

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9076 of 2014

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Dr. Janak Lal Sharma son of Late Ram Prit Vishwakarma resident of Mohalla - Saraiya, Ward No.1, North to NH - 28, P.S. Gopalganj, District - Gopalganj

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health, Bihar, Patna
2. The Principal Secretary, Department of Health, New Secretariat, Patna
3. Joint Secretary - cum - Conducting Officer, Department of Health, Government of Bihar, Patna
4. The Additional Secretary, Department of Health, Government of Bihar, Patna
5. Deputy Secretary to Government, Department of Health, Govt. of Bihar, Patna
6. Under Secretary to Government, Department of Health, Govt. of Bihar, Patna
7. The District Magistrate, Rohtas at Sasaram District - Rohtas
8. Additional Collector, (Revenue), Rohtas (Sasaram)
9. Additional Collector, (Naxal), Rohtas (Sasaram)
10. Civil Surgeon - Cum - Chief Medical Officer, Rohtas (Sasaram)

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Durga Nand Jha, Adv.

For the Respondent/s : Mr. SC8- KUMAR ALOK

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 25-08-2017

Heard both sides.

2. The petitioner by filing this writ petition seeks quashing the order dated 01.04.2014 as contained in Memo No. 267 (Annexure-1) by which 20% pension of the petitioner has been withheld.

3. The brief facts which is relevant for the disposal of this writ petition is that the petitioner was posted as Civil Surgeon-cum-Chief Medical Officer, Rohtas at Sasaram. On 21.01.2010, a



proceeding under Rule 43(b) of the Bihar Pension Rules was initiated against the petitioner. The petitioner gave his show-cause. Departmental enquiry was initiated on the charge that while the petitioner was posted as Civil Surgeon, Rohtas at Sasaram sixty old vehicles were lying uncared and the petitioner was responsible for upkeepment of the old vehicles, but due to negligence of the petitioner all the old vehicles and their parts were stolen. The petitioner submitted his show-cause that only 4 to 5 vehicles were lying in the premises of Sadar Hospital and during the course of new construction Mr. Arun Kumar Assistant Engineer, Building Construction Department placed the vehicles to some other place inside the premises without his consent and only the parts of those vehicles were stolen for which F.I.R. was lodged. The Enquiry officer after enquiry did not find the petitioner guilty of the charge, but the disciplinary authority vide letter dated 09.04.2013 as contained in annexure-14 issued second show-cause and reiterated the charge, but the petitioner submitted his show-cause in detail stating that there is no material on record to show that the petitioner was the custodian of any vehicle kept in the premises of Sadar Hospital Rohtas at Sasaram, but the disciplinary authority issued the order withholding 20% of the pension of the petitioner.



4. Learned counsel for the petitioner submits that order passed by the disciplinary authority withholding 20% of the pension of the petitioner is illegal, bad and erroneous, as same is based on no evidence. Rule 18 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter for the sake of brevity referred to as the C.C.A. Rules, 2005) provides actions by the disciplinary authority after receipt of enquiry report. Sub-rule 2 of Rule 18 says that on receipt of the enquiry report the disciplinary authority may disagree with the findings of the enquiry officer on any articles of charge, and disciplinary authority shall record its reasoning for such agreement and also record its own finding on such charge, if evidence on record are sufficient for the purpose. Thereafter, the disciplinary authority is obliged under the law to forward the copy of the enquiry report along with his point of difference on the basis of evidence, so that the government servant may give the detailed reply. Learned counsel for the petitioner further submits that the presenting officer did not produce any evidence. The enquiry officer in his report very categorically stated that there is no material on record to show that the petitioner was the custodian of any vehicle lying in the premises of Sadar Hospital, Rohtas at Sasaram, but the disciplinary authority for the reason best known to him without recording his reasons of his difference of opinion with the



findings of the enquiry officer substituted his own finding that the petitioner was the custodian of the vehicles and apparently the same is based on no evidence. The law does not permit the disciplinary authority to record finding of guilt differing with the findings of the enquiry officer without any evidence. Therefore, the order is bad and not sustainable.

5. The State has filed counter affidavit. Learned counsel for the State has submitted that Additional Collector, (Naxal) Rohtas at Sasaram on the basis of the complaint petition filed by M.L.A. held enquiry. The M.L.A. made allegation against Arun Kumar Singh Assistant Engineer, Building Construction Department that he took away the parts of the vehicles and other parts of demolished vehicle for the use of his own. The Collector entrusted the enquiry to the Additional Collector, (Naxal) and the Additional Collector, (Naxal) in his preliminary enquiry report held Civil Surgeon responsible for destruction of vehicles lying in the premises of Sadar Hospital Rohtas at Sasaram. On the basis of such preliminary enquiry report the petitioner who was the Civil Surgeon at the relevant time was found responsible and the order withholding 20% pension of the petitioner was passed. There is no procedural illegality or irregularity in conducting departmental proceeding. The disciplinary authority rightly differed with the findings of the enquiry officer and held the



petitioner guilty. Therefore, there is no illegality in the order.

6. On consideration of submissions of both the parties, the question falls for consideration whether the order passed by the disciplinary authority withholding 20% of the pension of the petitioner is in accordance with law? It would be appropriate to reproduce sub-rule (2) and (3) of Rule 18 which gives power to the disciplinary authority to take action on the enquiry report which reads as follows:-

Rule 18(2) and (3) says as follows:-

18. Action on the inquiry report. –

(2) The disciplinary authority, after receipt of the enquiry report as per Rule 17 (23)(ii) or as per sub-rule (1), shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own finding on such charge, if the evidences on record is sufficient for the purpose.

(3) The disciplinary authority shall forward or cause to be forwarded a copy of the inquiry report, together with its own findings, if any, as provided in sub-rule (2), to the government servant who may submit, if he or she so desires, his or her written representation or submission to the disciplinary authority within fifteen days.

Sub-rule (2) of Rule 18 bestows power on the disciplinary authority that after receipt of the enquiry report as per Rule 17(23)(ii) or as per sub-rule (1), if it disagrees with the findings of the enquiry report on any article of charge, the disciplinary authority shall record its reasons for such disagreement and also record its own finding on



such charge, if the evidences on record are sufficient for the purpose. Sub-rule (3) thereafter provides that the disciplinary authority shall forward the enquiry report together with its own findings, as provided under sub-rule (2), to the government servant who may submit his written representation or submission to the disciplinary authority within fifteen days.

7. The aforesaid provisions of Rule 18 clearly mandates that after receiving the enquiry report, the disciplinary authority shall records his reason for such disagreement and also record his own findings on such charge, but the disciplinary authority neither recorded any reason for his disagreement nor recorded his own finding on the charge against the petitioner on the basis of evidence on record. The petitioner has submitted and drew attention of this court that presenting officer did not produce any witness and the enquiry officer in his report clearly held that there is no material to show that the petitioner was responsible for destruction of any vehicle lying in the premises of Sadar Hospital, but the disciplinary authority without recording his reason for his difference with the findings of the enquiry officer and without recording the guilt on the basis of the evidence differed with the finding of the enquiry officer and therefore, the order of the disciplinary authority inflicting punishment of withholding 20% of the pension of the petitioner is palpably illegal



and against the provisions of law and the same is not sustainable.

Thus, the writ petition is allowed and the order dated 01.04.2014, as contained in Memo No. 267 (Annexure-1) is set aside.

(Prabhat Kumar Jha, J.)

Vinita/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.09.2017
Transmission Date	NA

