

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1477 of 2013

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DR. BANWARI LAL S/O LATE SHIVDHARI BAITHA R/O VILL.-
BINDUSAR, P.S.- MUFFASIL, DISTRICT- SIWAN

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR REPRESENTED THROUGH THE CHIEF SECRETARY GOVT. OF BIHAR, PATNA
2. THE PRINCIPAL SECRETARY DEPTT. OF HEALTH, GOVERNMENT OF BIHAR, PATNA
3. ADDITIONAL SECRETARY, DEPTT. OF HEALTH, GOVERNMENT OF BIHAR, PATNA
4. JOINT SECRETARY DEPTT. OF HEALTH, GOVERNMENT OF BIHAR, PATNA
5. DEPUTY SECRETARY DEPTT. OF HEALTH, GOVERNMENT OF BIHAR, PATNA

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prabhakar Singh
For the Respondent/s : Mr. YOGENDRA PD. SINHA

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 26-02-2018

Heard learned counsel for the parties.

This writ petition under Article 226 of the Constitution of India has been filed for quashing the resolution dated 31.07.2012, by which the services of the petitioner has been terminated.

Briefly stated, the facts of the case is that petitioner was posted as District Tuberculosis Officer, Bettiah and was arrested by vigilance team on 23.01.2006 for accepting bribe from the complainant.

A vigilance case was registered on the basis of



written complaint made by the complainant before the Additional Director General, Vigilance, stating therein that he was posted in the District Tuberculosis Centre, Bettiah and petitioner used to demand bribe for his release of monthly salary. The complainant had met the petitioner with an application for grant of leave on account of marriage of his niece and petitioner orally allowed him to proceed on leave and after his return, he was show caused which was replied but not accepted and thereafter he was marked absent for five days and a message was conveyed by the petitioner to the complainant for payment of Rs. 2000/- and is not ready to accept Rs. 500/-, and same was conveyed to the complainant by the son of the petitioner and on such complaint being made, vigilance department FIR was instituted against the petitioner. Thereafter a team was constituted and after verification of allegation, Rs. 1500/- was recovered from below the table-cloth by the trap team and petitioner was arrested on 25.01.2006. The petitioner was put under suspension but his suspension was not revoked after release from the jail. A departmental proceeding was initiated against him under Bihar Government Servant (Classification, Control & Appeal) Rules, 2005, by resolution dated 07.08.2006. The charges in the departmental proceeding



as well as criminal proceeding were identical. Petitioner submitted his reply to the show cause notice on 09.01.2007 and stated that he is innocent and has been falsely implicated in this case on the basis of manufactured and fabricated documents. The enquiry officer after examining and considering the show cause as well as materials available on record, the attendance register of complainant, his previous conduct and report of forensic lab of not changing of colour of hand found charges against the petitioner to be doubtful and opined that the matter should be kept under abeyance till decision of the vigilance court. It has been further submitted that samples of hand wash of petitioner was sent to Forensic Science Laboratory, Patna to prove the acceptance of bribe and FSL report does not support the prosecution case as reported by the FSL on 20.09.2007. The recommendation of departmental authorities for revocation of suspension order did not found favour with the Chief Secretary and a fresh departmental proceeding was instituted against him by order dated 20.04.2010, at the instance of Chief Secretary on the report of letter of the trap team without being examined before the enquiry officer and without any opportunity to the petitioner to cross-examine him. The petitioner had also filed CWJC No. 14837 of 2010, which was disposed of by order



dated 12.10.2010, directing the respondent-authorities to conclude the departmental proceeding within three months. It was proposed by the department to conclude the departmental proceeding after awarding minor punishment which was approved by the departmental head as well as departmental minister but the Chief Secretary and Chief Minister passed an order of punishment of dismissal of the petitioner from service and thereafter order of termination dated 31.07.2012 was issued.

