

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7450 of 2016

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1. Manoj Kumar son of Kuldip Barai, resident of Village- Satsanda, P.S. Halsi
Ramgarh, Dist- Lakhisarai. Petitioner/s

Versus

1. The State of Bihar, through the Chief Secretary, Govt. of Bihar, Patna.
2. The State of Bihar, through the Principal Secretary, Department of Health, Govt. of Bihar, Patna.
3. The State of Bihar, through Secretary, Department of Health, Govt. of Bihar, Patna.
4. The Joint Secretary, Department of Health, Govt. of Bihar, Patna.
5. The State Drug Controller, Bihar, Patna.
6. The Deputy Director Pharmacy, Department of Health, Govt. of Bihar, Patna.
7. The District Magistrate, Nalanda.
8. Civil Surgeon, Nalanda.
9. Bihar Public Service Commission, Bailey Road, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranjeet Kumar, Adv.
Mr. Sabal Kumar Jha, Adv.
For the Respondent/s : Mr. Prabhu Narain Sharma, A.C. to A.G

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 05-02-2018

This writ petition under Article 226 of the Constitution of India has been filed for quashing of the order bearing Memo No.395(15) dated 28.03.2016 of the State of Bihar in its Health Department whereby the petitioner has been dismissed from service from the post of Licensing Authority, a copy of the order is impugned at Annexure-14 to the writ petition. The petitioner has prayed for reinstatement with all consequential benefits.

Facts of the case briefly stated is that the petitioner was appointed as a Drug Inspector on the recommendations of the Bihar Public Service Commission vide Notification dated 22.5.2000 along



with some others. He was posted as a licensing authority under Rule 59(1) of the Drug and Cosmetic Rule, 1945 (hereinafter referred to as 'the Rules') read with Section 21 of the Drugs and Cosmetic Act, 1940 (hereinafter referred to as 'the Act') vide Notification bearing Memo No.636 (15) dated 26.6.2006 at Annexure-2. The records transpires that during the posting of the petitioner as licensing authority at Purnea one Chandra Kant Das seeking a licence for opening a Ayurvedic shop, made a complaint to the Vigilance Officer that the petitioner had demanded an illegal gratification of Rs. 10,000/-. A trap was laid and the petitioner was allegedly caught taking Rs. 5000/- from Chandra Kant Das. A vigilance case was instituted bearing Vigilance Case No. 6 of 2008 under the provisions of Prevention of Corruption Act. The petitioner was suspended on 17.01.2008 and taken to judicial custody whereafter he was suspended under the provisions of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the disciplinary rules'). On release from custody on bail, the suspension of the petitioner was revoked and he was directed to join the headquarters. The petitioner was again suspended vide order bearing No.524 (15) dated 07.07.2008 with stipulation of initiation of departmental proceedings. A departmental proceeding was initiated against the petitioner by service of charge memo through



resolution No.1765 dated 20.08.2008 and by the same order the Deputy Director, Pharmacy was appointed as a Conducting Officer and the Section Officer was appointed as Presenting Officer. A copy of the resolution is impugned at Annexure-6. The Enquiry Officer submitted his report on 13.10.2008 vide Annexure-7 holding the charge not proved. Since despite the exoneration of the petitioner by the Enquiry Officer, no order was being passed by the disciplinary authority that the petitioner approached this Court in C.W.J.C.No.4519 of 2009 and vide order passed on 10.4.2009 the disciplinary authority was directed to conclude the proceeding within one month of receipt/production of a copy of the order. The petitioner on his part filed his representation for conclusion of the departmental proceeding vide Annexure-9 and the State Government vide Notification No.1836 (15) dated 8.9.2009 while taking note of the report of the Enquiry Officer revoked the suspension of the petitioner and directed that the exoneration would be governed by the final outcome of the vigilance case instituted against the petitioner and the matter would be reviewed separately. A copy of the Notification is enclosed at Annexure-10. The petitioner on revocation of suspension joined his post at Nalanda on 04.11.2009 in pursuance of the notification dated 04.11.2009 at Annexure-11. It is more than 4 and half years later since the revocation of suspension and the decision of



the State Government to reconsider the matter on the finality of the criminal proceedings that the Joint Secretary, Health Department became wise to issue a second show cause notice through letter dated 20.05.2014 even when the criminal case was yet pending. A copy of the Notification is at Annexure-12. The petitioner filed his exhaustive reply to the second show cause notice at Annexure-13 but has been met with the impugned resolution holding him guilty of the charges. In exercise of power vested under Rule 28 (1) (iv)(ख) and Rule 14 (9) of 'the disciplinary rules' that a decision was taken for dismissal from service. The order is impugned at Annexure-14 and feeling aggrieved the petitioner is before this Court.

