

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21026 of 2018

Dr. Arun Kumar Tiwary Son of Late Shivnath Tiwary, Dismissed- Medical Officer, Leprosy Control Unit, Bettiah, District- West Champaran, Resident of Village- Ujjain Tola, Bettiah, District- West Champaran.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Principal Secretary, Department of Health, Government of Bihar, Patna.
3. The Director in Chief, Health Services, Bihar, Patna.
4. The Joint Director, Health Services, Bihar, Patna.
5. The Additional Director, Health Services, Bihar, Patna.
6. The Divisional Commissioner, Tirhut Division, Muzaffarpur.
7. The Regional Additional Director, Health, Tirhut Division, Muzaffarpur.
8. The Deputy Secretary, Health Services, Bihar, Vikash Bhawan, New Secretariat, Patna.
9. The District Magistrate, West Champaran, Bettiah.
10. The Civil Surgeon cum Chief Medical Officer, Bettiah, West Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Amit Pandey, Advocate
For the Respondent/s : Mr. Ramadhar Singh, GP 25

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 17-05-2022

Heard learned counsel for the respective parties.

2. In the instant petition, petitioner has prayed for the following relief/reliefs:

“(i) For issuance of an order (s)/direction (s) or writ(s) in the nature of writ of certiorari for quashing the order contained in memo no. 384(9) dated 09.04.2018 passed by the Respondent No.-2 whereby the Service Appeal of the Petitioner was rejected without application of mind with corresponding order contained in memo no. 461 (9)



dated 29.05.2015 2015 coupled with memo no. 904(9) dated 24.05.2017 issued by the Deputy Secretary, Health Services, Bihar and communicated vide letter contained in memo no. - 1609 dated 25.08.20174 as well as for quashing of the entire departmental proceedings initiated/drawn against the petitioner, on account of inordinate delay and laches on part of the respondents. And/or

(ii) For issuance of further order (s)/ direction (s) or writ (s) in the nature of Mandamus directing the Respondents to make payment of petitioners' full salary and arrears of full pension with entire retiral benefits including gratuity EPF and Leave Encashment in terms of revised pay scale with reasonable compensation.

(iii) For issuance of any further order (s) / direction (s) or writ (s) which this Hon'ble Court may deem fit and proper in the facts and circumstances of the instant case."

3. Matter heard at length.

4. Petitioner was appointed on 29.07.1976 as a Medical Officer. On certain allegations he was placed under suspension on 30.03.2001. Inquiry proceedings were initiated and petitioner was dismissed from service on 10.06.2005. Feeling aggrieved by the order of dismissal, petitioner approached this Court. This Court allowed the petitioner's on 18.03.2011 and remanded the matter for initiation of fresh inquiry. The official respondents were stated to have initiated inquiry in framing charges on 31.07.2002,



however, copy of the charge memo, statement of imputation, list of documents and list of witnesses were not furnished to the petitioner and it is disputed fact whether it was served on the petitioner or not. As on today the official respondents are not in a position to apprise this Court in pointing out with reference to original record as to whether petitioner was communicated with the charge memo dated 31.07.2002 or not?

5. Assuming that petitioner was served with the charge memo accompanied by statement of imputation and list of documents and list of witnesses, if petitioner has failed to submit his explanation, in that event, the disciplinary authority was required to record that on a particular date show cause notice/charge was issued and there is no explanation of the petitioner. In the result, the disciplinary authority proceeded to appoint Enquiry Officer and Presenting Officer on 17.01.2012.

6. On one or two dates, enquiry were stated to have been conducted on 17.02.2012. Thereafter, petitioner is stated to have submitted an application seeking copy of charge memo on 16.09.2013 and it was not provided to the petitioner. Abruptly on 22.01.2014, show cause notice was issued by the Secretary of the Department, however, it was not accompanied by Enquiry Officer's report which is one of the mandatory requirement under



