

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8177 of 2015

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Dr. Vijay Kumar. S/o Late Rameshwar Paswan. Resident of Mohalla -
Bariyusufpur, P.O.- Hajipur, P.S.- Industrial Area, Hajipur, District - Vaishali,
Bihar, presently posted as Medical Officer, Referral Hospital, P.O.- Meriganj, P.S.-
Raniganj, Dist.- Araria. Petitioner

Versus

1. The State of Bihar, through the Principal Secretary, Health Department,
Government of Bihar, Patna.
 2. The Principal Secretary, Health Department, Government of Bihar, Patna.
 3. The Deputy Secretary, Health Department, Government of Bihar, Patna.
 4. The Under Secretary, Health Department, Government of Bihar, Patna.
 5. The Joint Director, Health Services, Bihar, Patna Respondents
- =====

Appearance :

For the Petitioner : Mr. Y. V. Giri, Senior Advocate and
Mr. Nikhil Kumar Agrawal, Advocate

For the State : Prachi Pallavi, AC to AG, Bihar

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

CAV JUDGMENT

Date: 9th July, 2018.

Heard learned senior counsel for the petitioner and learned
counsel for the State.

2. The brief facts giving rise to the writ petition are that one
charge memo dated 2.12.2009 (Annexure 3) came to be served on
the petitioner who was then working as In-charge Medical officer,
Primary Health Center, Sarmera in the District of Nalanda. Petitioner
had been placed under suspension. The allegation was arising out of
Vigilance Police Station Case No. 42 of 2009 lodged against him on
24.4.2009. The charges were mentioned in '*Praptra Ka*' issued by
the authorities vide letter dated 12.11.2009. Substance of the
allegation was that the petitioner had been caught red handed while
accepting a bribe of Rs. 3000/-. The list of evidence which is



enclosed along with '*Praptra ka*' contains departmental communications including papers in relation to the vigilance case against the instant petitioner. By relying upon such documents the authorities proposed to establish the charge against the petitioner in the proceedings.

3. An enquiry report was submitted which is dated 10.9.2010. In respect of Charge no.1 alleging bribery, the Enquiry officer has submitted a report to the extent that a final decision would be taken only after conclusion of the pending judicial proceeding. Order indicates that till conclusion of the vigilance case against the petitioner, final decision was not possible in respect of the charge of accepting bribe on basis of material available on record. Regarding Charge no.2 arising out of some irregularities in some schemes of the Government, the Enquiry officer has specifically held the same to be not proved.

4. The said enquiry report does not record clear and definite findings in support of any of the allegations made against the petitioner and none of the charges were proved in the proceedings before the Enquiry officer.

5. Under order dated 23.3.2011 (Annexure 5) the Disciplinary authority has communicated his disagreement with the enquiry report submitted in favour of the petitioner and called upon him to submit his reply within 15 days. One fact that is relevant to



notice at this juncture is that the order of the Disciplinary authority does not contain any tentative reason for differing with the findings of the Enquiry officer and is contrary to the procedure prescribed under Rule 18 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as 'the Bihar CCA Rules, 2005'). In this respect, stand of the State Government as contained in the counter affidavit is also relevant to notice wherein they have submitted that the enquiry report was duly examined by the Health Department, Government of Bihar and differing with the enquiry report second show cause was issued to the petitioner. Counter affidavit is also vague and does not contain the reasons for disagreement with the findings of the Enquiry officer, other than examination of the Enquiry report by the Health Department. The admitted position that emerges is that enquiry report had not been considered by the Disciplinary authority.

6. It is also submitted on behalf of the petitioner that even alleged consideration of the department has never been communicated to him. Disciplinary authority was acting on extraneous considerations such as consideration of the Enquiry report at the departmental level. No opportunity was given to the petitioner by the Disciplinary authority independently to submit his reply to the second show cause. It is submitted that Annexure 5 purporting to be second show cause to the petitioner was in fact nothing but an empty formality dictated by the department and is



not as per the procedure contained in Rule 18 (2) & (3) of the Bihar CCA Rules, 2005 which mandates that Disciplinary authority is required to consider the Enquiry report. Even consideration of the department has not been communicated to the petitioner while issuing second show cause, therefore, does not subserve the Principle of Natural Justice.