The argument of Mr. Ranjeet Kumar , learned counsel for the petitioner stands noted in the order of this Court passed on 11.12.2017 and for the sake of convenience as well to avoid repetition, the extract is reproduced hereinbelow

“The argument of Mr. Ranjit Kumar, learned counsel appearing for the petitioner is that the charge at page 31 of the proceeding is resting on 'no evidence' rather is founded on a malicious allegation and the reasons stand noted in the enquiry report. In the opinion of the Enquiry Officer whose report is present at Annexure 7, he has specifically held that in absence of any licence required for sale of Ayurvedic medicine there was no reason either for the complainant to apply or for the petitioner to demand bribe. In reference to the enquiry report he submits that the Enquiry Officer has rejected the charge as motivated, vexatious and resting on malicious allegation and which opinion has in fact been upheld by the State while examining the opinion of the Enquiry Officer to hold that it would be subject to the outcome of the criminal case



instituted against the petitioner. A copy of the order of the State in its Health Department bearing Memo No.1836 (15) dated 8.9.2009 is enclosed at Annexure 10. It is in purported exercise of review power that the Joint Secretary in its Health Department proceeds to issue second show cause notice entirely resting his opinion on the charge submitted in the criminal case without bothering to give tentative reason for disagreement on the opinion of the Enquiry Officer as well as on the evidence, if any, which has led to reopening the matter and has resulted in the punishment order bearing Memo No.395(15) dated 28.3.2016 impugned at Annexure 14, whereby the petitioner has been dismissed from service. He further informs that even in the criminal case the petitioner has been acquitted.”

This Court taking note of the submission of Mr. Ranjit Kumar as well prima facie finding infirmity in the order of the Joint Secretary to issue a second show cause notice to the petitioner vide his letter dated 20.05.2014 even in absence of any decision by the State Government to such effect and which apparently was a case of overreach to the decision of the State Government present in the Notification dated 8.9.2009 at Annexure-10 as also noting the submission that the petitioner had been acquitted in the criminal case, required the learned State counsel to inform as to whether the records of the disciplinary proceeding contained any evidence to connect the petitioner with the alleged offence. Learned State counsel was directed to produce the records as well.

Mr. Prabhu Narain Sharma, A.C. to Advocate General while defending the impugned action of the respondents including the Joint



Secretary, in restoring the proceedings in the light of the liberty reserved by the State to review the matter on the outcome of the proceedings has submitted that even though the petitioner had been acquitted of the charges in the criminal case but that acquittal ipso facto would not preclude the disciplinary authority to adjudge the conduct of the petitioner as to his retention in the Government service for the scope of disciplinary proceedings on the issue of misconduct based on bribery charge and the scope of criminal proceeding are vastly different. He submits that the petitioner was trapped while accepting a bribe and which by itself is a proven misconduct warranting a dismissal.

As to the issuance of the second show cause notice by the Joint Secretary he submits that since the bribe cases were reviewed at the Governmental level that the case of the petitioner was also reviewed and reopened and it is after obtaining approval from the Minister, that the second show cause notice was issued which was in consonance with law. He submits that even though the Bihar Public Service Commission has not concurred with the proposed punishment but it would not preclude the disciplinary authority from differing with the opinion considering the gravity of the charge. According to learned counsel, the order has been passed after giving due opportunity of hearing to the petitioner and thus suffers no infirmity for interference.



I have heard learned counsel for the parties and I have perused the records.