Rule 18 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (for short “Rules 2005”). The petitioner had submitted explanation on 29.01.2014. Thereafter, once again petitioner was dismissed on 29.05.2015 and it was communicated after a long gap of more than three years that is on 25.08.2017. Feeling aggrieved and dissatisfied with the order of dismissal, petitioner preferred appeal before the appellate authority and as on 11.09.2017 it was not decided. Thereafter, petitioner was compelled to approach this Court in filing writ petition and it was disposed of with certain direction to consider his appeal before the appellate authority, such petition was allowed on 09.02.2018 with a time bound direction to pass order on the petitioner’s appeal by the appellate authority, however, appellate authority did not act on the directions of this Court whereby compel the petitioner to file contempt petition namely M.J.C. and during pendency of contempt petition, the appellate authority passed an order on 09.04.2018. Thus, the petitioner has presented this petition in quashing the dismissal as well as appellate authority’s order. The petitioner has contended as follows:

Charge memo was not issued and he was not given an opportunity of cross examination by the enquiry officer.



It is further submitted that Enquiry Officer's report was not furnished along with second show cause notice issued by Under Secretary, Health Department dated 22.01.2014.

7. At this juncture, this Court posed a question to the learned counsel for the State in the presence of Mr. Brijesh Mehrotra, Additional Chief Secretary - cum - Incharge Principal Secretary of Health Department as to whether charge memo dated 31.07.2002 was communicated to the petitioner or not? From the records, the learned counsel for the State submitted that there were no material as to whether charge memo dated 31.07.2022 has been communicated to the petitioner or not? So also there is no noting relating to communication and there is recording of no response from the petitioner.

8. At this stage, learned counsel for the State as well as Mr. Brijesh Mehrotra, Additional Chief Secretary - cum - Incharge Principal Secretary of Health Department seeks time to ascertain further materials as to whether petitioner was provided show cause notice/charge memo dated 31.07.2002, petitioner was provided opportunity of cross examination, witnesses and copy of enquiry report was made available to the petitioner along with second show cause notice dated 22.01.2014 or not?



9. In this matter sufficient time has been spent from time to time. At the behest of the State – respondents, matter is being adjourned from 12.04.2022 to 10.05.2022 and to this day. Despite providing these many opportunities to the State – respondents, they are not assisting this Court properly, therefore, matter is adjourned to Thursday, 19.05.2022 at the request of the Additional Chief Secretary - cum - Incharge Principal Secretary of Health Department subject to payment of Cost of Rs. 20,000/-. Cost shall be remitted in the Patna High Court Legal Services Committee, Patna High Court.

10. Re-list this matter on 19.05.2022.

11. At this stage learned counsel for the State submitted that matter be decided today itself in order to overcome the imposition of cost. Thus, the following order.

12. There is total non co-operation and any assistance from the State Department in providing material information as to whether petitioner has been provided opportunity of hearing like issuance of show cause notice dated 31.07.2002, petitioner was provided opportunity of cross examination and further Enquiry Officer's report has been provided to the petitioner along with second show cause notice or not? Therefore, this Court has drawn



inference that there is non compliance to the Rule 17 of Rules 2005.

13. Rule 17 of the Rules 2005 reads as under:

“17. Procedure for imposing major penalties. - (1) No order imposing any of the penalties specified in clauses [(vi) to (xi)] of Rule 14 shall be made without holding an inquiry, as far as may be, in the manner provided in these Rules.

(2) Wherever the disciplinary authority is of the opinion that there are grounds for inquiring about the truth of any imputation of misconduct or misbehaviour against a government servant, he may himself inquire into it, or appoint under these Rules an authority to inquire about the truth thereof.

Explanation. - Where the disciplinary authority himself holds the inquiry, any reference in sub-rule (7) to sub-rule (20) and in sub-rule (22) of this Rule to the inquiring authority shall be construed as a reference to the disciplinary authority.

(3) Where it is proposed to hold an inquiry against a government servant under this Rule, the disciplinary authority shall draw up or cause to be drawn up-

(i) the substance of the imputations of misconduct or misbehaviour as a definite and distinct article of charge;

(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain-

(a) a statement of all relevant facts including any admission or confession made by the Government Servant;

(b) a list of such document by which, and a list of such witnesses by whom, the articles of charge are proposed to be sustained.



(4) The disciplinary authority shall deliver or cause to be delivered to the Government Servant a copy of the articles of charge, such statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the Government Servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person.

