

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4106 of 2018

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Dr. Shiv Dayal Verma, Son of late Yadunandan Verma, resident of 3/38, Rajendra Nagar, P.S. - Kadamkuan, District - Patna, presently residing at AMRI, Adarsh Colony, NMCH Road, Agamkuan, P.S. - Alamganj, District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Chief Secretary, Govt. of Bihar, Patna.
3. The Principal Secretary, Department of Health, Govt. of Bihar, Patna.
4. The Additional Secretary, Health Department, Govt. of Bihar, Patna.
5. The Joint Secretary, Health Department, Govt. of Bihar, Patna.
6. The Bihar Public Service Commission through its Chairman.
7. The Secretary, Bihar Public Service Commission, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prashant Sinha, Adv.
For the Respondent/s : Mr. Mustabul Haque, GP-12

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

C.A.V. JUDGMENT & ORDER

Date : 08-07-2019

The petitioner has challenged the order dated 30.08.2013 passed by the Additional Secretary, Health Department, Govt. of Bihar, Patna, whereby he has been dismissed from service as also the letter No.



504 (De. Chi.) dated 21.06.2012 issued by the Joint Secretary, Health Department, Govt. of Bihar, Patna, whereby a note of disagreement from the finding of the enquiry officer has been given to the petitioner without assigning any reason for such disagreement as well as for the quashing of letter No. 1003 dated 04.09.2017 issued under the signature of the Under Secretary, Health Department, Govt. of Bihar, Patna, whereby the review application of the petitioner has been rejected in a mechanical manner.

2. The petitioner, while posted as In-charge Principal, Rajkiya Maharani Rameshwari Bhartiya Chikitsa Vigyan Sansthan, Mohanpur, Darbhanga, was made accused in a Vigilance case, viz., Vigilance P.S. Case No. 13 of 2008, which was lodged under Sections 7/13 (2) read with 13 (1) (d) of the Prevention of Corruption Act, 1988.

3. A trap was laid and the petitioner was caught having accepted bribe money for Rs. 5,900/- from the complainant for making available to him the



benefits of A.C.P. Thereafter, the petitioner was suspended by the Health Department, Govt. of Bihar, Patna, which suspension was revoked and, thereafter, he was again suspended on 19.12.2008 in contemplation of a departmental enquiry.

4. On 05.10.2010, *vide* resolution of the Government, a departmental proceeding was initiated against the petitioner and the memo of charge was served upon him with the allegation that on the complaint of one Dhaneshwar Prasad Sinha, the Compounder of the College, a trap was laid in which the petitioner was caught red handed while accepting tainted money by the Vigilance team. During the search of the room of the petitioner, the file relating to A.C.P. was also seized and some irregularities were discerned in that file.

5. It appears from the records that the petitioner participated in the enquiry and submitted his explanation. During the enquiry, two witnesses of the Vigilance case, *viz.*, Damodar Mishra and Raj Kumar



Dwivedi @ Raju Kumar Dwivedi were examined. They did not support the allegation of the petitioner having accepted bribe money in their presence. The enquiry officer submitted his report on 25.05.2011, exonerating the petitioner of the charges.

6. It further appears that a letter was issued by the Health Department, Govt. of Bihar, Patna on 21.06.2012, intimating the petitioner that there was disagreement of the Government with the finding of the enquiry officer and the petitioner was asked to furnish his explanation. The petitioner, thereafter, furnished his explanation.

7. By order dated 30.08.2013, issued under the signature of Additional Secretary, Health Department, Govt. of Bihar, Patna, the petitioner was dismissed from service.

8. On a mistaken advise, the petitioner preferred an appeal, but the same was found to be not in accordance with Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (*in*



short the Rules of 2005) and, therefore, he preferred a review under Section 24 (2) of the Rules of 2005, which too was rejected *vide* order dated 17.10.2017.

9. It has been submitted on behalf of the petitioner that the orders impugned can be faulted on several score, the foremost being that the charge against the petitioner could not be proved in the departmental proceeding. Additionally, it has been urged that no reason was accorded by the Government for differing with the opinion of the enquiry officer. Lastly, it has been submitted that all the orders and correspondences impugned in the present petition are cryptic and do not reflect any application of mind.

10. As opposed to the aforesaid contention, the learned counsel for the State has submitted that the petitioner had committed a misconduct and the charge against him has been proved in the departmental proceeding. The very fact that the petitioner has been made accused in a



Vigilance case in which he was arrested in the trap is sufficient to prove the guilt of the petitioner. It has further been submitted that the disagreement note was made available to the petitioner and his explanation was found to be unworthy of acceptance. Hence, there is no reason for this Court to interfere with the orders impugned in the present petition.

11. It has also been brought to the notice of the Court that the enquiry officer, for having given an opinion in favour of the petitioner, is also proposed to be subjected to departmental proceeding.

12. On perusal of the documents on record, it appears that the only basis for subjecting the petitioner to the punishment of dismissal from service is the Vigilance case, referred to above, and the trap memorandum disclosing that he was arrested with the tainted money.

