

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8475 of 2012

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Braj Kumar Verma S/O Late Kamaldeo Prasad Verma, In front of House of
Dr. Mithilesh Jha, Professor Colony, Gali No.-1, Tajpur Road, District-
Samastipur

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Principal Secretary, Health and Family Welfare Department, Government Of Bihar, Patna
3. Director-In-Chief, Health and Family Welfare Department, New Secretariate, Government Of Bihar, Pat
4. Civil Surgeon-Cum-Chief Medical Officer, Samastipur
5. Incharge Medical Officer, Sub-Divisional Hospital, Dalsinghsarai, District-Samastipur
6. Incharge Medical Officer, Primary Health Centre, Dalsinghsarai, District-Samastipur

... .. Respondent/s

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Appearance :

For the Petitioner/s : Ms. Roona, Advocate
For the Respondent/s : Mr. Manish Kumar, AC to Ex-AAG-6
(Incharge AAG-5)

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

Date : 20-11-2025

1. Heard learned counsel for the petitioner and learned
counsel for the respondents.

2. The petitioner has filed the instant application for
the following reliefs :-

“(I) For quashing of order dated



06.05.2010 as contained in Annexure-3, whereby the petitioner has been awarded major as well as minor punishment on charges of having helped in irregular purchase of medicine from M.S.D. Calcutta.

(II) For quashing of order dated 12.01.2012 passed by the appellate authority as contained in Annexure-6 whereby without considering the objection of having not been served the copy of enquiry report and second show cause before final punishment, the appellate authority upheld the order of punishment.

(III) For declaration of whole proceeding to be void in view of the fact that the delinquent employee was not served with enquiry report and second show cause before order of punishment was passed.

(IV) For declaration that the petitioner was simply a Storekeeper and had not played any role, so far as alleged irregular purchase of medicine from M.S.D. Calcutta is concerned.

(V) Any other order/orders, direction/directions for which the petitioner is found entitled to in the facts and circumstances of the present case.”

3. The case of the petitioner in brief is that the petitioner while posted at the relevant time as a Storekeeper at Sub-Divisional Hospital, Dalsinghsarai i.e. from 8.6.1983 to



1.11.1989, he was proceeded against in a departmental proceeding for which a memo of charge was served on the petitioner on 3.2.2002. The allegations related to the petitioner having helped in the purchase of medicines contrary to the provisions of the Rules.

4. The Regional Deputy Director, Health Services, Darbhanga Division was appointed as the Enquiry Officer.

5. It is further case of the petitioner that the petitioner filed his reply and participated in the departmental proceeding.

6. It is categorical case of the petitioner that not having been served with either the enquiry report or the second show-cause notice, the respondents proceeded to pass the order of punishment on 6.5.2010 issued under the signature of the Director-In-Chief, Health Service, Bihar, Patna awarding the punishment of withholding of two increments with cumulative effect, punishment of censure, the petitioner not to be given any financial work, withholding of future promotion and further that nothing was to be paid to the petitioner for the period of suspension except the subsistence allowance, though the said period was to be counted for the purpose of pension. It was further observed that as the matter was being enquired into by the CBI, the order of punishment may be reconsidered after the



investigation.

7. The petitioner filed his appeal before the Appellate Authority which came to be rejected by the Appellate Authority/Principal Secretary by his order bearing no.61(4) dated 12.1.2012.

8. It is submitted by learned counsel for the petitioner that though the petitioner has no case on merits in so far as in the capacity of a Storekeeper he had no role to play so far as purchase of medicines etc. are concerned. It is further submitted that not having been served with a copy of the enquiry report nor with the second show-cause notice, the order of punishment as also the order passed by the Appellate Authority cannot be sustained and as such the writ application be allowed.

9. The application is opposed by learned counsel appearing for the respondents. It is submitted by learned counsel that while the petitioner was posted as a Storekeeper at the Sub-Divisional Hospital, Dalsinghsarai in Samastipur, he was placed under suspension on 19.8.2002 on the allegations involving purchase of medicines in violation of the Rules. There was violation of the Rules as also the guidelines issued by the Government which lead to initiation of the departmental proceeding. The petitioner participated in the same and on the



basis of the evidence adduced in course of enquiry, the enquiry report was submitted and which lead to the Disciplinary Authority passing the order of punishment, impugned in the instant application. It is submitted that there is no illegality in the order of punishment which has been awarded on the basis of the enquiry report. The issues raised by the petitioner was considered by the Appellate Authority and not finding any merit in the same, the appeal was rightly rejected. There is no merit in the instant application and the same be dismissed.

