IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.21768 of 2013

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Yogendra Kumar Jaiswal S/O Late Jagannath Prasad Resident Of Shivpuri, House No. 27, P.S. Shashtri Nagar, Patna - 800023

.... Petitioner/s

Versus

1. The State Of Bihar Through The Chief Secretary, Government Of Bihar, Patna
2. Principal Secretary, Department Of Health, Bihar, Government Of Bihar, Patna
3. State Drug Controller, Department Of Health, Bihar, Patna
4. Shri Bhupendra Kumar Singh, The Then Joint Secretary, Dept. Of Health, Govt. Of Bihar
5. The Secretary, Bihar Public Service Commission, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Hemant Kumar, Advocate
		Mr. K.K. Thakur, Advocate
For the B.P.S.C	:	Mr. Subodh Chandra Jha, Advocate
For the Respondent/s	:	Mr. Mr. Apurv Harsh, AC to SC 28

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 12-07-2018

Heard learned counsel for the petitioner, the respondent State as also learned counsel for the B.P.S.C.

2. The writ petition has been filed for quashing the order of punishment contained in letter dated 06.05.2013 bearing memo no. 534 (9) issued by the respondent no. 5, the Secretary, Bihar Public Service Commission whereby the respondents have forfeited the payable amount of pension and gratuity to the petitioner.

3. The final order which have been issued by the respondent no. 5 is placed on record by filing I.A. No. 8167 of 2014.

The same is dated 10.12.2013 and is bearing memo no. 1424 (9). The petitioner was proceeded against on certain allegations arising out of Special Case No. 03 of 2007.

4. The charge memo was communicated to the petitioner on 17.04.2009. The charges were three in number. The first charge is alleging disproportionate assets to the tune of Rs. 42,92,000/-. The second charge was that the petitioner after his transfer under the departmental notification no. 552 (15) dated 22.02.2004 from his posting as Regional Licensing to be posted as In-Charge Officer, Flying squad (headquarter)-cum-Licensing Officer, Patna, had after his transfer renewed some licenses even after he had submitted his joining on the transferred place of posting on 22.07.2004. The third charges is that the petitioner was taking work from an unauthorized person namely, Md. Jalil Ansari which was objectionable and contrary to the government Rules. In respect of these three charges the petitioner was subjected to an enquiry.

5. Counsel for the petitioner has raised various issues during hearing of the instant proceedings. He has specifically submitted that the documents which were purported to be relied upon by the respondents in the proceedings before the Enquiry Officer have not been made available to the petitioner. It is also his case that the proceedings have been concluded by submission of the enquiry report

dated 09.04.2012. However, the specific order purporting to convert the proceedings under Rule 43(B) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as 'the Bihar CCA Rules, 2005) was issued subsequently thereon specifically on 06.06.2012. The order converting the proceedings is Annexure D to the counter affidavit filed on behalf of the State.

6. The petitioner's counsel has denied the allegations and submitted that adequate opportunity was not afforded to him to make out his defence before the Enquiry Officer; and that the issues were raised before the disciplinary authority but the disciplinary authority has failed to consider the objection regarding lack of opportunity raised by the petitioner. It is his submission that the procedure therefore, suffers from serious irregularity in as much as non-supply of the documents which have been relied upon in the proceedings before the Enquiry Officer is a grave lapse in the procedure and is contrary to the Rule 17 (3) of the Bihar CCA Rules, 2005.

7. This Court would observe that the enquiry report as also the conclusions of the disciplinary authority are *prima facie* not sustainable in law. The Enquiry Officer while enquiring the first charge regarding disproportionate assets has discussed five sale deeds. It is considered by the Enquiry Officer that the five sale deeds show purchase of land by the petitioner in Varanasi, the value of which was

grossly disproportionate to his income. Apart from the fact that the five sale deeds referred to in the enquiry report have not been served on the petitioner, it is also a fact that none has appeared in support of any of the charges before the Enquiry Officer. There is not even a single oral witness to support the charges against the petitioner. Apart from that the details of the five sale deeds have been recorded in the enquiry report and the same only shows the name of the seller, who has purchased the said sale deed is not apparent and cannot be deciphered from the list of five sale deeds which have been relied upon by the Enquiry Officer. There was no material whatsoever in the enquiry to conclude that the sale deeds have been purchased by the petitioner or by anyone.

