolishes the charge set up against the petitioner which I would be discussing hereinafter.

As I have mentioned, the charge against the petitioner is of being a co-sharer in the bribe money. It is the specific charge against the petitioner that of the Rs.2500/- amount handed over to the Upper Division Clerk Indrashan Prasad Singh in the denomination of Rs.500/- (3 notes) and Rs.1000/- (1 note), he handed over one note of Rs.500/- denomination to the petitioner saying that it was his share and the petitioner kept the note after counting it. This statement comes from the Vigilance constable Mukesh Kumar who accompanied the complainant and is stated to be present when the occurrence happened. It is on this basis that the charge was served on the petitioner of sharing the bribe money which was allegedly recovered from him as is manifest from the charge memo in Form (Ka) dated 29.8.2012 placed on the record so produced.

The report of the Presenting Officer dated 12.8.2013 is present at page-177 of the records of the proceedings. The Presenting



Officer has specifically discussed the evidence recorded and mentions that on 11.2.2013, the complainant was present for giving his evidence and he states that he handed over Rs.2500/- to Indrashan Prasad Singh who received the same and immediately thereafter the vigilance officials surrounded him and took him into custody. The complainant also states that he recognizes the petitioner by face and has found him near the office of the Under Secretary, Sri Kripaluji Pandey. The most important aspect which would be relevant for the issue in consideration is that while the complainant has specifically mentioned that the said Indrashan Prasad Singh never handed over any money to this petitioner, it is the statement of the constable Mukesh Kumar who had accompanied the complainant that Indrashan Prasad Singh Upper Division Clerk gave one Rs.500/- note to the petitioner and which was recovered. According to Vigilance the hands of the accused were dipped in water which turned pink which confirms the illegal act. The petitioner in his reply to the show cause dated 26.3.2014 issued by the Disciplinary Authority indicating his tentative reasons of disagreement has specifically mentioned that the money was never handed over to him nor a single Rs.500/- note requires to be counted rather the chemical was rubbed into his hands and that he has been implicated in the occurrence on false accusation. These relevant piece of evidence as discussed in the report

of the Presenting Officer and the report of the Enquiry Officer has been ignored by the Disciplinary Authority.

In the eloquent circumstances discussed above, where it is neither the charge of the complainant that the petitioner demanded any money nor it is the charge of the complainant that of the money handed over to the accused Upper Division Clerk, he handed over any amount to the petitioner, the initiation of proceedings against the petitioner on a statement made by the Vigilance constable Mukesh Kumar which stands contradicted on the statement of the complainant himself, it is a matter of adjudication whether explanation given by the petitioner to his implication, is correct and whether there was sufficient ground for proceeding against the petitioner for his dismissal.

Another relevant aspect of the matter would be that even if the charge is taken on its face value, would it constitute a 'misconduct' in absence of any demand made by the petitioner from the complainant and in absence of any bribe money or part thereof being handed over by the complainant to the petitioner as admitted by the complainant. In fact it is also not a case where any demand was made by the petitioner before the U.D.C. Indrashan Prasad Singh rather the charge is that the said Indrashan Prasad Singh of his own volition handed over a Rs.500/- denomination note to the petitioner

which is alleged to have been retained by him. In addition thereto, the Vigilance constable himself has admitted that during the earlier hours when the demand for bribe was made by Indrashan Prasad Singh which led to preparation of a pre trap memorandum, this petitioner was not present. Meaning thereby, the petitioner was apparently unaware that the money handed over is a bribe money.

In my opinion in the circumstances discussed above, the alleged act whatsoever complained against the petitioner, of accepting money from Indrashan Prasad Singh, neither constitutes misconduct nor provides any foundation for a disciplinary proceedings. Reference in this regard is made to paragraph 47 of the judgment reported in (2015)3 SCC 220 (Vinod Kumar Vs. State of Punjab) which runs as follows :-

“ There can be no quarrel over the proposition that on the basis of mere recovery an accused cannot be found guilty. It is the settled principle of law that mere recovery of the tainted money is not sufficient to record a conviction unless there is evidence that bribe had been demanded or money was paid voluntarily as bribe. In the absence of any evidence of demand and acceptance of the amount as illegal gratification, recovery would not alone be a ground to convict the accused. This has been so held in **T. Subramanian v. State of T.N. (2006)1 SCC 401, Madhukar Bhaskarrao Joshi v. State of Maharashtra (2000) 8 SCC 571, Raj Rajendra Singh Seth v. State of Jharkhand (2008) 11 SCC**

681, State of Maharashtra v. Dnyaneshwar Laxman Rao Wankhede (2009) 15 SCC 200, C.M. Girish Babu v. CBI (2009) 3 SCC 779, K.S. Panduranga v. State of Karnataka (2013) 3 SCC 721 and Satvir Singh v. State of Delhi (2014) 13 SCC 143.”

The opinion expressed by the Supreme Court is reiterated in the following judgments :

(a)(2015) 7 SCC 283 (State of Andhra Pradesh vs. P. Venkateshwarlu) para-11

(b)(2015) 10 SCC 230 (Selvaraj vs. State of Karnataka) para-18 and 19

In so far as the case in hand is concerned, there is no dispute that no demand of any bribe money was made by the petitioner either from the complainant or from the alleged bribe taker Indrashan Prasad Singh.

In the circumstances discussed, the order of penalty is based on no evidence and in the conflicting circumstances reflecting in the enquiry report and the report of the Presenting Officer, in my opinion, there was no occasion for initiation of any proceedings against the petitioner.

For the reasons aforementioned, the conclusion arrived at by the Disciplinary Authority as affirmed by the appellate authority is perverse and cannot be upheld. In result the orders dated 27.11.2014

and 23.6.2015 of the disciplinary authority and the appellate authority
impugned at Annexures 3 & 5 respectively is quashed and set aside.

The writ petition is allowed.

(Jyoti Saran, J)

N.H./- Vats/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	20-08-2016
Transmission Date	