7. The petitioner in response to the said second show cause dated 23.3.2011 submitted his elaborated response which has been received in the office of the Disciplinary authority on 25.4.2011 wherein he has given a detailed response highlighting the various procedural infirmity. The issue that such a second show cause would not subserve the Principle of Natural Justice has also been highlighted by the petitioner, in his response, with reference to the law in this regard.

8. The Disciplinary authority under order dated 25.8.2011 (Annexure 7) has inflicted the petitioner with the punishment of reduction to lower time scale of pay with non cumulative effect for a period of three years. It has also been concluded that other than subsistence allowance nothing would be payable to the petitioner in respect of the period of suspension during which the proceedings against him had been conducted. The Disciplinary authority has also ordered debarring any further promotion to the petitioner during pendency of the criminal case.

9. Availing the statutory remedy of appeal, the petitioner



submitted his memo of appeal before the Appellate authority on 30.9.2011 (Annexure 9) challenging the punishment inflicted on him. Petitioner has highlighted the procedural lapses, which as noticed above were committed by the Disciplinary authority. More than three years thereafter, while appeal of the petitioner under Rule 23 of the Bihar CCA Rules was pending, the petitioner was served with a notice dated 9.10.2014 (Annexure 10) to the writ petition. He was called upon to show cause as to why the punishment imposed upon him under order dated 25.8.2011 (Annexure 7) be not revised by the authorities invoking their Revisional power under Rule 28 of the Bihar CCA Rules. The petitioner submitted his response by making a representation dated 10.11.2017 (Annexure 11).

10. The petitioner has contended in his response before the authorities that his appeal filed against order of punishment was pending and that the same had not been disposed of. He has also raised a grievance that since the statute provides a time limit within which the revisional power could have been exercised taking resort to revision by the authorities was time barred. By raising his grievance the petitioner has prayed that his representation may be accepted, and the proceedings in the revision initiated under notice dated 9.10.2014 may be closed.

11. The authorities thereafter issued order dated 28.4.2015 (Annexure 12) proclaiming to be “Reasoned Order”. The same is a composite order disposing of the appeal filed by the petitioner as



also deciding to revise the punishment dated 25.8.2011 in light of the allegations made against the petitioner and considering the fact that the charges in relation to the bribery had been established.

12. The composite order dated 28.4.2015 (Annexure 12) as also order dated 25.8.2011 (Annexure 7), issued by the Disciplinary authority inflicting punishment upon the petitioner have been assailed by filing the instant writ petition.

13. In view of the above noted facts and in view of the agreement between the parties, the matter is being taken up for disposal at the stage of admission itself.

14. The petitioner has challenged the entire procedure adopted by the respondent authorities since passing of the order of punishment dated 25.8.2011 upto the composite order dated 28.4.2015 whereby and whereunder, while rejecting his appeal under Rule 27 of the Bihar CCA Rules, the respondent authorities have communicated their decision under Rule 28 of the Bihar CCA Rules to revise the punishment inflicted under order dated 25.8.2011 considering the same to be inadequate.

15. It is submitted that order of punishment is at the dictates of the department. The Disciplinary authority has not recorded its own reason for disagreement with the findings of the Enquiry officer. It has also not recorded its own tentative findings with reference to the charges and as such order of punishment dated 25.8.2011 is contrary to the mandate of Rule 18(2) & (3) of the



Bihar CCA Rules, 2005.