10. Heard learned counsel for the parties and perused the material on record.

11. The petitioner who happened to be a Storekeeper at the relevant time in the Sub-Divisional Hospital, Dalsinghsarai, was proceeded against in a departmental proceeding by issuance of memo of charge on 3.2.2002 and after the enquiry, the enquiry report was submitted and finally the order of punishment dated 6.5.2010 was passed, as stated above. The appeal preferred by the petitioner was also rejected by order dated 12.1.2012.

12. Bereft of unnecessary details, the limited submission of the petitioner is that not having been served with the enquiry report nor with the second show-cause notice, the



order of punishment as also the order passed in appeal cannot be sustained.

13. It may be observed here that inspite of a categorical assertion having been made by the petitioner of non service of the enquiry report and the second show-cause notice in paragraph no.9 of the writ application, the same has not been denied in the counter affidavit.

14. At this time, it would be relevant to refer to the judgment in the case of the **Managing Director, ECIL, Hyderabad & Ors. vs. B. Karunakar & Ors.; (1993) 4 SCC 727**, where the Hon'ble Supreme Court proceeded to hold as follows :-

“25. While the right to represent against the findings in the report is part of the reasonable opportunity available during the first stage of the inquiry viz., before the disciplinary authority takes into consideration the findings in the report, the right to show cause against the penalty proposed belongs to the second stage when the disciplinary authority has considered the findings in the report and has come to the conclusion with regard to the guilt of the employee and proposes to award penalty on the basis of its conclusions. The first right is the right to prove innocence. The second right is to plead for either no penalty or a lesser penalty although the conclusion regarding the guilt is



accepted. It is the second right exercisable at the second stage which was taken away by the Forty-second Amendment.

26. The reason why the right to receive the report of the enquiry officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the enquiry officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the enquiry officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is



also equally true that the disciplinary authority takes into consideration the findings recorded by the enquiry officer along with the evidence on record. In the circumstances, the findings of the enquiry officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the enquiry officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the enquiry officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusions. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the enquiry officer's findings. The disciplinary authority is then required to consider the evidence, the report of the enquiry officer and the representation of the employee against it.

27. It will thus be seen that where the enquiry officer is other than the disciplinary authority, the disciplinary proceedings break



into two stages. The first stage ends when the disciplinary authority arrives at its conclusions on the basis of the evidence, enquiry officer's report and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. If the disciplinary authority decides to drop the disciplinary proceedings, the second stage is not even reached. The employee's right to receive the report is thus, a part of the reasonable opportunity of defending himself in the first stage of the inquiry. If this right is denied to him, he is in effect denied the right to defend himself and to prove his innocence in the disciplinary proceedings."

(Emphasis supplied)

15. Having heard learned counsel for the parties and having perused the contents of the petition, in view of the judgment of the Hon'ble Supreme Court in the case of **B. Karunakar** (*supra*), in the opinion of the Court, the fact that the enquiry report or the second show-cause notice not having been served on the petitioner not having been denied by the respondents, neither the order of punishment nor the order passed in appeal can be sustained and are fit to be set aside.

16. Both the order contained in Memo no.698(4) dated 6.5.2010 issued under the signature of the Director-In-Chief, Health Service, Bihar, Patna as also the Order no.61(4)



dated 12.1.2012 issued under the signature of the Principal Secretary, Health Department, Government of Bihar are set aside.

17. The application is allowed with all consequential benefits which shall be paid to the petitioner within a period of three months.

18. The order of punishment having been set aside, the petitioner is also held entitled for the difference of arrears of salary for the period of suspension which shall also be paid to the petitioner within the aforesaid period.

19. The writ application stands allowed with the above observations and directions.

(Partha Sarthy, J)

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AFR/NAFR	NAFR
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