

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1003 of 2018

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Awadhesh Kumar Singh, son of late Raja Prasad Singh resident of Flat No. 305, Santosh Complex, Bandar Bagicha, P.S. - Kotwali, District - Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Department of Health and Family Welfare, Govt. of Bihar, Patna.
3. The Deputy Secretary, Department of Health and Family Welfare, Govt. of Bihar, Patna.
4. The Joint Secretary, Department of Health and Family Welfare, Govt. of Bihar, Patna.
5. The Additional Secretary, Department of Health and Family Welfare, Govt. of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shekhar Singh, Advocate Mr. Sumit Kumar, Advocate Mr. Avinash Kumar, Advocate
For the State	:	Mr. Manoj Kumar Yadav, (AC to GA-10)

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 03-10-2023

Heard learned counsel for the petitioner and learned counsel for the State.

2. Learned counsel for the petitioner fairly submits that the name of the petitioner has wrongly been typed in the petition as 'Awadesh' whereas his correct name is 'Awadhesh'. He is permitted to correct the same in the course of the day. Office is directed to correct the name of the parties everywhere in the soft and hard copy.



3. The present writ petition has been filed for quashing of the order communicated by letter No. 535 (15) dated 31.08.2015 issued by Joint Secretary, Department of Health and Family Welfare, Govt. Of Bihar, Patna, by which the review application has been rejected. The further prayer has been made for setting aside the order of punishment contained in notification No. 578 (15) dated 06.04.2011 issued under the signature of Joint Secretary, Department of Health and Family Welfare, Govt. Of Bihar, Patna, by which the petitioner has been awarded the punishment of reprimand, stoppage of five increments with cumulative effect and nothing is payable except the substantial allowances for the period of suspension (excluding the period of custody). The further prayer has been made that the entire departmental proceeding arising out of memo of charge dated 11.02.2006 be declared as erroneous and misplaced and to quash the entire proceedings based on the said charge memo.

4. Learned counsel for the petitioner submits that the petitioner was working as Assistant Drug Controller in the Drug Control Department, Govt. Of Bihar. He submits that his service was guided by the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the



CCA Rules, 2005'). Counsel submits that he was put under suspension by a letter issued to him vide memo No. 109 (15) dated 17.01.2017. Petitioner was communicated the resolution of the Health Department contained in memo No. 1331 (15) dated 11.12.2006 whereby it was decided to initiate the departmental proceeding. With the said resolution, memo of charge dated 04.12.2006 was attached which is Annexure-2. Learned counsel submits that the article of charge itself are vague and cryptic, because there is absence of detail of charge in the said charge memo. One of the charge was stated to be misuse of post and accumulating disproportionate asset and second allegation was the allegation leveled in letter No. 882 (15) dated 28.08.2006. Counsel submits that according to Rule 17 (3) of the CCA Rules, 2005, the substance of the imputation misconduct or misbehaviour as a definite and distinct article of charge should be mentioned in the charge memo. As such, the said charge has been issued in gross violation of section 17 (3) (i) of the CCA Rules, 2005.

5. Learned counsel further submits that after receiving the charge memo, the counsel has appeared before the inquiry Officer and submitted his reply. Learned counsel submits that though there were no specific charges made in the charge memo



in its second part. But the Inquiry Officer at the time of hearing the petitioner has framed the separate charges and on each charge the petitioner has submitted reply and subsequently, inquiry report has been submitted, which is annexed as Annexure- 3. According to the said inquiry report, the separate charges were bifurcated in the category of charge No. 1, Charge No. 2 (k), 2 (kh), 2 (g), 2 (gha), 2 (anga) and 2 (cha). In the conclusion, the Inquiry Officer in its inquiry report has not reached on any conclusion with regard to charge No. 1 on the ground that case is going on in the vigilance Court and, therefore, restrain himself to take any decision on the said charge. But so far as the other charges are concerned i.e., Charge No. 2 (k), 2 (kh), 2 (g), 2 (gha), 2 (anga) and 2 (cha), he found that no charges were proved. Learned counsel submits that thereafter a punishment letter was issued to the petitioner vide Memo No. 616 (15) dated 19.04.2007. By the said letter, three punishments were imposed upon the petitioner, i.e., punishment of reprimand, stoppage of five increments with cumulative effect and nothing is payable except the subsistence allowances for the period of suspension (excluding the period of custody).

6. Learned counsel for the petitioner further submits



that being aggrieved and dissatisfied with the said punishment order dated 19.04.2007, the petitioner has preferred CWJC No. 4718 of 2007 before this Hon'ble Court and during pendency of the said CWJC No. 4718 of 2007, another letter No. 992 (15) dated 28.06.2007 has been issued, by which the punishment order issued vide Memo No. 616 (15) dated 19.04.2007 was kept in abeyance and it has been decided that second show cause shall be issued to the petitioner.