16. Order of the Appellate authority is also assailed on the ground of being contrary to the procedure prescribed under Rule 27(2) of the Bihar CCA Rules, 2005. Rule 27(2) clearly prescribes the manner of “consideration of appeal”. Said procedure has blatantly been violated. The composite order dated 28.4.2015 is assailed on the ground that there is no provision in the Bihar CCA Rules, 2005 which allows issuing such a composite order disposing of the appeal as also deciding to enhance the punishment invoking the revisional jurisdiction under Rule 28 of the Bihar CCA Rules, 2005. The consequent order of punishment of dismissal dated 20.12.2017 has been assailed as being the outcome of a procedure wholly unknown to the Bihar CCA Rules, 2005 and without complying with the principle of the Natural Justice and as being barred by the limitation of six months prescribed in Rule 28 of the Bihar CCA Rules, 2005. The order is also without recording any reason whatsoever for condoning the delay as required under Rule 29 of the Bihar CCA Rules, 2005. It is also submitted that authority proposing to enhance the punishment under purported exercise of power under Rule 28 of the Bihar CCA Rules, 2005 could not have done so without resorting to an enquiry in the manner laid down in Rule 17 of the Bihar CCA Rules, 2005 after giving a reasonable opportunity to the petitioner.

17. On behalf of the State it is submitted by learned counsel



for petitioner that the charges against the petitioner are very grave. In view of the charges of bribery, consequence of dismissal was wholly justified as no leniency can be shown on the issue of corruption. Learned counsel submits that the period of limitation prescribed under Rule 28 of the Bihar CCA Rules, 2005 should be would be calculated from 28.4.2015, i.e., the date on which the composite order disposing of the appeal and deciding to revise the punishment was issued. She submits that sufficient opportunity has been afforded to the petitioner so as to ensure compliance with the principle of Natural Justice. It is also submitted that the petitioner's reliance on Rule 28 of the Bihar CCA Rules, 2005 to contend that for revising/enhancing punishment enquiry in the matter laid down under Rule 17 was a pre requisite is misconceived. No second opportunity is envisaged under proviso to Rule 28 of the Bihar CCA Rules, 2005.

18. Order of punishment has been awarded on 20.12.2017 as a consequence of composite order dated 28.4.2015. The same has been challenged by way of I.A.No. 316 of 2018. Since punishment of dismissal was awarded to the petitioner during pendency of the instant proceedings, State was allowed opportunity to respond to I.A. and supplementary counter affidavit has been filed on behalf of the State.

19. Bare perusal of the order dated 23.3.2011 (annexure 5) purporting to differ with the findings of the Enquiry officer reveals



that it is violative of the procedure prescribed under Rule 18(2) & (3) of the Bihar CCA Rules, 2005.

Rules 18(2) & (3) of the Bihar CCA Rules, 2005 mandate as follows:-

“(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.”

20. The Rule requires the Disciplinary authority to record its reason for disagreeing with the findings of the enquiry authority. It also requires that the Disciplinary authority should record its own findings. The same is to be done with reference to an evidence on record and only if the reasons are sufficient for the propose. The Rule also requires that the reasons, findings and evidence relied upon by the Disciplinary authority be forwarded/communicated along with a copy of the enquiry report to the delinquent while soliciting the written representation/submission.

21. This has not been done in the instant case. No reasons of the Disciplinary Authority have been recorded with reference to



any material or evidence. The respondents have explained by way of counter affidavit that the Disciplinary authority has acted as per the dictates of the department by saying that the enquiry report was duly examined by the Health department.

22. No independent reasons or findings with reference to any evidence whatsoever has been recorded in the communication dated 23.3.2011. Even the purported reasons on which the Department has taken a decision, has not been communicated to the petitioner. Respondents in the counter affidavit have specifically taken a stand that "... after receipt of the enquiry report the matter was duly examined by the Health department, Government of Bihar and differing with the enquiry report issued second show cause to the petitioner vide memo no. 268 (9) dated 23.3.2011 under the signature of the Deputy Secretary, Health department, Government of Bihar...". For the reasons indicated hereinabove such stand of the respondents is unsustainable in law.

23. There is complete violation of Rule 18 of the Bihar CCA Rules, 2005. On this ground alone, all further proceedings after submission of the enquiry report are liable to be struck down.

24. The petitioner has also availed the remedy of appeal provided under Rule 27 of the Bihar CCA Rules, 2005. Rule 27 requires consideration of the appeal. In respect of appeal against order imposing penalty. Appellate authority is required at least to



consider the contentions raised therein. Appeal of the petitioner dated 30.9.2011 is a detailed appeal highlighting the procedural lapses committed by the Disciplinary authority.