A counter affidavit has been filed on behalf of respondent, in which they have defended the order of dismissal of petitioner from service and have stated that sufficient opportunity was granted to the petitioner and there has been no violation of principles of natural justice and the BPSC had also concurred with the proposed punishment against the petitioner. The petitioner during his posting as District Tuberculosis Officer, Bettiah was arrested for accepting bribe against which vigilance PS Case No. 04 of 2006 was registered against him. In the light of the aforesaid, petitioner was put under suspension by notification dated 18.03.2006 w.e.f. 25.01.2006 and after his release on bail and after his joining, he was again put under suspension vide notification dated 06.06.2007 w.e.f. 02.05.2006 and simultaneously a decision was taken to initiate departmental



proceeding against the petitioner vide resolution dated 07.08.2006. It has been further stated that after receipt of report of inquiry, it was reviewed by the disciplinary authority and since the charges were serious in nature therefore, it was decided to hold *de novo* enquiry by the Health Department Notification dated 20.04.2010. It has been further submitted that in the light of order dated 12.10.2010 passed in CWJC No. 14837 of 2010, a show cause notice dated 27.12.2010 was issued to the petitioner after differing from inquiry report submitted by the enquiry officer pursuant to the resolution of 2006 and petitioner submitted his reply on 10.01.2011, which was duly considered and charges against the petitioner were found to be proved and thereafter he was imposed penalty of dismissal from service and decision of the Government with respect to proposed punishment was also concurred by the BPSC by its letter dated 29.03.2012.

After hearing learned counsel for the petitioner as well as learned counsel for the State, this Court finds that no procedure of departmental proceeding as envisaged under Bihar Government Servant (Classification, Control & Appeal) Rules, 2005, has been followed by the department. In the memo of charge dated 07.08.2006, nothing has been enclosed on the basis



of which department proposed charges to be proved against the petitioner, no list of witnesses of oral evidence or documentary evidence in support of charges has been enclosed along with memo of charge which is contrary to the provisions as contemplated in Rule-17(3) of Bihar Government Servant (Classification, Control & Appeal) Rules, 2005. The enquiry officer had not found the charges against the petitioner to be proved and the same was sent to the competent authority and by resolution dated 20.04.2010, enquiry report was not accepted by the competent authority and thereafter a direction was given to hold *de novo* inquiry which is not permissible, there is no provision of holding second inquiry after conclusion of inquiry proceeding in which the enquiry officer has submitted its report to the disciplinary authority. The disciplinary authority is free to disagree with the findings of enquiry report but under no circumstance he can direct for second inquiry proceeding for the same charge, as such the inquiry proceeding against the petitioner is vitiated. It appears that in the second inquiry also the enquiry officer has found the charges not to be proved and petitioner was given a second show cause on 27.12.2010, issued by the disciplinary authority differing with the finding of enquiry officer but in that second show cause also the



disciplinary authority has not given tentative reasons for differing with the finding of the inquiry officer.

From the record, it appears that no witness was examined on behalf of the department in order to establish charges against the petitioner neither any documents were exhibited to establish the charges against the petitioner, as such the whole proceeding has been conducted in a most illegal and perfunctory manner and even though the inquiry officer had opined that criminal court charges and departmental proceeding charges are identical, as such the department should await the result of the criminal court but still proceeding continued against the petitioner which is not in consonance with the Bihar Government Servant (Classification, Control & Appeal) Rules, 2005, as such the whole departmental proceeding right from issuance of memo of charge is not in conformity with Bihar Government Servant (Classification, Control & Appeal) Rules, 2005. The disciplinary authority has passed the order on the basis of no evidence as such the order of disciplinary authority cannot be sustained and is accordingly quashed. However, during pendency of this writ petition, petitioner has been convicted in the vigilance case no. 4 of 2006 by judgment and order of conviction dated 17.08.2015, and has been sentenced to



undergo rigorous imprisonment for one year and fine of Rs. 5000/- under Section 7 of the PC Act and further one year rigorous imprisonment and a fine of Rs. 5000/- under section 13(2) read with section 13(1)(d) of PC Act and both sentences will run concurrently. The disciplinary authority can impose punishment against the petitioner of his being convicted by the criminal court under Article 311(2)(a) of the Constitution of India and Rule 20 of Bihar Government Servant (Classification, Control & Appeal) Rules-2005 as well as circular no. 7820 dated 28.10.2003 issued by Government to pass order on conviction of employee in criminal proceeding.

The writ petition is partly allowed to the extent indicated above.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	29.03.2018
Transmission Date	N.A.