Underline supplied

(5) (a) On receipt of the written statement of defence, the disciplinary authority may himself inquire into such of the articles of charge which are not admitted, or, if it thinks necessary to appoint, under sub-rule (2) of this Rule, an inquiry authority for the purpose he may do so and where all the articles of charges have been admitted by the Government Servant in his written statement of defence, the disciplinary authority shall record his findings on each charge after taking such evidence as it may think fit and shall take action in the manner laid down in Rule 18.

(b) If no written statement of defence is submitted by the Government Servant, the disciplinary authority may itself inquire into the articles of charge or may, if it thinks necessary to appoint, under sub-rule (2) of this Rule an inquiry authority for the purpose, it may do so.

(c) Where the disciplinary authority itself inquires into any article of charge or appoints an inquiring authority for holding an inquiry about such charge, it may, by an order, appoint a government servant or a legal practitioner to be known as the "Presenting officer" to present on his behalf the case in support of the articles of charge.



(6) The disciplinary authority shall, where it is not the inquiring authority, forward the following records to the inquiring authority-

(i) a copy of the articles of charge and the statement of the imputations of misconduct or misbehaviour;

(ii) a copy of the written statement of defence, if any, submitted by the government servant:

(iii) a copy of the statement of witnesses, if any, specified in sub-rule (3) of this Rule.

(iv) evidence proving the delivery of the documents specified to in sub-Rule (3) to the Government Servant; and

(v) a copy of the order appointing the "Presenting officer".

(7) The Government Servant shall appear in person before the inquiring authority on such day and at such time within ten working days from the date of receipt by him of the articles of charge and the statement of the imputations of misconduct or misbehaviour, as the inquiring authority may, by a notice in writing, specify in this behalf or within such further time, not exceeding ten days, as may be specified by the inquiring authority.

(8) (a) The Government Servant may take the assistance of other Government Servant posted in any office, either at his headquarter or at the place where the inquiry is to be held, to present the case on his behalf:

Provided that he may not engage a legal practitioner for the purpose, unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or the disciplinary authority, having regard to the circumstances of the case, so permits:



Provided also that the Government Servant may take the assistance of any other Government Servant posted at any other station, if the inquiring authority having regard to the circumstances of the case, and for reasons to be recorded in writing so permits:

Provided further that the Government Servant shall not take the assistance of any such other Government Servant who has three pending disciplinary cases on hand in which he has to give assistance.

(b) The Government Servant may take the assistance of a retired government servant to present the case on his behalf, subject to such conditions as may be specified by the Government from time to time by general or special order in this behalf.

(9) If the Government Servant, who has not admitted any of the articles of charge in his written statement of defence or has not submitted any written statement of defence, appears before the inquiring authority, such authority shall ask him whether he is guilty or has to say anything for his defence and if he pleads guilty to any of the articles of charge, the inquiring authority shall record the plea, sign the record and obtain the signature of the Government Servant thereon.

(10) The inquiring authority shall return a finding of guilt in respect of those articles of charge to which the Government Servant pleads guilty.

(11) The inquiring authority shall, if the Government Servant fails to appear within the specified time or refuses or omits to plead, require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the Government Servant may, for the purpose of preparing his defence,-



(i) inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow, the documents specified in the list in sub-rule (3);

(ii) submit a list of witnesses to be examined on his behalf;

Note:-*If the Government Servant applies in writing for the supply of copies of the statements of witnesses mentioned in the list referred to in sub-rule (3), the inquiring authority shall furnish him with such copies as early as possible.*

(iii) give a notice within ten days of the order or within such further time as the inquiring authority may allow for the discovery or production of any documents which are in the possession of Government but not mentioned in the list specified in sub-rule (3) of this Rule:

Provided that the Government Servant shall indicate the relevance of the documents required by him to be discovered or produced by the Government.

(12) The inquiring authority shall, on receipt of the notice for the discovery or production of documents, forward the same or copies thereof to the authority in whose custody or possession the documents are kept, with a requisition for the production of the document by such date as may be specified in such requisition:

Provided that the inquiring authority may, for reasons to be recorded by it in writing, refuse to requisition such of the documents as are, in its opinion, not relevant to the case.