Relevant extract of Rule 27 laying down the mandatory scope of consideration of appeal is as follows:-

.....(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 14, the appellate authority shall consider-

(a) whether the procedure laid down in these Rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

(c) whether the penalty imposed is adequate, inadequate or severe; and pass orders-

(i) confirming, enhancing, reducing, or setting aside the penalty; or

(ii) remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case :

25. The detailed and elaborate appeal filed by the petitioner was required to be considered under Rule 27 of the Bihar CCA Rules, 2005 by considering whether the procedure laid down in the Rules had been complied and whether non consideration of any provision has occasioned failure of justice. The Appellate authority was also required to consider whether the evidence on record was sufficient to sustain the findings of the Disciplinary authority. Thirdly, the adequacy/inadequacy of punishment was to be considered. None of this has been done.



26. The authorities vide composite order dated 28.4.2015 have disposed of the appeal without considering any of the issues including procedural infirmities raised by the petitioner. The sufficiency of evidence so as to sustain the findings of the Disciplinary authority has also not been considered. In fact order dated 28.4.2015 does not show consideration of any of the points raised by the petitioner and a very cryptic order has been passed without considering any of the plea raised by the petitioner in his appeal. The requirement of assigning reasons has been reiterated by courts repeatedly. Only by considering issues and assigning reasons the authorities can fortify their orders against attack on the ground of arbitrariness in the decision making process. It is a different thing that reasoned and speaking orders may be assailed on the ground of the same being violative of the Principles of Natural Justice, being perverse or other permissible grounds. Such order of the Appellate authority, without assigning any reasons and without considering any of the points which it was required to consider under Rule 27 of the Bihar CCA Rules, renders the remedy of appeal a mere formality. Order dated 28.4.2015, therefore, amounts to deprive the petitioner his remedy of appeal provided under Rule 23 of the Bihar CCA Rules, 2005.

27. Defects in the decision making process do not end here. Last paragraph of order passed by the Appellate authority proposes to invoke the revisional jurisdiction under Rule 28 of the Bihar CCA



Rules, 2005. It records that the punishment awarded under order dated 25.8.2011 by the Disciplinary authority was found to be inadequate and therefore the Disciplinary authority has decided to revise the punishment by invoking its power under Rule 28 of the Bihar CCA Rules, 2005. The revisional jurisdiction under Rule 28 of the Bihar CCA Rules, 2005 could not have been invoked by the department after such an inordinate delay, after about three years. The revisional jurisdiction could not have been invoked after the limitation period of six months prescribed therein. Only by exercising power under Rule 29 of the Bihar CCA Rules, 2005 for “good and sufficient reasons” the revisional power could have been exercised by condoning the delay . In fact, order of the Appellate authority which is a composite order rejecting petitioner's appeal and invoking power under Rule 28 of the Bihar CCA Rules, 2005 does not record any reasons whatsoever for invoking revisional jurisdiction under Rule 28 of the Bihar CCA Rules, 2005 after such inordinate delay of three years. Clearly exercise under Rule 28 was barred by delay.

28. The revisional jurisdiction under Rule 28 of the Bihar CCA Rules, 2005 was also circumscribed by a procedure which requires the revisional authority to exercise its revisional jurisdiction on its own or otherwise after calling for the records of any enquiry, after consultation with the Commission where such consultation was necessary. Another pre condition to the exercise of revisional



jurisdiction is that no appeal should have been preferred or from which no appeal is allowed. The appeal in the instant case had been preferred and the revisional jurisdiction has been exercised during pendency of the appeal. Order dated 28.4.2015 purporting to invoke revisional jurisdiction is, therefore, clearly not in accordance with the procedure prescribed under Rule 28 of the Bihar CCA Rules, 2005. Even prior concurrence of the Service Commission which was necessary in case of the petitioner was not obtained. Thus requisite conditions for invoking revisional jurisdiction under the Bihar CCA Rules, 2005 was not complied and the order dated 28.4.2015 passed on revision, thus cannot be sustained.

