

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17019 of 2024

Dr. Raman Kumar Singh @ Raman Kumar Singh Son of Shivendra Prasad Singh, Resident of Ward-09, Jagatpura, P.S. - Sangrampur, District - Munger.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Health Department, Bihar.
2. The Additional Chief Secretary, Health Department, Bihar.
3. The Director, Health Services, Bihar, Patna.
4. The Civil Surgeon-Cum-Chief Medical Officer, District - Sheohar.
5. The Executive Director, State Health Society, Bihar, Patna.
6. The Regional Additional Director of Health Services, Tirhut Division, Muzaffarpur.
7. Dr. Kamlesh Kumar Kamal, Current Medical Officer, Primary Health Center, Tariyani.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Madhumay Madhup, Advocate Mr. Anand Kumar Tiwari, Advocate Mr. Nishikant, Advocate
For the Respondent/s	:	Mr.Standing Counsel 21

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 19-12-2024

Heard Mr.Madhumay Madhup along with Mr.
Anand Kumar Tiwari and Mr. Nishikant, learned counsel
appearing on behalf of the petitioner and learned SC 21 for the
State.

2. Petitioner has *inter alia* prayed for following
reliefs in the paragraphs No.1 of the writ petition:-

*“(I) To issue an appropriate writ in
nature of certiorari for setting aside the order dated.
24/08/2024 of the Civil Surgeon-Cum-Chief Medical
Officer, District-Sheohar (Respondent No. 1)
contained in Annexure P/24, whereby and whereunder*



the Respondent No. 3 has removed the petitioner from the post of In-Charge Medical-Cum-Withdrawal and Disbursement Officer at Primary Health Centre, Traiyani.

(ii) To issue an appropriate writ in the nature of mandamus directing the concerned respondents to reinstate the petitioner on the post of In-Charge Medical Officer- Cum -Withdrawal and Disbursement Officer at Primary Health Centre, Taryani along with consequential benefits.

(iii) To grant any other relief, which Your Lordship may deem fit and proper in the interest of justice, equity and good conscience.”

3. Learned counsel appearing on behalf of the petitioner straight away refers to communication contained in Memo No.411(3) dated 20.06.2023, by which the Deputy Secretary, Health Department has directed the Civil Surgeon-cum-Chief Medical Officer, Sheohar to consider the case of Dr. Kamlesh Kumar Kamal, who was posted as Medical Officer, Additional Primary Health Centre, Shalimpur and upon his complaint (Complaint No.8260120032308367), on 09.06.2023 and 21.04.2023 orders have been passed that the petitioner is senior to Dr. Kamlesh Kumar Kamal and action is required to be taken in accordance with departmental order No.1091(3) dated 21.12.2021 and letter No.96(3) dated 09.03.2022. At the same time, petitioner has drawn attention of this Court towards letter in letter no.52 dated 22.08.2024, by which Member of Parliament has requested the Civil Surgeon, Sheohar to take appropriate action against the petitioner, who was posted for last



15 years at the same Primary Health Centre. In compliance of the complaint made by the Member of Parliament, learned counsel submitted that without following the due process of law, the petitioner has been demoted and has been posted in the same Primary Health Centre as Medical Officer vide Memo No.- 532 dated 24.08.2024 and Dr. Kamlesh Kumar Kamal, who is Junior to the petitioner has been posted as In-charge Medical Officer-cum-Drawing and Disbursing Officer. Learned counsel further submitted that the order is not only derogatory and demoralizing to the petitioner but at the same time, it is against the service condition rules, as well as, it is punitive in nature as without following the due process of law, the petitioner has been penalized to work under his junior.

4. *Per contra*, learned counsel appearing on behalf of the respondents submitted that the counter affidavit has been filed on behalf of respondent nos.2 and 3, who are the Additional Chief Secretary, Health Department and Director Health Services, Bihar, Patna. Referring to several paragraphs, he submitted that from the very inception, the petitioner as a matter of right cannot claim to continue to hold the charge of post of In-charge, Medical Officer-cum-Drawing and Disbursing Officer, Primary Health Centre, Tariyani and



considering the administrative exigency, he was relieved of the charge in public interest. In paragraph 10, summary of the background facts as made available by the Civil Surgeon has been reiterated and the same is reproduced hereinafter:

“That the brief summary of the background facts as made available by the Civil Surgeon, Sheohar are being stated as hereunder:-

i) Petitioner has remained posted as Medical Officer, Primary Health Centre, Tariyani for about 15 years and in the capacity of being Incharge Medical Officer of the Primary Health Centre in question, he has continuously misbehaved with senior/junior officers and female/male employees of the Primary Health Centre in question.

ii) In 2016, the then Civil Surgeon-cum-Chief Medical Officer, Sheohar vide his Letter no.472 dated 22.04.2016 petitioner had been posted at Primary Health Centre, Durari, Katsari on account of his bad behaviour with the employees.

iii) In 2016 itself, two persons namely, Dr. Om Prakash Singh and Smt. Vineeta Kumari has lodged FIR against the petitioner vide P.S. Case No.44/2016 and 14/2016 alleging indecent behaviour.