8. Such conclusion, therefore, is highly arbitrary and perverse in as much as in absence of even the names of the purchasers being disclosed in the enquiry proceedings, it is impossible to conclude who has purchased the lands.

9. The second charge with respect to issuance of license even after his transfer on 22.05.2004, has also been discussed by the Enquiry Officer. However, there is no clear and specific findings as to which license petitioner has renewed subsequent upon his transfer on 22.05.2004. Finding in respect of the said charges therefore, is also perverse.

10. The third charge which have been made against the petitioner is that he had engaged the services of one Md. Jalil Ansari in the office and the same was objectionable. It would be relevant to notice here that there is no finding to this extent in the report of the Enquiry Officer dated 09.04.2012.

11. Second show cause notice has been issued to the petitioner on 06.06.2012. In response to the same the petitioner has submitted his detailed response raising the procedural lapses before the disciplinary authority. Finding of the disciplinary authority is dated 06.12.2013. The findings arrived at purporting to form the basis of the order of punishment of withholding entire pensionary benefits of the petitioner are at variance with the charges communicated to the petitioner under charge memo dated 17.04.2009.

12. The comparative reading of the charges set out in the charge memo issued under 'Prapatra Ka' and the findings of the disciplinary authority make it abundantly clear that the findings of the disciplinary authority are in respect of the charges which were never raised in the charge memo and in respect of which no enquiry has been conducted before the Enquiry Officer. The charge memo discloses the following charge

"**अनुबंध**

1. अरोपित पदा0 का नाम – श्री योगेन्द्र कुमार जायसवाल, (निलंबित)
2. पदनाम – प्रभारी राज्य औषधि नियंत्रक, बिहार , पटना
3. वेतनमान – 6500 – 10,500/–

आरोप – विवरणी

निगरानी विभाग विशेष निगरानी इकाई द्वारा आरोपित पदाधिकारी के विरूद्व अप्रत्यानुपातिक परिसम्पति अर्जन के मामले में भ्रष्टाचार निरोध अधिनियम 1988 की धारा 13 (2) सह पठित धारा 13 (1) (ई) के अन्तर्गत वि"ाष निगरानी इकाई थाना कांड संख्या – 003/2007 दिनांक – 11.10.2007 दर्ज किया गया है। वि"ाष निगरानी इकाई द्वारा आरोपित पदाधिकारी के विरूद्व अबतक 42,92,000=00/ रूपये मूल्य के नजायज धर्नाजन की सूचना दी गयी जो आरोपित पदाधिकारी के नैतिक भ्रष्ट, कर्तव्यहीनता एवं लोकसेवक के आचरण के विरूद्व है, जिसके लिए वे दोषी है।

2. श्री जायसवाल के विरूद्व यह भी आरोप है कि विभागीय अधिसूचना संख्या – 552 (15) दिनांक 22.5.04 द्वारा उन्हें क्षेत्रीय अनुज्ञापन प्राधिकारी पटना प्रमंडल, पटना के पद से प्रभारी पदाधिकारी, उड़नदस्ता (मुख्यालय) सह अनुज्ञापन प्राधिकारी पटना (खुदरा) के पद पर स्थानान्तरण किया गया था। उक्त आदे"ा के आलोक में उनके द्वारा स्थानान्तरित पद पर दिनांक 22.7.04 को योगदान देने के बाद क्षेत्रीय अनुज्ञापन प्राधिकारी पटना प्रमंडल, पटना में औषधी अनुज्ञप्तियों का नवीकरण किया गया है, जो उनके अनैतिक आचरण एवं अनु"ाासनहीनता तथा सरकारी सेवक के आचरण के विरूद्व है।
3. उनके विरूद्व यह भी आरोप है कि उन्होनें अपने कार्यालय में एक गैर सरकारी व्यक्ति श्री मो0 जलील अंसारी से कार्य लिया जाता था, जो आपत्तिजनक एव सरकारी नियमों के विरूद्व है जिसके लिये वे पूर्ण दोषी है।