29. Last issue raised by learned counsel for the petitioner is that the order could have been passed enhancing punishment/penalty under Rule 28 of the Bihar CCA Rules, 2005 only after an enquiry in the manner laid down under Rule 17 of the CCA Rules, 2005. The same need not be considered in the instant case and is left open for consideration in an appropriate case since this Court is satisfied that while issuing the second show causes notice dated 23.3.2011 the Disciplinary authority has committed a gross illegality by issuing the same without recording reasons and communicating any reasons of disagreement and without discussing any material/evidence on record to sustain its conclusion to differ with the findings of the Enquiry officer, which findings were favourable to the petitioner. The entire procedure prescribed under rule 18(2) & (3) have



therefore been violated by the Disciplinary authority. The opportunity at this stage and in such circumstance, where the findings of the Enquiry officer are favourable to the petitioner, is a very vital opportunity. The importance of second show cause notice to contain reasons of disagreement and tentative findings of the Disciplinary authority, as required under Rule 18 of the Bihar CCA Rules, 2005, has been emphasized by the Hon'ble Apex Court in case of **the Punjab National Bank and others Vs. Kunj Bihari Misra**, reported in (1998) 7 Supreme Court Cases 84. Relevant extract from paragraphs 17 and 19 of the judgment are reproduced herein below:-

“17.... When, like in the present case, the inquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings what is of ultimate importance is the findings of the disciplinary authority...

19....The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favorable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges



framed against the officer.”

30. Such failure on the part of the Disciplinary authority renders the entire exercise after submission of the Enquiry report till award of punishment by the Disciplinary authority to be illegal.

31. In support of submission regarding illegal exercise of jurisdiction by appellate authority learned Senior counsel for appellant has relied upon judgment of the apex court in case of James Joseph Vs. State of Kerala, reported in (2010) 9 SCC 642. The judgment of the Hon'ble Apex Court has formulated various principles regarding scope and manner of exercise of appellate jurisdiction. Amongst other principles, the judgment of the Hon'ble Apex Court emphasizes that the extent and scope of appeal has to be decided with reference to the language employed by the statute conferring the appellate jurisdiction. In the instant case also, the Bihar CCA Rules, 2005, as noticed above, prescribes the extent and manner of exercise of appellate jurisdiction. The same has clearly been violated and the order passed by the Appellate authority dated 28.4.2015 is illegal and unsustainable for the reasons indicated hereinabove.

32. Exercise of revisional jurisdiction in the instant case is also in gross violation of the procedure and scope laid down in Rule 28 of the Bihar CCA Rules, 2005. Order of punishment dated 20.12.2017 contained in memo no.1304 (Annexure 9) by the Health



department, Government of Bihar, as noticed above is without following the mandatory procedure prescribed for invoking jurisdiction under Rule 28 of the Bihar CCA Rules, 2005 by the Government itself.

33. The Bihar CCA Rules, 2005 provides the procedure to ensure compliance with fairness and observance with Principle of Natural justice in the matter of the conduct of departmental enquiry against a delinquent. The procedure prescribed in the Bihar CCA Rules, 2005 is to ensure fairness so that no one who is innocent should be punished. The respondent State authorities are, therefore, under legal obligation to ensure compliance with the procedure prescribed under the Bihar CCA Rules, 2005. Order dated 20.12.2017 issued by the department bearing Memo no. 1304(9) inflicting severe punishment of dismissal upon the petitioner and having such grave civil consequence in violation of the procedure prescribed under the Bihar CCA Rules and in violation of the principle of Natural Justice and fairness is unsustainable and hereby quashed.

34. Since the proceedings, after submission of the enquiry report up to invocation of revisional jurisdiction, have been found to be in gross violation of the principles of Natural Justice and fair play and specifically violative of procedure prescribed under the Bihar CCA Rules, 2005 the entire proceedings after submission of the enquiry report as well as order of punishment dated 25.8.2011



(Annexure 7) is also quashed.

35. As a result of quashing of the punishment order, the petitioner would be entitled to all consequential benefits.

36. The writ petition is allowed.

(Madhuresh Prasad, J)

Shashi.

AFR/NAFR	AFR
CAV DATE	10.04.2018
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