

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.571 of 2007

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Rameshwar Sah s/o Late Ramayan Sah, r/m – Ratanpura, near Court Devi Mandir,
P.S. – Bhagwan Bazar, District - Saran

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Secretary-cum-Commissioner, Health, Medical Education and Family Welfare, New Secretariat, Government of Bihar, Patna
3. The Director-in-Chief, Health Services, Government of Bihar, New Secretariat, Patna
4. The Director, Health Services, Government of Bihar, New Secretariat, Patna
5. The Additional Director, Health Services, Government of Bihar, New Secretariat, Patna
6. The Regional Deputy Director, Health Services, Government of Bihar, Saran Division, Chapra
7. The Civil Surgeon-cum-Chief Medical Officer, Saran at Chapra

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S.B.K. Mangalam, Adv.

For the Respondent/s : Mr. (AC. to S.C. -12)

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 17-02-2017

Heard Mr. S.B.K. Mangalam learned counsel for the petitioner and learned A.C. to S.C.-12.

2. The petitioner by filing this writ petition seeks quashing of the order dated 15.03.2003, as contained in Memo No. 327(4) (Annexure-10) by which the Director-in-Chief respondent no. 3 withheld two increments of the petitioner with cumulative effect. The petitioner further seeks quashing of the order, as contained in Memo No. 1834(4) dated 02.12.2006 (Annexure-14), by which the order of stoppage of two increments of the petitioner is confirmed.



3. The Facts which are relevant for the disposal of this writ petition are that the petitioner was posted as Clerk in the office of the Sub-Divisional Medical Officer, Chapra. He was posted on deputation in the office of Civil Surgeon, Chapra. On 15.09.1990 while the petitioner was on deputation in the office of Civil Surgeon, Chapra, the petitioner was suspended vide order dated 08.06.2001, as contained in Memo no. 515(4) and departmental enquiry was initiated. The Memo of Charge was given to the petitioner vide Memo No. 516(4) dated 08.06.2001. Regional Deputy Director, Medical Services Saran Division, Chapra was appointed as Enquiry Officer. The petitioner filed his show-cause stating that the charge is vague and also requested to supply the papers. The petitioner stated in his show-cause that he did not place any purchase order of medicines to M.S.D. (Medical Store Depot, Kolkata), but without supplying the papers and the enquiry report, the Enquiry Officer stopped two increments of the petitioner with cumulative effect. The petitioner preferred appeal, but the appeal of the petitioner was also dismissed.

4. Mr. Mangalam learned counsel for the petitioner submits that the Memo of Charge given to the petitioner is vague and petitioner in his reply to the first show-cause stated that on such vague charge, specific reply could not be given; even then, departmental proceeding was concluded without providing the proper opportunity



to the petitioner to defend his case. The enquiry report was submitted to the Disciplinary Authority and the Disciplinary Authority neither supplied the enquiry report nor asked any second show-cause from the petitioner, so that the petitioner may defend his case.

5. Learned counsel for the State however, admitted that no second show-cause notice was given to the petitioner and the stoppage of two increments with cumulative effect is a major punishment. Admittedly, in view of judgement, as reported in **(1998) 7 S.C.C. 84 (Punjab National Bank and Ors. vs. Kunj Behari Misra)**, the departmental proceeding is bifurcated in two parts. The first part is initiation of departmental proceeding and show-cause and supply of the papers to the delinquent, so that the delinquent may be represented properly, before the Enquiry Officer. Second part starts after submission of the Enquiry report. The Disciplinary Authority should firstly, give the enquiry report to the delinquent, so that the delinquent may file detailed representation in order to defend his case and not to rely the enquiry report on the grounds, on which, he could prove his innocence against the finding of the Enquiry Officer, but the opportunity has not been given. Therefore, I find that the order of punishment, as contained in Annexure-10 is vitiated on the ground of violation of principle of natural justice and thus not sustainable. The petitioner also preferred appeal, but the Appellate Authority did not



take into consideration any of the grounds taken by the petitioner. Therefore, the order of Appellate Authority is also vitiated on the ground of violation of principles of natural justice, thus, not sustainable. Therefore, both the orders are liable to be set aside.

6. On the basis of discussions made above, the writ petition is allowed and the order dated 15.03.2003, as contained in Memo No. 327(4) (Annexure-10) and order dated 02.12.2006, as contained in Memo No. 1834(4) (Annexure-14) are set aside. The matter is remitted to the Disciplinary Authority to pass order afresh in accordance with law after serving a copy of enquiry report to the petitioner and considering his show-cause.

7. In the facts and circumstances of the case, there shall be no order as to costs.

(Prabhat Kumar Jha, J.)

Vinita/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.03.2017
Transmission Date	NA