साक्ष्य तालिका :– **सरकार के अवर सचिव**

(1) पुलिस महानिरीक्षक वि"ाष निगरानी इकाई,
बिहार , पटना के पत्रांक 748 /गो0 दिनांक 15.10.07
(2) श्री रामाकांत ठाकुर पूर्व विधायक आरा
के पत्र दिनांक – 1.3.06 एवं 8.7.05
सभी अनुलग्नक के साथ।

सरकार के अवर सचिव"

13. The findings of the disciplinary authority communicated in the notification dated 06.12.2013 are as follows :

"संचालन पदाधिकारी से प्राप्त अधिगम (जॉंच प्रतिवेदन) एंव आरोपी पदाधिकारी से प्राप्त कारण पृच्छा की समीक्षोपरान्त पाया गया कि श्री योगेन्द्र कुमार जायसवाल के विरूद्व ज्ञात स्त्रोंतो से अधिक परिसम्पति अर्जित करने, बिना सक्षम पदाधिकारी को सूचित किये अचल सम्पत्ति/ भू–खंडों का क्रय करने, अनुग्रह/ रि"वत के रूप में हवाई यात्रा का टिकट अपने तथा परिवार जनों के उपयोग के लिए क्रय करवाने तथा प्राप्त करने अन्य व्यक्ति का मोबाईल फोन निजी उदे"यो के लिये इस्तेमाल करने तथा

> अनाधिकृत व्यक्ति से कार्यालय का कार्य करवाने स्थानांतरण के प”चात भी पूर्व धारित पद की शक्तियों का निजी स्वार्थ व”ा दुरूपयोग करने के साथ–साथ अनैतिक एवं भ्रष्ट आचरण का आरोप प्रमाणित पाया गया है।
>
> श्री योगेन्द्र कुमार जायसवाल को तत्कालीन औषधी निरीक्षण सम्प्रति सेवा निवृत के विरूद्व उपादान तथा पें”ान की शत प्रति”ात रा”ि जब्त करने का निर्णय सक्षम प्राधिकार द्वारा लिया गया है।
>
> सक्षम प्राधिकार के निर्णय के आलोक मे विभागीय पत्रांक – 534 (9), दिनांक– 06.05.13 द्वारा बिहार लोक सेवा आयोग, बिहार, पटना से उनकी पराम”िा/ सहमति प्राप्त करने हेतु प्रस्ताव भेजा गया है।
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> सचिव, बिहार लोक सेवा आयोग, बिहार, पटना के पत्रांक– 1820, दिनांक 25.11.2013 द्वारा श्री योगेन्द्र कुमार जायसवाल तत्कालीन औषधी निरीक्षक, बिहार, पटना सम्प्रति सेवा निवृत की पें”ान तथा उपादान की शतप्रति”ात रा”ि जब्त करने हेतु बि0लो0से0आ0 द्वारा सहमति प्रदान की गई है।
>
> इस परिप्रेक्षय में आरोपित पदाधिकारी श्री योगन्द्र कुमार जायसवाल का पें”ान तथा उपादान की शतप्रति”ात रा”ि जब्त की जाती है।
>
> बिहार राज्यपाल के आदे”ा
>
> सरकार के वि”ोष सचिव,
स्वास्थ्य विभाग, बिहार, पटना।”

14. Apparently the findings are at variance with the charges made out in the charge memo. It appears that the Disciplinary Authority while issuing the order of punishment was totally unaware of the charges in respect of which the findings were to be recorded. Apart from the aforesaid infirmity, the order of the disciplinary authority is actually a one page order dealing with none of the issues raised by the petitioner and without reference to any material brought during course of enquiry.