iv) Thereafter, in the light of the charge constituted in form 'k' by Civil Surgeon, Sheohar, vide Departmental Letter No.37(9) dated 15.01.2021 show cause was issued against the petitioner seeking explanation of the charge of indecent behaviour and maltreatment against his fellow employees namely, Dr. Daya Nand Mallick, Incharge Medical Officer and Sri Lukesh Kumar, Clerk, Primary Health Centre, Tariyani.

v) After examination of the show cause reply at departmental level, Health Department, Govt, of Bihar issued a notification bearing Memo No.400(9) dated 16.06.2022 whereby petitioner has been inflicted with the punishment of censure and stoppage of increments cumulative effect for two years without cumulative effect.

vi) Thereafter, in pursuance of and in compliance with the order of Regional Additional Director, Health Services, Tirhut Division, Muzaffarpur issued vide Letter no.258



dated 20.06.2022, one Dr. Kamlesh Kumar Kamal was made Incharge Medical Officer-cum-Drawing Disbursing Officer, Primary Health Centre, Tariyani in place of the petitioner in view of work interest and administrative expediency.

vii) Thereafter, petitioner lodged a complaint before the Departmental Grievance Redressal Officer against making Dr. Kamlesh Kumar Kamal as Incharge Medical Officer of the Primary Health Centre, Tariyani and after hearing on the factual report submitted by the then Civil Surgeon, Sheohar dated 27.07.2022, the complaint of the petitioner was rejected.

viii) Thereafter, petitioner again submitted a similar complaint before the Grievance Redressal Officer, which was allowed ex- parte in favour of the petitioner on 27.01.2023.

ix) Thereafter, being aggrieved with the aforesaid order dated 27.01.2023(vide Annex-D) passed by the Service Grievance Redressal Authority, altogether 19 female employees of the Primary Health Centre in question also filed writ petition bearing CWJCNo. 10374/2023 praying for quashing the aforesaid order dated 27.01.2023 passed in favour of the petitioner, which is pending for adjudication before this Hon'ble Court.

x) Civil Surgeon-cum-Chief Medical officer, Sheohar vide his letter order dated 22.11.2024 has also mentioned about guidelines issued by General Administration Department, Government of Bihar as contained in letter No. 8322 dated 10.06.2015 in which, it clearly stipulates that the senior officer should maintained decent behaviour with subordinate employees working under his jurisdiction.

xi) Civil Surgeon-cum- Chief Medical Officer, Sheohar vide his letter dated 22.11.2024 has further reported that during inspection of Sheohar district, several officers and employees have complained that though, they discharge their duty regularly, but their salary/honorarium was kept pending for several months and simultaneously, they have also submitted application that they are contemplating to go for mass leave and in pursuance thereof, Civil Surgeon-cum- Chief Medical Officer, Sheohar vide Letter No.484 dated 07.08.2024 has instructed all the Drawing & Disbursing Officers of the health institutions of Sheohar district to



ensure payment of salary to the employees within 24 hours and also inform, but petitioner did not comply with the order.

xii) Petitioner has been continuously absent from duty since 07.09.2024 which is causing hindrance to the working of Primary Health Centre, Tariyani.

xiii) Petitioner being aggrieved with the impugned order of removal dated 24.08.2024, has submitted an application before the Regional Additional Director, Health Services, Tirhut Division, Muzaffarpur and pursuant to his representation, the Regional Additional Director, Health Services, Tirhut Division, Muzaffarpur ordered for enquiry by three member enquiry committee which has submitted its report vide Memo No.01 dated 12.11.2024 recommending for keeping the impugned order bearing Memo No.534 dated 24.08.2024 as intact.”

5. It is specifically mentioned in sub-paragraph no. (v) of the para 10 of the Counter Affidavit that the Health Department, Government of Bihar, issued a notification bearing Memo No.400(9) dated 16.06.2022, whereby petitioner has been inflicted with the punishment of censure and stoppage of increments for two years without cumulative effect. The said communication has been brought on record by way of Annexure R/C to the counter affidavit and after passing of the order in accordance with law, the petitioner has been directed to be posted at Primary Health Centre, Tariyani and Dr. Kamlesh Kumar Kamal has been made in-charge Medical Officer-cum-Drawing and Disbursing Officer, Primary Health Centre, Tariyani. Thereafter, the petitioner submitted several complaints before the Grievance Redressal Officer, which was allowed in



part *ex parte* in favour of the petitioner on 27.01.2023 and also an allegation has been made against the petitioner that altogether 19 female employees of Primary Health Centre in question also filed writ petition bearing CWJC No.10374 of 2023 for quashing of order dated 27.01.2023 passed in favour of the petitioner. Status of aforesaid writ petition shows that it is pending for hearing (Annexure R/E). On these backgrounds, learned counsel submitted that adhering to the strict guidelines issued by the General Administrative Department, Government of Bihar, as contained in Letter No.8322 dated 10.06.2015, the order has been passed and the petitioner at the same time, has been absent from duty since 07.09.2024, which is causing hindrance to the working of Primary Health Centre, Tariyani and as such no interference is required with the impugned order of removal dated 24.08.2024.

