

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5334 of 2001

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Abinash Kumar Sinha son of Sri Baijnath Sahay, resident of 'D' Block,
Kadamkuan, Police Station Kadamkuan, District Patna.

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Chemical and Fertilizer, Government of India, New Delhi, having his office in Shastri Nagar, Dr. Rajendra Prasad Road, New Delhi.
2. The Managing Director, Hindustan Antibiotic Limited Pimpri, Pune, Government of India undertaking.
3. The General Manager Marketing Hindustan Antibiotics Limited, Pimpri, Pune.
4. The Divisional Manager, Hindustan Antibiotics Limited, Road No.5, Rajendra Nagar, Patna-16.
5. The Divisional Manager having his office in Hindustan Antibiotics Limited, Calcutta.
6. Hindustan Antibiotics Limited through Company Secretary, Pimpri, Pune, A Government of India Undertaking

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rupak Kumar, Adv.
Mr. Jitendra Kumar, Adv.
For the Respondent/s : Mr. Manish Kumar
Mr. Rana Vikram Singh

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date: 25-08-2018

It is very surprising and shocking that the respondents no. 2 to 5 i.e. the authorities of Hindustan Antibiotics Limited, Pimpri, Pune have been playing hide and seek with this Court since despite valid service of notice and a direction of this Court to file counter affidavit, failing which a sum of Rs. 5,000/- would have to be deposited by them with the Patna High Court Legal Services Committee, Patna, neither any counter affidavit has been filed nor the said cost of Rs. 5,000/- has been paid, which shows that the said



respondents have no regard to the orders of this Court. In such view of the matter, this Court is not inclined to grant any further adjournment to the respondents, who are duly represented by their learned counsel, hence this Court proposes to hear the present case and pass the final orders. However, since the aforesaid respondents have violated the order of this Court and not deposited the aforesaid amount of Rs. 5000/-, the Registrar General of this Court is directed to send a communication to the Director General of Police, Maharashtra to ensure payment of cost of Rs. 5,000/- by the said respondents forthwith, as directed by this Court vide order dated 6.3.2018.

2. Now, coming to the merits of this case, the case of the petitioner is that the petitioner had joined as Junior Medical representative with the Hindustan Antibiotics Limited in the year 1985 and thereafter he was working to the satisfaction of all concerned and his case was also recommended for promotion to the post of Regional Manager. However, suddenly the petitioner was served with a charge memo dated 19.11.1999 relating to the period 1992 to 1995 on the allegations of having committed irregularities in the working of the company in Nepal area in supplying medicines to the distributors without any confirmed orders as also regarding slow movement of stocks and accepting part payment from the distributors as per liquidations of stocks and making adjustments by giving special



rates for the medicines supplied to the distributors. Thereafter, an enquiry was conducted by the enquiry officer and the enquiry officer submitted his enquiry report dated 13.9.2000 finding all the charges levelled against the petitioner to have been proved. A second show cause notice dated 9.10.2000 was then issued to the petitioner admitting that the enquiry proceeding had been held in absence of the physical presence of the petitioner. However, the petitioner was asked to submit his reply to the enquiry report and the findings arrived at by the enquiry officer. Further, in the said show cause notice dated 9.10.2000 the petitioner was asked to show cause as to why he should not be dismissed from service. Thereafter, the General Manager (Marketing) by an order dated 5.12.2000 dismissed the petitioner from the services of the company, without notice, w.e.f. 5.12.2000. The petitioner had then filed an appeal, however, the same has also been dismissed by the Managing Director of the Hindustan Antibiotics Limited by an order dated 24.1.2001.

3. The learned counsel for the petitioner has raised a small point for consideration to the effect that the petitioner was promoted as Area Executive in the marketing division by an order issued by the Chief General Manager (Marketing), who is the appointing authority of the petitioner herein, however, the punishment order dated 5.12.2000 has been passed by the General Manager



(Marketing), hence on this ground alone, the order of punishment dated 5.12.2000 is fit to be set aside since the petitioner could not have been dismissed by an authority who is lower in rank to the appointing authority. Reference in this regard has been made to a judgment reported in *AIR 1964 SC 600 (Moti Ram Deka Vs. G.M., North East Frontier Railway & Ors.)*. The next issue raised by the learned counsel for the petitioner is that bare perusal of the punishment order dated 5.12.2000 would show that neither any opportunity of hearing was given to the petitioner nor any reason whatsoever has been furnished in the said order of dismissal, hence the order of dismissal is fit to be set aside on this ground alone. Reference in this regard has been made to a judgment reported in *(2002) 10 SCC 351 [State of Bihar & Ors. Vs. Lakshmi Shankar Prasad]* and the one reported in *2005(3) PLJR 304 [Md. Hassan Ansari vs. The State of Bihar & Ors.]* The last submission made by the learned counsel for the petitioner is that once the appellate order dated 24.1.2001 does not deal with any of the issues raised while filing the memo of appeal on 7.1.2001, the appellate order dated 24.1.2001 is perverse and fit to be set aside.

4. The respondents have not controverted the aforesaid pleadings and submissions made by the learned counsel for the petitioner, hence the grounds raised by the learned counsel for the



petitioner for assailing the order of punishment dated 5.12.2000 and the appellate order dated 24.1.2001 are held to be cogent and legal, thus for the reasons discussed herein above in the preceding paragraphs, as argued by the learned counsel for the petitioner, the order of punishment dated 5.12.2000 and the appellate order dated 24.1.2001 are held to be illegal and perverse and are accordingly quashed.

5. The writ petition is allowed with a direction to the respondent authorities of the Hindustan Antibiotics Limited to pay all the consequential benefits as a result of allowing of the present writ petition and quashing of the order of dismissal. It is needless to state that the petitioner be re-instated in service forthwith.

(Mohit Kumar Shah, J)

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Uploading Date	
Transmission Date	

