

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.879 of 2017

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Chaudhary Nagmani Chakravarty Son of Late Dasai Chaudhary, Resident of
Village-Marachi, P.S. Punpun, District-Patna

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Health Department,
Government of Bihar, Patna
2. The Director in Chief, Health Services, Bihar, Patna
3. The Regional Director, Health Services, Patna Division, Patna
4. The Civil Surgeon Cum Chief Medical Officer, Patna
5. The Additional Director Cum Conducting Officer of the Department Inquiry,
Health Services, Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jagannath Singh, Adv.
For the Respondent/s : Mr. Nagendra Pd. Yadav- SC -23

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 02-04-2019

The petitioner has challenged the order of dismissal as contained in Memo No. 435(4) dated 29.05.2014 passed by the Director-in-Chief, Health Services as also the order dated 25.11.2016 passed in appeal by the appellate authority whereby the order passed by the disciplinary authority has been affirmed and upheld.

The major ground of challenge according to the petitioner is that neither in the enquiry report nor in the



orders impugned is there any evidence with respect to the demand of bribe money by the petitioner from Malti Sinha, the complainant and no witness has been offered on behalf of the department to prove the charge of demand of bribe and accepting bribe. It has been submitted by the learned counsel for the petitioner that the enquiry report and the two orders impugned in the present petition only talk about existence of a vigilance case wherein, the petitioner was found with the tainted money offered by the complainant Malti Sinha an A.N.M. Without examining any person of the trap team or proving any document to indicate that the tainted money with which the petitioner was caught was the money which was attempted to be paid to him on his demand for disbursing salary to the aforesaid A.N.M., has been brought on record. Thus it has been urged that mere existence of a vigilance case which has not yet attained finality, the petitioner has been dismissed from service.

To adumbrate the aforesaid ground of



challenge, the petitioner has submitted that a complaint was filed against him in the Vigilance Investigation Bureau alleging that the petitioner is demanding money for disbursing salary of the complainant, an A.N.M. Pursuant to the aforesaid complaint, a F.I.R. was registered vide Vigilance Case No. 18/11 dated 09.03.2011 under Section 7/13(2) read with section 13(1)(d) of the Prevention of Corruption Act 1988. The petitioner was arrested on 09.03.2011 and was sent to jail custody.

The petitioner was placed under suspension, but the aforesaid suspension was revoked after his coming out from jail. He was again placed under suspension till further orders.

A departmental proceeding was initiated against the petitioner for having committed the misconduct of demanding and accepting bribe money for doing an act, which he was under an obligation and duty to perform. Conducting and Presenting Officers were appointed after



the memo of charge was served upon the petitioner. The memo of charge merely stated that the petitioner was caught taking bribe of Rs. 5,000/- by the Vigilance Police.

The enquiry report which has been annexed with the writ petition as Annexure-7, clearly indicates that the only material available on record before the enquiry officer was the existence of a vigilance case and the admission of the petitioner that he was arrested in connection with the aforesaid case. The enquiry officer has also vide his report dated 08.10.2011 referred to the defense of the petitioner that he was absent from his office from 08.03.2011 till 09.03.2011, as his mother was admitted in P.M.C.H. in the Surgery Department, who was released from the hospital only on 18.03.2011. No opinion was given by the enquiry officer on the charge as the main allegation of accepting bribe money was pending trial before a criminal court.

The order of the disciplinary authority, it has



been urged only indicates that the demand has been presumed because of the delayed payment of salary to the complainant, A.N.M.

The aforesaid order has been sustained by the appellate authority only on that count.

The submissions urged on behalf of the petitioner before the appellate authority with respect to breach of the rules contained in section 17(3) to 17(23) of the Bihar Government Servant (Classification Control and Appeal Rules, 2005) have also not been answered by the appellate authority. Neither the complainant/Malti Sinha the A.N.M. nor any member of the raiding team was examined and even though opportunity was given to the petitioner to explain his defense but, since no evidence was brought forth, nothing else except denial of the oral allegation could have been resorted to by the petitioner.

The limitations of a judicial scrutiny over the orders passed in domestic proceeding is to well settled to



be recounted here. A departmental proceeding is a quasi judicial proceeding and the enquiry officer performs a quasi judicial function. The charges levelled against a delinquent officer has to be proved and in the absence of the proof of such charge, which in the present case does not appear to have been done, as no witness has been examined, the petitioner could not have been subjected to the harshest of the punishments. Even the documents on which presumption has been drawn about the demand and acceptance of bribe money has not been proved nor the same have been tendered by any one of the official witnesses.

From the perusal of the enquiry report, the order passed by the disciplinary authority as also the appellate authority, the only evidence which appears to have been relied upon for dismissing the petitioner is the purported admission of the petitioner of having been arrested in the vigilance case. Such admission can not also be taken to be a proof of his having demanded and



accepted bribe money. Without the element of demand having been proved, it could not have been said by the disciplinary authority that the money which was recovered from the possession of the petitioner was the tainted money and was paid against the demand made by the petitioner for timely disbursal of the salary.

It need not be noted as it is *cadit quaestio* by this time that in the absence of the proof of demand, a person cannot be punished for having accepted bribe. There is no justification for not bringing/pitching in evidence with respect to such demand or of the petitioner having been arrested with the tainted money. As noted earlier, the only evidence which has been relied upon by the disciplinary authority/appellate authority is the existence of the F.I.R.

The petitioner has all through taken the stand that the trial has not yet been concluded. Though, it need not be specified that trial of a criminal proceeding and a domestic proceeding with respect to a



misdemeanor and misconduct are two different things; nonetheless for proving the misconduct which has been charged against the petitioner, it was but of utmost importance that the element of demand of bribe money ought to have been proved. That not having been done, the order dismissing the petitioner from service and the appellate authority affirming the same can not be sustained.

For the reasons aforestated the orders impugned are set aside. However, the case is relegated to the stage of the enquiry and the enquiry officer is directed to conduct a fresh enquiry against the petitioner after giving notice to him. Since its an old matter, it is expected that the enquiry shall be concluded within a period of four months from the date of its commencement. After the enquiry report, if it is found that the petitioner is guilty, necessary consequences will follow and the disciplinary authority shall take a call upon such report and the defense of the petitioner. The



entire exercise be concluded within a period of eight months. The petitioner shall furnish a copy of the order to the disciplinary authority within one week for him to remand the case to the enquiry officer.

With the aforesaid order/observation the writ petition is allowed.

Whether the petitioner shall be kept under suspension would be the decision of the disciplinary authority. Needless to state that if he is allowed to remain under suspension during the period of enquiry, he shall be paid his subsistence allowance.

(Ashutosh Kumar, J)

vinita/-

AFR/NAFR	NAFR
CAV DATE	NA
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