

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23626 of 2012

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Mahendra Paswan Son of Sri Raghunandan Paswan Resident Of Village-
Kewalachak, Post Office- Fulwaria Baheri, P.S. Gurua, District- Gaya, At
Present posted and working as Upper Division Clerk in the Office Of Block
Development Officer, Barachatti, District- Gaya

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, General Administration Department, Government
Of Bihar, Patna
3. The Commissioner, Magadh Division, Gaya
4. The District Magistrate, Gaya
5. The District Supply Officer, District Supply Section, Gaya
6. The District Establishment Deputy Collector, Gaya
7. The Senior Deputy Collector, Incharge General Section Gaya-Cum-
Conducting Officer

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Arvind Kumar Singh, Advocate
For the State : Mr. Gyan Prakash Ojha, G.A.-7

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

Date : 26-09-2022

Heard learned counsels for the parties.

2. The petitioner while working as Upper Divisional Clerk in District Supply Office, Gaya is stated to have availed leave. On completion of leave, he continued to make further leave application due to illness. In other words, overall from 21.03.2011 to 17.04.2011, he had not discharged the duties. In Para 9 of the pleadings he has specifically stated that he had given medical certificate.

Para 9 of the pleadings reads as under:-

“9. That it is stated that further



prior to 20.04.2011, the petitioner became cured and accordingly he came and joined on 18.04.2011 in the office of District supply office, Gaya and further as per oral direction of Head clerk of the office, he also submitted a medical certificate dated 5.04.2011 granted by Dr. Uday Kumar of Sherghati, Gaya and a medical certificate of fitness dated 18.04.2011 granted by Dr. A.N. Rai of Gaya under whom the treatment of the petitioner was going on.”

Whereas in the counter affidavit in Para 7 it is averred as under (page 49):-

“7. That in reply to averment made at Para-5, 6, 7, 9 and 13 are concern, its all matter of records, hence required no comment.”

3. The learned counsel for the petitioner submitted that petitioner has not been provided copy of the inquiring officer's report and second show cause notice before imposition of penalty of withholding of two increments without cumulative effect on 26.11.2011. He has exhausted the remedy of appeal and in appeal order of penalty was confirmed on 01.11.2012.

4. Learned counsel for the petitioner submitted that there was inaction on the part of the concerned respondent in not taking note of medical certificates which was furnished in the concerned official respondent's office and it was much before framing of article of charges on 11.05.2011. It is further submitted that the concerned respondent has neither accepted nor rejected the medical certificates furnished by the petitioner and so also



inquiring and disciplinary authority have not taken note of the medical certificates. It is further submitted that once petitioner has disputed that he did not remain unauthorized absent, on the other hand, he remained absent due to illness and it is supported by material information, therefore, it is not a case of misconduct. On the other hand, in a disciplinary proceeding and inquiring officer and disciplinary authority have come to the conclusion that the petitioner has committed misconduct pursuant to Charge No. 1 to 4. Once the charges were proved against the petitioner in that event, he should have been provided inquiring officer's report before imposition of penalty irrespective of minor or major penalty.

5. Per contra, learned counsel for the respondent resisted the aforesaid contentions and submitted that in the light of the fact that petitioner has been punished with a minor penalty, namely withholding of two increments without cumulative effect, in such an event question of furnishing of inquiring officer's report is not warranted in the light of Rule 18 of *Bihar Government Servants (Classification, Control & Appeal) Rules, 2005*. Therefore, there is no infirmity in the order of disciplinary and appellate authority.

6. Heard learned counsels for respective parties.

7. Petitioner while working as Upper Divisional



Clerk, he had applied for leave for certain period from 21.03.2011 to 23.03.2011. Thereafter, he had sought for extension of leave by sending a registered post from 24.03.2011 to 31.03.2011. Due to certain illness he could not recover from illness. Thereafter, he availed leave from 01.04.2011 to 17.04.2011. In this regard, he had submitted leave application before 18.04.2011. Similarly other charges are relating to non-production of medical certificate, non-marking of attendance, belatedly issuing of levy supply of sugar and distribution of Annpurna Scheme and failed to withdraw the allotted fund. These are all disputed facts which are required to be adjudicated in the disciplinary proceedings.

8. Perusal of the records it is evident that petitioner is stated to have furnished medical certificates before framing of article of charges on 05.04.2011. The same has not been taken note of by the disciplinary authority before framing of article of charges and further while imposing penalty. No doubt, the official respondents have proceeded to impose minor penalty. At the same time, one cannot loose sight of the fact that petitioner has disputed certain alleged charges. In such an event, proper opportunity was required to be given while furnishing the inquiring officer's report and seeking his explanation. Once the petitioner has disputed that he remained absent due to illness and it is supported by medical certificates which were placed before appropriate authority before



framing of article of charges, it was bounden duty of the disciplinary authority to take note of such medical certificates. If the disciplinary authority finds that medical certificates were not genuine, in that event, necessary order should have been passed in rejecting the medical certificates. In such circumstances, petitioner would have availed the opportunity of placing medical certificates before the inquiring officer and to prove that his illness was genuine and medical certificate was also genuine, he would have led evidence. Similarly, the other charges were also disputed by the petitioner. Therefore, it is a case of providing ample opportunity of hearing to the petitioner. Merely disciplinary authority proceeded to impose minor penalty that does not amount to waiver of principles of natural justice in not providing inquiring officer's report and seeking petitioner's explanation, pursuant to the charge-memo dated 11.05.2011 read with petitioner's explanation dated 03.06.2011 and relevant medical certificates and other documents. Petitioner has made out a *prima facie* case so as to interfere with the penalty order dated 26.11.2011 read with appellate authority order dated 01.11.2012. Hence, penalty order dated 26.11.2011 read with appellate authority order dated 01.11.2012 (Annexure-1 and 2 respectively) are set aside. Accordingly, the present writ petition stands allowed.

9. The concerned authority is hereby directed to re-



fix the withheld increment and re-fix the petitioner’s pay and disburse arrears of monetary benefits within a period of three moths from the date of receipt of this order.

10. Learned counsel for the state, at this stage, submitted that department is disputing receipt of medical certificates stated to have been submitted by the petitioner on 05.04.2011. However, the department had opportunity of saying so in the inquiry as well as before this Court while filing counter affidavit. On the other hand, in Para 7 of the counter affidavit, aforesaid issue is silent to the extent. The statement has been made to the effect that *no comment*. Therefore, this Court has to draw inference in favour of the petitioner in so far as production of medical certificates.

(P. B. Bajanthri, J)

rakhi/Shoaib

AFR/NAFR	
CAV DATE	
Uploading Date	30.09.2022
Transmission Date	