6. Heard the parties.

7. Having considered the rival submissions made on behalf of the parties, as well as, the fact that the petitioner having been demoralized and at the same time an order of imposing minor punishment of censor has been passed against the petitioner and in defence, the Additional Chief Secretary who is well aware of the manner in which the disciplinary



action has to be carried on but in the present case, there is complete go-by to the provision of Bihar CCA Rules, 2005. The punishment has been enumerated in Rule 14 of Bihar CCA Rules, 2005 and any disciplinary action against a gazetted officer, the petitioner being selected by the Bihar Public Service Commission, adherence of Rules 16 of Bihar CCA Rules, 2005 necessitated of holding of enquiry by appointing presenting officer and the enquiry officer. The allegation is that the petitioner remained at the same place of posting for nearly 15 years and he was punished on the basis of the complaint made by a member of Parliament without holding any enquiry as stipulated under Rule 19 for imposition of minor penalty which mandates holding of enquiry as per the provision of Rule 17(3) – 23. In the present case, there has been complete violation of holding an enquiry as per the manner prescribed in Sub-Rule 1 (b) of Rule 19 of the Bihar C.C.A Rules, 2005, inasmuch as, which prescribes for holding of an enquiry in the manner laid down in Sub-Rules (3) to (23) of Rule 17, in every case, in which the Disciplinary Authority is of opinion that such Enquiry is necessary. I find that at the same time, there has been complete violation of the mandatory provision as contained in Sub-Rule (c), (d) and (e) of Rule-1 and also Sub- Rule (2) of



Rule 19. No doubt, a minor penalty has been issued but this Court is aghast to peruse the manner in which the Additional Chief Secretary, who is the senior IAS officer has dealt with the case of the petitioner being influenced by the communication and complaint made by the Member of Parliament and has bypassed all the requirement of Bihar CCA Rules, 2005. Adhering to the principle of natural justice even though the order of transfer by demoting of the petitioner can be considered to be for administrative exigency required minimum opportunity of hearing.

8. Reference in this regard can be made to the judgment of the Hon'ble Supreme Court in following cases:-

The Hon'ble Supreme Court in the case of ***State of Karnataka Vs. Umesh***, reported in **(2022) 6 SCC 563**, has held that:

"In the exercise of judicial review, the Court does not act as an appellate forum over the findings of the disciplinary authority. The court does not re appreciate the evidence on the basis of which the finding of misconduct has been arrived at in the course of a disciplinary enquiry. The Court in the exercise of judicial review must restrict its review to determine whether;

(i) the rules of natural justice have been complied with;

(ii) the finding of misconduct is based on some evidence;

(iii) the statutory rules governing the conduct of the disciplinary enquiry have been observed; and

(iv) whether the findings of the disciplinary authority suffer from perversity; and



*(v) the penalty is disproportionate to
the proven misconduct."*

The Apex Court in the case of ***Sarvepalli
Ramaiah v. District Collector, Chittoor***, reported in ***(2019) 4
SCC 500*** has held as follows:-

"40. Administrative decisions are subject to judicial review under Article 226 of the Constitution, only on grounds of perversity, patent illegality, irrationality, want of power to take the decision and procedural irregularity. Except on these grounds administrative decisions are not interfered with, in exercise of the extraordinary power of judicial review. Judicial review under Article 226 is directed, not against the decision, but the decision-making process. Of course, a patent illegality and/or error apparent on the face of the decision, which goes to the root of the decision, may vitiate the decision-making process...."

9. Further, the law in this regard is well settled that there cannot be abdication of power in favor of the Senior authority by the junior authority. This Court took reference of judgment delivered by Hon'ble Supreme Court in case of ***Manohar Lal vs. Ugrasen & Ors***, reported in ***(2010) 11 SCC 557***.

10. The counter affidavit is devoid of any pleading or supporting document, as to whether, the petitioner was ever served a show cause notice and any reference of the fact though a minor penalty was imposed against the petitioner, as would appear from perusal of sub-para(v) of paragraph no.10 of the



counter affidavit, the petitioner was inflicted with minor punishment of censor and stoppage of increment for two years without cumulative effect, the effect of the same having been over in view of the explanation to Rule 14, the authorities in a very vindictive manner has penalized the petitioner without following the principle of natural justice, which surprisingly has been supported by the Additional Chief Secretary, which is uncalled for. This Court has no alternative than to set aside and quash the order as contained in memo 532 dated 24.08.2024 and observe that in future the authorities holding administrative post in the State of Bihar must educate themselves and be cautious in defending any order which is not based on the sound principle of law. The petitioner is directed to be reinstated back to the post of in-charge Medical Officer-cum-Drawing and Disbursing Officer, Primary Health Centre, Tariyani.

11. The writ petition is accordingly allowed.

(Purnendu Singh, J)

Sanjay/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	23.12.2024
Transmission Date	NA