The foundational facts and the rival contentions have already been exhaustively dealt above and requires no reiteration. The records transpires that the complainant intended to obtain a licence for sale of Ayurvedic medicine even though law does not mandate any licence for such purpose. There is a conclusive finding by the Enquiry Officer as well as the Trial Court in the criminal proceeding that the statutory provisions underlying 'the Act' and 'the Rules' framed thereunder did not require a licence for sale of Ayurvedic medicine. It is thus manifest that the said Chandra Kant Das could not have been a person aggrieved to initiate such proceeding because he did not require any licence under 'the Act' or 'the Rules' for sale of Ayurvedic medicine and if he did not require any licence there was no occasion for him to file any application which again was found to be defective by the Enquiry Officer as well as the Trial court. The other aspect of the matter is that the even though the application of the complainant for such licence is dated 14.1.2008 and was found defective as the required fee was yet to be deposited, the complainant without taking steps for removing defect, on the following day i.e 15.01.2005 lodged a complaint of demand of illegal gratification and which has led to the institution of the criminal proceeding. The third



aspect of the matter is that the eye witness to the occurrence, are local drug dealers whose licences have been cancelled by the petitioner for statutory violation.

These three aspects of the matter put a serious cloud over the manner in which the petitioner has been roped in the present case; Firstly, that 'the Act' or 'the Rules' did not mandate obtaining a licence for sale of Ayurvedic medicines and thus there was no occasion for the complainant to approach the petitioner. Secondly, even if on a misconception such application was filed, that it was found defective, as held by the Enquiry Officer as well as the Trial Court, it could not have been a foundation for institution of a criminal case on the very next day. Thirdly, the witnesses to the complaint are local drug dealers whose licences had been cancelled by the petitioner.

Another important flaw in the allegation is that the complaint was verified on 14.01.2008 i.e even before the case was instituted on 15.1.2008 and even before the required licence fee was deposited by the applicant in the treasury. It is taking note of the circumstances and glaring defects in the accusations that the Enquiry Officer has concluded that the petitioner has been made a victim of a well thought conspiracy by the local drug dealers. The Enquiry Report was submitted way back in the year 2008, and it is appreciating the



circumstances that the disciplinary authority in the light of the order passed by this Court at Annexure-8, decided to review the matter on conclusion of the criminal case instituted against the petitioner vide Annexure-10. The judgment of the criminal court has been placed on record through supplementary affidavit and gives a clear acquittal to the petitioner on the failure of the prosecution to drive home the charges. Paragraph 27 of the judgment takes note of the fact that the witnesses were hearsay and except the complainant there was no witness on the point of transaction of bribe money. The so called independent witness were local Drug Traders who were inimical to the accused. The trial court has also taken note of the fact that neither the tainted money nor the application form for Ayurvedic Drug licence which was the foundation for the charges was produced during the trial or taken in evidence. Even the verifier of the complaint Upendra Chaudhary could not be produced due to his death. The trial court taking note of the fact that 'the Act' and 'the Rules' do not contain any provision for grant of licence for sale of Ayurvedic medicine and also taking note of the fact that the petitioner had cancelled several licenses of local drug dealers on irregularity, has acquitted the petitioner of all charges on the failure of the prosecution to prove the same.

The position is that the petitioner stands exonerated of the



charges not only by the Enquiry Officer but also by the trial court. Neither the Enquiry Officer nor the trial court has found any evidence to connect the petitioner with the charge rather the victimization of the petitioner by the local drug dealers is taken note of by the two forums. The judgment and order of the trial court is dated 30.8.2016 but much prior thereto that the decision was taken by the Joint Secretary to issue a second show cause notice on 20.5.2014 and the source of power is missing from the discussion. In my opinion once the State Government had decided to review the matter on conclusion of the criminal case, the order could not have been reviewed by any, except by the State Government itself and certainly the Joint Secretary, Health Department does not exercise any such power nor is delegated for such exercise.

The other infirmity in the second show cause notice is that even though it proceeds to disagree with the finding of the Enquiry Officer and even though Rule 18 of 'the disciplinary rules' mandates the disciplinary authority to record its tentative reasons for disagreement but failing on such obligation that the Joint Secretary has got swayed by the submission of the chargesheet in the criminal case to hold that the guilt has been proved. The opinion expressed by the Joint Secretary is de hors the statutory provisions and de hors the previous opinion expressed by the State Government in its notification dated



08.09.2009.

