

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1004 of 2017

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(Dr.) Shankar Jha son of late Hari Jha resident of village Gangapur, P.S.
Pandaul, District - Madhubani.

... .. Petitioner/s

Versus

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

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Alok Kumar, Adv. Mr. Binodanand Mishra, Adv. Mr. Hemant Mishra, Adv.
For the Respondent/s	:	Mr. Ajay Behari Sinha- Ga8

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 10-07-2018

Heard learned counsel for the parties.

In this case, the petitioner is challenging the order of punishment of censure which has been passed in terms of Rule 14(i) of the Bihar Government Servant (Classification, Control and Appeal) Rule, 2005.

The petitioner at the relevant time was posted as Superintendent of Darbhanga Medical College and Hospital on 30.6.2014 and he was discharging the duty with utmost responsibility and satisfactorily. No complaint was ever made against the petitioner. The ward of the hospital was in a very dilapidated condition and, time to time, letters were addressed for proper repairing and maintenance but, it was proved to be futile.

In the Mithilanchal, the earthquake struck, on that account, some persons were injured and other nature of ailments erupted on



account of earthquake and the people affected were brought to the Darbhanga Medical College and Hospital for their treatment. A news was flashed in the T.V. Channel “Aaj Tak” showing that the patients who were victim of the earthquake, the authorities have pasted a sticker on their forehead. The stickers on the forehead had gone viral, the administration came into action and, accordingly, proper enquiry was conducted, whereafter, the petitioner and other Deputy Superintendents were also proceeded departmentally.

The petitioner was served with Praptra “Ka” in which three charges were framed against him. The first charge was sticking of sticker on the forehead of the earthquake victims and they tried to cover the same. The second charge was that the petitioner was negligent in taking proper action for treatment to the patients at the relevant time and the third charge is that the patients were attended belatedly and the patients and their relatives were compelled to purchase the medicines from open market as the necessary medicines were not kept in the Hospital store for the treatment of the patients. At the same time, further allegation has been made that the patients were not treated properly and the food material supplied to them were not up to the mark and, thereafter, a full-fledged departmental proceeding was initiated. The Enquiry Officer has found the charge nos. “Ka” and “Kha” not proved and with regard to charge no. “Ga”,



the Enquiry Officer has recorded that the prosecution has failed to bring any material to show that he was staying at Jhanjharpur.

The explanation of the petitioner was accepted and the Enquiry Officer also found that he failed to control the situation as he was not knowing about the thing happening in and around the hospital and, accordingly, the charges were partially found to be proved.

Learned counsel for the petitioner submits that the explanation with respect to charge no.3 having been accepted by the Enquiry Officer but, the charges were found to be partially proved against the petitioner is without any substance as it is impossible for the Superintendent to remain informed of all events took place in and around the hospital. So far the charges which are of substance having been not found proved against the petitioner but, a charge which was remotely connected with the official duty of the petitioner was found to be proved roughly, cannot be a basis for awarding punishment, the charge that the petitioner failed to know the incident in the hospital cannot be a subject matter of a departmental proceeding as it was not part of charge-sheet. It has further been submitted that before inflicting the punishment, it was the bounden duty of the authority that the enquiry report should have been served, explanation should have been asked and only then the punishment could have been awarded but, this procedure has not been followed in this case and



the same has also not been denied by the State rather it has been accepted in verbatim that the enquiry report was not served to the petitioner and no show-cause was issued asking explanation with regard to enquiry report in which it has been recorded that the charge was found partially proved and, as such, the order requires to be interfered with, inasmuch as, the petitioner has also superannuated from service, it will be unnecessary harassment to the petitioner for remanding back and asking the authority concerned to serve a copy of the enquiry report and after receipt of the explanation, pass an order accordingly.

Per contra, learned counsel for the State has submitted that though two charges were not found to be proved but, with regard to one charge it has partially been proved and, as such, looking to the nature of misconduct, the quantum of minor punishment has been awarded to the petitioner commensurate to the allegations but, there is no denial to the fact that neither the copy of enquiry report was served upon the petitioner nor any comment on the enquiry report was asked and, as such, on the face of it, the punishment which has been awarded to the petitioner cannot survive. It is well known principle of law that when the enquiry officer has submitted the enquiry report and found the charges proved, in turn, the Disciplinary Authority will serve the enquiry report and ask comments on the



enquiry report and, after due consideration, the order would be passed but, this procedure has not been followed in the present case.

In such view of the matter the order of punishment passed against the petitioner in awarding censure is set aside.

On the question of remanding back the case to the Disciplinary Authority, as the final action without serving the notice is a technical flaw committed by the authority concerned. This Court would have remanded back the matter but, the question in the present case that the petitioner has already superannuated from service and, in such circumstances, the proceeding has to be converted in 43(b) of the Bihar Pension Rule which provides satisfaction of two conditions, one is, the conduct shows major misconduct, at the same time, it has caused financial loss to the State. The charges which have been found to be proved does not depict about the major misconduct or any loss caused to the State.

In that view of the matter, the order of punishment is quashed. At the same time, the petitioner will be entitled to the salary during the period of suspension.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
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