

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7590 of 2014

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1. Dr. Mohd. Khalil Ansari Son of Late Abdul Latif Ansari resident of Village : -
Dhangarha, P.S. : Baniyapur, District : - Saran, Presently residing at A-41, Gandhi
Bihar, Anisabad, P.S. : - Gardanibagh, Patna - 2.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Health, Govt. of Bihar, Patna.
3. The Joint Secretary, Department of Health, Govt. of Bihar, Patna.
4. The Addl. Secretary, Department of Health, Government of Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Lalan Kumar

For the Respondent/s : Mr. SC-17 ARBIND KR. NO.-2

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 28-08-2017

Heard both sides.

The petitioner has challenged the order dated 02.08.2010, as contained in memo No. 673, by which the petitioner has been compulsorily retired from service (Annexure-18).

The learned counsel for the petitioner submits that an enquiry was held in the year 1994 with regard to irregular appointments on the post of class-III and class-IV in Deshi Chikitsalaya, Siwan. The report was submitted on 21.01.1994 but no action was taken on the report. On 11.05.2005 the petitioner was put under suspension and articles of charge was served on the petitioner. The petitioner submitted his show cause. Out of five charges the enquiry officer found charge No.1 proved and charge No.2 partially proved but did not find charge No. 3, 4 and 5 proved. Thereafter, second show cause was given to the petitioner on the following proposed punishment:-

“(i) stoppage of three increments with cumulative effect;



(ii) the petitioner shall not be eligible for promotion for three years and

(iii) during the period of suspension the petitioner shall not be entitled to get salary and other allowance, save and except, subsistence allowance”.

The petitioner submitted his reply on the proposed punishment but the disciplinary authority again served memo of charges with regard to charge No. 3, 4 and 5 on which enquiry has already been held and another enquiry officer was appointed. The enquiry officer submitted his report and found charge No.3 proved but charge No. 4 and 5 were not proved.

The learned counsel for the petitioner submits that on the basis of such enquiry report the petitioner was compulsorily retired from service but second enquiry held against the petitioner, after submission of first enquiry report and reply of the petitioner on the proposed punishment, is absolutely bad and not permissible under any procedure meant for holding departmental enquiry. The learned counsel for the petitioner placed reliance on the judgement of the Supreme Court in the case of *Union of India v. K. D. Pandey* reported in (2002) 10 SCC 471. The learned counsel for the petitioner further submits that there are many judgements on this point.

This is not in controversy and almost well settled that once enquiry officer submits enquiry report the disciplinary authority has to act under the provisions laid down under Rule 18 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as the CCA Rules). According to Rule 18 of the CCA Rules, 2005 the disciplinary authority may differ with the findings of the enquiry officer on the basis of evidence on record. If the disciplinary authority finds that the enquiry officer did



not hold enquiry on a particular point of article of charge, the disciplinary authority may direct the enquiry officer to hold further enquiry on that particular point but fresh enquiry is not at all permissible.

On such, the learned counsel for the State points out that the appeal of the petitioner is still pending before the appellate authority.

Considering the fact that appeal of the petitioner is still pending before the appellate authority, I dispose of the writ petition with a direction to the appellate authority to dispose of the appeal of the petitioner within three months from the date of receipt of this order. If the petitioner is aggrieved by the order of the appellate authority, he may again file writ petition..

(Prabhat Kumar Jha, J)

BKS/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	31.08.2017
Transmission Date	N.A.