In normal course the matter could have been remitted to the State Government for proceeding a fresh after giving its tentative reasons for disagreement as mandated under Rule 18 of 'the disciplinary rules' after quashing the second show cause notice as well as the order of dismissal. However, in my opinion this remand would have only delayed a foregone conclusion because even the order of penalty neither assigns any reason to differ with the opinion of the Enquiry Officer to uphold the guilt nor refers to a single evidence to confirm the charge.

The duty assigned on an authority exercising quasi judicial functions has been a subject matter of discussion in a number of proceedings over the years. Although the judgments are many but for the purpose reference is made to the judgments of the Supreme Court reported in **AIR 1971 SC 862 (M/s Travancore Rayons Ltd., vs. the Union of India & Ors.)** where the Supreme Court has explained the duty of the authority performing quasi judicial functions and his duty to record reasons has been discussed. In fact in a judgment reported in **(2010) SCC 496 (Kranti Associates Private Limited & Anr. Vs. Masood Ahmed Khan and Others)** paragraph 14 to 47, their Lordships of the Supreme Court have reiterated the opinion recorded by the Supreme Court from time to time on the



mandatory nature of disclosure of reasons but unfortunately wisdom yet evades the authorities discharging such function.

The order of the disciplinary authority is bereft of reasons and reflects mechanical application of mind rather the charge is upheld simply on the allegation without bothering to satisfy whether there was any evidence on record of the disciplinary proceeding to uphold the same.

I am in complete agreement with the conclusions drawn by the Enquiry Officer as well as the Trial court that where 'the Act' or 'the Rules' did not conceive of obtaining any licence for trading in Ayurvedic medicine there was no occasion for the complainant to seek such a licence rather the whole set up was stage managed. The situation is even worse here for even when the said application was defective and licence fee was yet to be deposited by the complainant, yet it was found sufficient by the vigilance to mechanically register a case and proceed therefrom without bothering to satisfy themselves whether a defective application could be a foundation for a serious charge as made out against the petitioner.

The circumstances noted by the Enquiry Officer as well as the trial court that the affidavit of the complainant is of a date earlier than the institution of the case and that the independent witness to the vigilance raid were local drug dealers who had faced actions at the



hands of the petitioner are sufficient indication of the malicious prosecution lodged against the petitioner. The trial court at paragraph 27 of the judgment has recorded that the only witness to the alleged bribe giving and taking is the complainant and one Upendra Chaudhary but even the said Upendra Chaudhary had deceased and thus even the verification report which contained his signature could not be proved.

It is taking note of such admitted circumstances that learned State counsel was given an opportunity to demonstrate whether there was any evidence led during the course of disciplinary proceeding which would connect the petitioner to the alleged charge so as to warrant a remand but during the course of the present hearing, nothing could be demonstrated and even the records of the disciplinary proceedings do not improve the situation for the respondents. It is perhaps for this reason that the Joint Secretary while issuing the second show cause notice simply relied upon the chargesheet submitted in the criminal case for reviving the proceedings and even the disciplinary authority has conveniently avoided to discuss any material led during the course of the disciplinary proceeding which connected the petitioner to the alleged charge save and except the bald allegation made by the complainant.

In the noted undisputed circumstances that this Court is of the



opinion that a remand of the matter on the technicality of non adherence of rule 18 of 'the disciplinary rules' by the disciplinary authority would be an exercise in futility and a delayed foregone conclusion for despite repetition, I am persuaded to record that the petitioner has been made a victim of conspiracy by the local drug dealers and even the state has failed to see through the conspiracy so designed against the petitioner. The proceedings is malicious and the conclusion drawn by the disciplinary authority is perverse for it is resting on no evidence.

For the reasons so discussed, the entire proceedings initiated against the petitioner together with the final order of dismissal so passed vide notification bearing No.395(15) dated 28.03.2016 of the State Government impugned at Annexure-14 cannot be upheld and is accordingly quashed and set aside. The petitioner is restored to his post and would be entitled to entire back wages all through which should be paid to him within a period of 3 months from the date of receipt/production of a copy of the order along with other consequential benefits as found admissible to him.

The writ petition is allowed with the directions aforementioned.

Let the records of the disciplinary proceedings so produced by Mr. Sharma be returned to him.

Bibhash/-

(Jyoti Saran, J)

AFR/NAFR	A.F.R
CAV DATE	NA
Uploading Date	21.02.2018
Transmission Date	NA