7. Learned counsel for the petitioner further submits that in this background, the said CWJC No. 4718 of 2007 was withdrawn. Learned counsel further submits that he has received letter No. 1227 (15) dated 09.08.2007 in the form of second show cause in which the disciplinary authority have raised disagreement on the inquiry report. Learned counsel submits that under the CCA Rules, 2005, Section 18 (2) of the said Rules is very clear that the disciplinary authority after receipt of the inquiry report as per Rule 17 (23) (ii) or as per sub-rule (1), shall, if it disagree with the findings of the Inquiry Authority on any article of charge, record its reasons for such disagreement and record its own finding on such charge, if the evidences on record is sufficient for the purpose. Counsel submits that the said second show cause notice dated 09.08.2007 in the form of



disagreement memo has been issued in gross violation of Rule 18 (2) of the CCA Rules, 2005.

8. Learned counsel further submits that in response of the second show cause, the petitioner has supplied a detailed answer vide letter No. 220 dated 07.09.2007. In its reply, the petitioner has answered on each and every allegations on which the disagreement memo has been issued in the form of second show cause to the petitioner. Counsel further submits that his second show cause reply has not been considered at all and order of punishment has been issued to the petitioner vide Memo No. 578 (15) dated 06.04.2011. Counsel submits that there is no whisper about any consideration of his statements made in his reply to the second show cause in the said order of punishment dated 06.04.2011. He submits that only one line reasoning has been assigned that in the absence of material facts the second show cause is unsatisfactory.

9. Learned counsel further submits that a new CWJC No. 13160 of 2005 has been discussed in the final order about which there was no description or any detail had been mentioned either in charge memo or in second show cause. Learned counsel submits that the petitioner thereafter moved before this Hon'ble Court in CWJC No. 9696 of 2011



challenging the order of punishment but after some argument, the said writ petition was withdrawn with liberty to file the departmental appeal against the impugned order of punishment. The said writ petition was withdrawn vide order dated 27.06.2013 (Annexure-1).

10. Learned counsel for the petitioner further submits that upon scrutiny of the Rule, it has been found that the provision of appeal is not available, therefore, the petitioner has preferred review under Rule 24 of the CCA Rules, 2005. The said review petition was rejected vide Memo No. 535 (15) dated 31.08.2015. Counsel submits that none of the points, which has been raised before the reviewing authority, has been discussed in the said order and thereafter, the petitioner has filed the present writ petition before this Hon'ble Court.

11. Learned counsel further submits that he has relied on two judgments. The first is case of **Ravi Yashwant Bhoir Vs. District Collector, Raigad and Others** reported in (2012) 4 SCC 407, whose para 44 is relevant and states that at the time of passing a judicial order, the reasons should be recorded and here in the present case, there is absolutely no reasons assigned either in the disagreement memo or in the punishment order or in the order passed in review. Learned counsel further relied on



another judgment of this case in case of **Raj Kishore Sinha Vs The State of Bihar and Ors.** decided on 18.05.2018 passed in CWJC No. 11240 of 2017. Paragraph 11 of the said judgment is very much relevant and it has been held that order of punishment cannot be passed from a retrospective date. He submits that here in the present case, the order of punishment has been passed with retrospective effects. Therefore, on this ground the said order is bad in law. Learned counsel for the petitioner conclusively submits his argument that there is a gross violation of Rules 17 (3), 18 (2) of CCA Rules, 2005 along with two judgments mentioned above.

12. Learned counsel for the State on the other hand vehemently opposes the pleadings of the petitioner and submits that the punishment order as well as review order both are absolutely in accordance with law and passed completely following the due procedure of law as laid down in CCA Rules. Learned counsel further submits that it is well within the power of the disciplinary authority that the disciplinary authority may disagree with the inquiry report and here in the present case by virtue of letter No. 1227 (15) dated 09.08.2007, a disagreement memo has been prepared in which reasons were also assigned.

13. Learned counsel for the State further submits that



in the punishment order issued vide Memo No. 578 (15) dated 06.04.2011, the punishment has been made, assigning the reasons that in the submitted show cause there is complete absence of the facts and those facts are unsatisfactory. Learned counsel further submits that the order of review is also sustainable in the eye of law as it has been stated in the said review order that the analysis has been made twice in the light of the submissions made by the department and, as such, it has been found that no new facts or evidence has been produced on the basis of which the petitioner could be found innocent. With this reasoning, the review has been dismissed.

