

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10161 of 2013

=====

Dr. Sakaldip Choudhary S/O Late Somar Choudhary R/O Village- Nimi, P.S.-
Daniaama, District- Patna

.... Petitioner/s

Versus

1. The State Of Bihar, Through The Principal Secretary Department Of Health,
Govt. Of Bihar, Patna
2. Joint Secretary Department Of Health, Govt. Of Bihar, Patna
3. Additional Secretary Department Of Health, Govt. Of Bihar, Patna
4. Deputy Director, Health Services, Bihar, Patna
5. Deputy Director, Health Services, Tirhut Division, Muzaffarpur
6. Civil Surgeon Cum Chief Medical Officer, Muzaffarpur

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Banwari Sharma, Advocate
Mr. Shiv Kumar, Advocate
Mr. Sahjanand Sharma, Advocate
For the Respondent/s : Mr. Bijay Bhushan Prasad, AC to SC 13

=====

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 29-08-2018

Heard learned counsel for the petitioner and the
respondent State.

2. Writ petition has been filed challenging the notification
dated 07.02.2012 bearing memo No. 248 (9) issued by the Additional
Secretary in the Department of Health, Government of Bihar whereby
and where under the petitioner has been awarded the punishment of
reduction to lower scale of pay for five years. His annual increments
for the said period and thereafter have also been withheld.

3. The short issue raised by Mr. Sharma, learned counsel



appearing on behalf of the petitioner is that the order of punishment has been awarded without even communicating any charge to the petitioner. Referring to the Resolution dated 21.02.2007 bearing memo no. 146 (9) issued by the Joint Secretary to the Government of Bihar in the Department of Health, he rightly points out that though the same resolves to initiate proceedings against him but the enclosure thereto does not disclose any charge. The essence of the submission made by the counsel for the petitioner is that primarily such punishment is violative of Principles of Natural Justice since no charge whatsoever has been communicated to the petitioner so as to enable him to prepare his defence or meet the charges.

4. Requirement of issuing the charge has been rendered futile. Bare perusal of the charge memo under the Resolution dated 21.02.2007 would show that it is not in accordance with the requirements of Rule 17(3) & (4) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as the Bihar CCA Rules, 2005). This Court would also observe that the same does not disclose any charges whatsoever. The charge which has been communicated to the petitioner is as follows:

“आरोप

निगरानी थाना कांड सं० 28/06 दिनांक 12.5.06
के अनुसंधान में पाये गये साक्ष्य तालिका—

1. थाना कांड संख्या 28/06
का जांच प्रतिवेदन।”



5. Other than communicating the preliminary enquiry report of the Department of Vigilance, the charge memo does not disclose any allegation whatsoever. It does not even disclose as to what part of the preliminary enquiry report constitutes a charge against the petitioner. The charge memo is perverse and defies logic. The manner in which the authorities have proceeded against the petitioner leaves no room for doubt that the action against the petitioner is in total contravention of the Principles of Natural Justice and infraction of the fairness required in the matter of conduct of proceedings.

6. It is a basic requirement of the Principles of Natural Justice that before a person is visited with civil consequences he must be given an opportunity to defend himself. Such opportunity is manifest by issuing a charge memo. Accordingly, the Bihar CCA Rules, 2005 incorporates the requirements for issuing a charge memo. Bare perusal of the Resolution dated 21.02.2007 as noted hereinabove shows that the same does not disclose any charge whatsoever. From perusal of charge memo no allegation/misconduct is made out. On basis of such charge memo it is also not possible for the Enquiry Officer or Presenting Officer to know what charges are to be established. Such charge memo which does not communicate any



charge cannot form the basis of any proceedings.

7. The entire proceedings arising out of the said Resolution are therefore, not only in violation of the Bihar CCA Rules, 2005 but also in violation of the Principles of Natural Justice and fairness. The entire actions arising out of the charge memo dated 21.02.2007 are therefore, unsustainable in the eye of law.

8. This Court, in the facts and circumstances taken note of hereinabove, is left with no option but to quash the entire proceedings arising out of the charge memo dated 21.02.2007 as also the order of punishment dated 07.02.2012 bearing memo no. 248 (9) issued by the Health Department.

9. The writ petition is allowed in the aforesaid terms.

10. Counsel for the State prays that a liberty should be granted to the department to initiate a proceeding afresh.

11. It goes without saying that the respondents would be entitled to avail opportunity for initiating a proceeding afresh in accordance with law if so required.

(Madhuresh Prasad, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