(13) On receipt of the requisition specified in sub-rule (12) of this Rule, every authority having the custody or possession of the requisitioned documents shall produce the same before the inquiring authority:

Provided that if the authority, having the custody or possession of the requisitioned documents, is satisfied, for



reasons to be recorded by it in writing, that the production of all or any of such documents will be against public interest or security of the State, he shall inform the inquiring authority accordingly and the inquiring authority shall, on being so informed, communicate the information to the Government Servant and withdraw the requisition made by it for the production or discovery of such documents.

(14) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the Government Servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses, as it thinks fit.

(15) If it shall appear necessary before the close of the case on behalf of the disciplinary authority, the inquiring authority may, in his discretion, allow the Presenting Officer to produce evidence not included in the list given to the Government Servant or may itself call for new evidence or recall and re-examine any witness and in such case the Government Servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The inquiring authority shall give the Government Servant an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the Government Servant to produce new evidence, if it is of



the opinion that the production of such evidence is necessary in the interests of justice:

Provided that new evidence shall not be permitted or called for or any witness shall not be recalled to supplement the evidence. Such evidence may be called for if there is any inherent lacuna or defect in the evidence, produced originally.

(16) When the case for the disciplinary authority is closed, the Government Servant shall be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the Government Servant shall be required to sign the record. In either case a copy of the statement of defence shall be given to the Presenting Officer, if any, appointed.

(17) The evidence on behalf of the Government Servant shall then be produced. The Government Servant may examine himself in his own behalf if he so prefers. The witnesses produced by the Government Servant shall then be examined and they shall be liable to examination, cross-examination and, re-examination by the inquiring authority according to the provisions applicable to the witnesses for the disciplinary authority.

(18) The inquiring authority may, after the Government Servant closes his case, and shall, if the Government Servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government Servant to explain any circumstances appearing in the evidence against him.

(19) The inquiring authority may, after the completion of the production of evidence, hear the Presenting Officer, if any, appointed and the Government Servant, or permit them to file written briefs of their respective case, if they so desire.



(20) If the Government Servant to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of this Rule, the inquiring authority may hold the inquiry ex-parte.

(21) (a) Where a disciplinary authority competent to impose any of the penalties specified in clauses (i) to (v) of Rule 14 [but not competent to impose any of the penalties specified in clauses [(vi) to (xi)] of Rule 14], has himself inquired into or caused to be inquired into the article of any charge and that authority having regard to his own findings or having regard to its decision on any of the findings of any inquiring authority appointed by it, is of the opinion that the penalties specified in clauses [(vi) to (xi)] of Rule 14 should be imposed on the government servant, that authority shall forward the records of the inquiry to such disciplinary authority as is competent to impose the penalties mentioned in clause [(vi) to (xi)] of Rule 14.

(b) The disciplinary authority to which the records are so forwarded may act on the evidence on the records or may, if he is of the opinion that further examination of any of the witnesses is necessary in the interests of justice, recall the witnesses and examine, cross-examine and re-examine the witnesses and may impose on the Government Servant such penalties as it may deem fit in accordance with these Rules.

(22) Whenever any inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein, and is succeeded by another inquiring authority which has and which exercises, such jurisdiction the inquiring authority so



succeeding may act on the basis of evidence so recorded by its predecessor, or partly recorded by its predecessor and partly recorded by itself:

Provided that if the succeeding inquiring authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, it may recall, examine, cross-examine and reexamine any such witnesses as hereinbefore provided.

(23)(i) After the conclusion of the inquiry, a record shall be prepared and it shall contain:-

(a) the articles of charge and the statement of the imputations of misconduct or misbehaviour;

(b) the defence of the Government Servant in respect of each article of charge.

(c) an assessment of the evidence in respect of each article of charge,

(d) the findings on each article of charge and the reasons thereof.

Explanation. - *If in the opinion of the inquiring authority the proceedings of the inquiry may establish any article of charge different from the original articles of the charge, he may record his findings on such article of charge:*

Provided that the findings on such article of charge shall not be recorded unless the Government Servant has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

(ii) The inquiring authority, where it is not itself the disciplinary authority, shall forward to the disciplinary authority the records of inquiry which shall include-



- (a) the report prepared by it under clause (i) of this sub rule;*
- (b) the written statement of defence, if any, submitted by the Government Servant;*
- (c) the oral and documentary evidence produced in the course of the inquiry;*
- (d) written briefs, if any, filed by the Presenting Officer or the Government Servant or both during the course of the inquiry; and*
- (e) the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry.”*

14. Further, there is non compliance to Rule 18 to the extent that petitioner has not been provided copy of the Enquiry Officer's report along with second show cause notice. Further it is to be noted that appellate authority has not taken note of Rule 27 of the Rules, 2005.