14. Learned counsel for the State further submits that the petitioner for the first time has raised this issue that the memo of charge is cryptic and not specific in gross violation of Section 17 (3) of CCA Rules, 2005 in the writ petition. Learned counsel for the State submits that the petitioner has not raised this question at any level and for the first time he has raised this question before this Hon'ble Court in the present writ petition and, therefore, this point that charge is cryptic may not be taken into consideration.

15. Upon going through the argument and pleading of the parties, it is necessary for this court to place those relevant



provisions of law on which both parties are agreed and those are as follows:-

Rule 17 (3) of the CCA Rules, 2005- 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 for 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.

“Rule 18 (2) of the CCA Rules, 2005- The disciplinary authority after receipt of the enquiry report as per Rule 17 (23) (ii) or as



per sub rule (1), shall, if it disagrees with the findings for the inquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidences on record is sufficient for the purpose.”

16. After going through the charge memo in comparison to the legislative guidelines laid down in Rule 17 (3), this Court is of the opinion that the said memo of charge is not in accordance with Rule 17 (3). So far as objection raised by the State is concerned that petitioner has not raised this part at any earlier occasion, this court is of the view that question of law can be raised at any stage of the case as the petitioner has challenged the violation of Rule 17 (3) of the CCA Rules, 2005. Upon issuance of second show cause by the disciplinary authority in accordance with Rule 18 (2) of the CCA Rules, 2005, which is very specific that the disciplinary authority shall record its reason for such disagreement and record its own finding of such charge if the evidence on record is sufficient for the purpose. This Court is of the opinion that the said disagreement memo in the form of second charge has been prepared in gross violation of Rule 18 (2) of the CCA Rules, 2005 and, therefore, in the view of this Court, this second



charge memo is not sustainable in the eye of law.

17. So far as the order of punishment is concerned, this order has been passed without assigning any reason and without any consideration of a single point which has been filed by the petitioner in reply to the second show cause. As such in the opinion of the Court, this order of punishment is also bad in law.

18. So far as the review is concerned, at the time of passing the order under Rule 24, the reviewing authority has also not considered any points which has been raised in the review petition as it transpires to this Court in the said order contained in letter No. 535 (15) dated 31.08.2015, particularly, in the light of the judgment of **Raj Kishore Sinha** (supra) in which it has been held that order of punishment cannot be passed from a retrospective date. The relevant part of the judgment i.e., paragraph-11 is reproduced as under:-

“At this juncture, the learned counsel for the petitioner has relied upon a judgment reported in AIR 1966 SC 951 (R. Jeeva Ratnam Vs. The State of Madras), to contend that the order of punishment cannot be passed from a retrospective date. The learned counsel for the petitioner has also relied on a judgment of the Hon’ble



Apex Court, reported in 2014 (2) PLJR 458 (SC) (State bank of Patiala and Ors. Vs Ram Niwas Bansal (dead) through L.Rs to contend that the order of punishment cannot be retrospective and the same has always to be prospective.

Subsequently, the judgment of **Ravi Yashwant Bhoir** (supra) relevant paragraph-44 is reproduced as under:-

“44. This Court while deciding the issue in Sant Lal Gupta vs Modern Coop. Group Housing Society Ltd. {(2010) 13 SCC 336: (2010) 4 SCC (Civ) 904}, placing reliance on its various earlier judgments held as under: (SCC pp. 345-46, para 27)

“27. It is a settled legal proposition that not only administrative but also judicial orders must be supported by reasons recorded in it. Thus, while deciding an issue, the court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the court to record reasons while disposing of the case. The hallmark of the order and exercise of judicial power by a judicial forum is for the forum to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound



administration of the justice delivery system, to make it known that there had been proper and due application of mind to the issue before the court and also as an essential requisite of the principles of natural justice.

‘3... The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the court concerned had really applied its mind.’

The reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, the order becomes lifeless. Reasons substitute subjectivity with objectivity. The absence of reasons renders an order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. Recording of reasons is the principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected must know why his application has been rejected.”

19. In the light of the above discussion, this court



is of the firm opinion that in the said departmental proceeding, there are gross violation of Rules 17 (3) and 18 (2) of the CCA Rules, 2005 and, subsequently, the violation of these principles laid down in those judgments that all the orders i.e., order of issuance of second show cause, order of punishment and order of review all are bad in law and, therefore, all those orders and letters contained in Letter No.535(15) dated 31.08.2015, Notification No.578 (15) dated 06.04.2011 and Memo of charge dated 11.02.2006 are hereby set aside.

20. With the above observation and direction, writ petition is hereby stands allowed.

(Dr. Anshuman, J.)

Mkr/Divyansh/-

AFR/NAFR	
CAV DATE	
Uploading Date	09.10.2023
Transmission Date	