13. The aforesaid documents have not been proved.

14. What strikes this Court is that even



the point of difference is not supported by any reason or logic. All that has been stated in the show-cause notice is that the Government has differed with the report of the enquiry officer. In none of the orders impugned in the present petition, the explanation offered by the petitioner has at all been adverted to. It also does not appear from the orders impugned that the complainant was examined to prove the charge against the petitioner, of demand of bribe. Thus, the entire proceeding and the order impugned are based on the existence of a criminal/Vigilance case only.

15. The note of difference without any reason could not have been responded by the petitioner effectively. The order of dismissal from service by the disciplinary authority and rejection of the review application by the reviewing authority do not spell out any reason whatsoever for rejecting the contentions of the petitioner.

16. The question, therefore, is whether on the basis of existence of an F.I.R., in the absence of



any proof of the same or even of supporting evidence in favour of the charge, can an employee be dismissed from the service.

17. In ***Roop Singh Negi Vs. Punjab National Bank & Ors., (2009) 2 SCC 570***, the Supreme Court has held that an enquiry officer and a disciplinary authority in a departmental proceeding perform a quasi-judicial function, who have a duty to arrive at finding upon consideration of materials on record. The evidence collected during investigation by the investigating officer cannot be treated as an evidence before the disciplinary authority without proof of such document.

18. The orders of the disciplinary authority and of the reviewing authority have to be supported by reasons as any order of dismissal and its affirmation has serious/severe consequences and those orders cannot be sustained, if they are not supported by reasons. Decision of the authorities have to be on the basis of evidence which is admissible.



19. The note of difference with the enquiry report, which has exonerated the petitioner, ought to have contained the reasons and explanation of the petitioner was required to be invited on such reasons. This Court is conscious of the fact that there is difference between trial of a criminal case and the manner of conducting a domestic proceeding. Nonetheless, without the proof of element of demand of bribe and its acceptance, the order of dismissal from service could not have been passed.

20. There is yet another reason for which all the orders impugned in the present petition can be faulted with.

21. Quasi-judicial and even administrative orders are required to be speaking orders. In ***Kranti Associates Private Ltd. & Anr. Vs. Masood Ahmed Khan & Ors.***, reported in ***(2010) 9 SCC 496***, the Supreme Court, after referring to various decisions of the Supreme Court in ***Keshav Mills Co. Ltd. Vs. Union of India, (1973)***



1 SCC 380; Harinagar Sugar Mills Ltd. Vs. Shyam Sunder Jhunjhunwala, AIR 1961 SC 1669; Bhagat Raja Vs. Union of India, AIR 1967 SC 1606; Mahabir Prasad Santosh Kumar Vs. State of U.P., (1970) 1 SCC 764; Travancore Rayon Ltd. Vs. Union of India, (1969) 3 SCC 868; Woolcombers of India Ltd. Vs. Workers Union, (1974) 3 SCC 318; Union of India Vs. Mohan Lal Capoor, (1973) 2 SCC 836; Siemens Engg. And Mfg. Co. of India Ltd. Vs. Union of India, (1976) 2 SCC 981; Menka Gandhi Vs. Union of India, (1978) 1 SCC 248; Rama Varma Bharathan Thampuram Vs. State of Kerala, (1979) 4 SCC 782; Gurdial Singh Fijji Vs. State of Punjab, (1979) 2 SCC 368; Bombay Oil Industries (P) Ltd. Vs. Union of India, (1984) 1 SCC 141; Star Enterprises Vs. City and Industrial Development Corpn. of Maharashtra Ltd., (1990) 3 SCC 280; S.N. Mukherjee Vs. Union of India, (1990) 4 SCC 594, has summarized the importance of any order to



be a speaking one.

22. The Supreme Court in paragraph 47 of ***Kranti Associates Private Ltd.*** (supra) has stated thus:-

47. Summarising the above discussion, this Court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by



administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.



(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor.)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija V. Spain EHRR, at 562 para 29 and Anya V. University of Oxford, wherein the Court referred to Article 6 of the European Convention of Human Rights which requires,

"adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due Process".

23. Tested on the aforesaid score,
neither the order of the disciplinary authority nor of
the reviewing authority can be said to be a speaking



order.

24. This Court does not get any idea as to the reasons which have weighed with the disciplinary authority and the reviewing authority for inflicting the severest of the punishments provided under the Rules of 2005. No doubt, corruption in public service is cancerous and is required to be weeded out; nonetheless rule of law cannot be bypassed for it would not be in the interest of either; the State/employer or the employee/petitioner.

25. For the reasons aforesaid, the orders passed by the disciplinary authority dated 30.08.2013 and reviewing authority dated 04.09.2017 are set-aside.

26. The case is remitted to the disciplinary authority for writing out a fresh order in accordance with law. The disciplinary authority shall provide to the petitioner reasons for difference with the report of the enquiry officer and would seek his response. Thereafter, a reasoned order shall be



passed within a reasonable period of time.

27. Since the matter is an old one, it is expected that the whole exercise shall be completed within a period of six months from the date of receipt/production of a copy of this order.

28. With the aforesaid observation/direction, the writ petition stands disposed off.

(Ashutosh Kumar, J)

Praveen-II/-

AFR/NAFR	AFR
CAV DATE	09.05.2019
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