15. Rules 27 of the Rules, 2005 reads as under:

“27. Consideration of appeal. - (1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in view of the provisions of Rule 9 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke or modify the order accordingly.

(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:

Underline supplied

(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 :

Provided that-

(i) the Commission shall be consulted in all cases where such consultation is necessary;

(ii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (i) to (v) of Rule 14 and an inquiry under Rule 17 has not already been held in the case, the appellate authority shall, subject to the provisions of Rule 19, himself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 18 and thereafter on a consideration of the proceedings of such inquiry and after giving the appellant a reasonable opportunity, as far as may be in accordance with the provisions of clause (ii) of Rule 18, of making a representation against the penalty proposed on the basis of the evidence adduced during such inquiry, make such orders as it may deem fit;

(iii) if the enhanced penalty which the appellate authority proposed to impose is one of the penalties specified in clauses



(i) to (v) of Rule 14 and an inquiry under Rule 17 has already been held in the case, the appellate authority shall, make such orders as it may deem fit, after the appellant has been given a reasonable opportunity of making a representation against the proposed penalty; and

(iv) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be, of making a representation against such enhanced penalty.

(3) The appellate authority shall consider all the circumstances of the case and make such orders as it may deem just and equitable.”

16. It is to be noted that this is the second disciplinary proceedings initiated against the petitioner on the alleged allegations as is evident from the earlier orders of this Court dated 18.03.2011 by which this Court has set aside the order of dismissal dated 10.06.2005. In order to initiate and complete the Enquiry proceedings, the respondents have taken more than decade. The petitioner was compelled to approach this Court on three occasions including a contempt proceedings. Despite these facts and circumstances the official respondents have not adhered to Rules, 2005. In the light of these facts and circumstances, petitioner has made out a *prima facie* case so as to interfere with the impugned order dated 09.04.2018. Accordingly, it is set aside with the Cost of Rs. 25,000/-. Cost shall be remitted in the Patna



High Court Legal Services Committee, Patna High Court within two months from today

17. Cost has been imposed having regard to the attitude of the Department from the inception that is framing of charges on 31.07.2002 till imposition of penalty of dismissal for the second time on 29.05.2015 and further such dismissal order was communicated to the petitioner after three years and few months. Thereafter, petitioner's appeal was not decided within a reasonable period of time and he was compelled to file writ petition and it was decided on 09.02.2018 with a specific direction that the appeal is required to be decided within a reasonable period of time. Despite that there was a inaction on the part of appellate authority in not deciding the petitioner's appeal within the time limit stipulated by this Court. In the result, petitioner filed contempt petition and during pendency of the contempt petition the appellate authority has passed the order. In the light of these factual aspects this Court feels that Cost is required to be imposed on the State Department.

18. The appointing authority/disciplinary authority is hereby directed to examine whether petitioner is entitled to arrears of salary up to 25.08.2017, the date on which dismissal order dated 29.05.2015 was communicated. In this regard, necessary



calculation shall be made and paid to the petitioner. If the petitioner is not entitled to salary during the intervening period, in this regard, necessary speaking order shall be passed with reference to relevant Rules so also Rule 21 of the Rules, 2005 relating to communication of the orders be taken note of. Such a decision shall be taken within a period of two months.

19. The State Government is requested to arrange refresher course periodically to all the disciplinary, inquiry and appellate authorities in respect of exercising *quasi judicial* functions under disciplinary rules like Bihar Government Servants (CCA) Rules, 2005. For the reasons that in every disciplinary matter authority has ignored the procedure laid down in the disciplinary rules.

20. Copy of this order be forwarded to the Chief Secretary, State of Bihar for taking necessary steps in the matter.

(P. B. Bajanthri, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	20.05.2022
Transmission Date	