15. The conclusion of the disciplinary authority under order dated 06.12.2013 are thus, contrary to the mandate of the procedure prescribed under Rule 18 (2) of the Bihar CCA Rules, 2005. The proceedings are apparently not only in contravention of Principles of Natural Justice and fair play but also are in violation of the provisions of the Bihar CCA Rules, 2005.

16. As noticed above it was incumbent upon the Enquiry Officer to bring home the charge against the delinquent by leading evidence in support of the charges as required under Rule 17 (14) of the Bihar CCA Rules, 2005. The same has not been done. No oral evidence whatsoever has been recorded in support of the charges even the sale deed which is produced in support of the first charge against the petitioner regarding disproportionate assets, cannot be said to be any evidence in support of the allegation against the petitioner. There was no finding regarding the name of the purchasers on the basis of the sale deed produced in the enquiry. Therefore, the conclusion of disproportionate assets against the petitioner cannot be sustained on the basis of the sale deeds. Even regarding the second charge as noticed above, there is no material on record to show as to whose license the petitioner has renewed subsequent upon his transfer. In absence of such basic material, it defies all logic as to how the conclusion would be arrived at that the petitioner had in fact renewed

licenses. The findings are thus, perverse and wholly unsustainable in as much as the same are based on no evidence.

17. In order to inflict the petitioner with the punishment of withholding of 50 percent of his pension some other findings of the Disciplinary Authority, taken note hereinabove have also been relied upon. The said findings as evident from comparative assessment with the charges reveal that the findings are at variance with the charge. In this connection judgment of the Apex Court in the case of **M.V. Bijlani vs. Union of India** reported in **2006 (5) SCC 88** more specifically paragraphs 14 and 15 is being quoted herein below :

> "**14**. From a perusal of the Enquiry Report, it appears to us that the disciplinary authorities proceeded on a wrong premise. The Appellant was principally charged for non-maintenance of ACE-8 Register. He was not charged for theft or misappropriation of 4000 kgs. of telegraph copper wire or misutilization thereof. If he was to be proceeded against for misutilisation or misappropriation of the said amount of copper wire, it was necessary for the disciplinary authority to frame appropriate charges in that behalf. Charges were said to have been framed after receipt of a report from CBI (Anti Corruption Bureau). It was, therefore, expected that definite charges of

misutilization/misappropriation of copper wire by the Appellant would have been framed. The Appellant, therefore, should have been charged for defalcation or misutilisation of the stores he had handled if he was to be departmentally proceeded against on that basis. The second charge shows that he had merely failed to supervise the working of the line. There was no charge that he failed to account for the copper wire over which he had physical control.

15. It will bear repetition to state that the charges which were framed related to only non-maintenance of ACE-8 Register and non-supervision of working of the line. In absence of any charge that he had in fact misappropriated copper wire for his own benefit out of the disposal thereof, the question as regard purported misconduct by way of misutilisation of 4000 kg. of copper wire could not have been gone into. Furthermore, it has not been shown that ACE-8 register was required to be maintained in an appropriate form or in a particular manner i.e. in bound form or in loose sheets."

18. The findings that the petitioner had taken air tickets as bribe for himself and his family members and that he had utilized the mobile phone facility of other persons etc., are findings in respect

of which no enquiry had been held. Findings to this effect are also unsustainable as being violative of the Principles of Natural Justice.

19. Since such findings having civil consequences against the petitioner have been recorded without even issuing a charge memo for the same, the order of punishment bearing memo no. 534(9), Patna contained in letter dated 06.05.2013 issued by the respondent no. 5 is therefore, quashed. As a result of quashing of the order of punishment, the order dated 10.12.2013 bearing memo no. 1424 (9) issued by the Special Secretary to the Government of Bihar in the Health Department notifying the punishment of withholding of sent percent of petitioner's pension and gratuity is also quashed. Petitioner as a result of quashing of the said order would be entitled to all consequential benefits.

20. The writ petition is allowed.

(Madhuresh Prasad, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	