

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.398 of 2023
In
Civil Writ Jurisdiction Case No.5334 of 2001

1. The Managing Director, Hindustan Antibiotic Limited Pimpri, Pune, Government of India undertaking.
2. The General Manager (Marketing) Hindustan Antibiotics Limited, Pimpri, Pune.
3. The Divisional Manager, Hindustan Antibiotics Limited, Road No. 5, Rajendra Nagar, Patna- 16.
4. The Divisional Manager having his office in Hindustan Antibiotics Limited, Calcutta.
5. Hindustan Antibiotics Limited, through Company Secretary, Pimpri, Pune, A Government of India Undertaking.

... .. Appellant/s

Versus

1. The Union of India through Secretary, Ministry of Chemical and Fertilizer, Government of India, New Delhi, having his office in Shastri Nagar, Dr. Rajendra Prasad Road, New Delhi.
2. Abinash Kumar Sinha, son of Sri Baijnath Sahay, resident of D Block, Kadamkuan, Police Station Kadamkuan, District Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Astitva Vatsa, Advocate Mr. Amitabh Sohan, Advocate
For the Respondent/s	:	Mr. Subodh Kumar Jha, Sr. CGC Mr. Satyendra Kr. Jha, CGC
For the Respondent No.2:		Mr. Rupak Kumar, Advocate Mr. Vikrant Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 27-02-2026

Re.: I.A. No. 01 of 2025

The present interlocutory application has been filed seeking condonation of delay of 04 years 04 months and 19



days in preferring the present appeal.

2. For the reasons stated in the interlocutory application, the delay in filing the appeal is condoned.

3. I.A. No. 01/2025 stands allowed.

Re.: L.P.A.No. 398 of 2023

4. The present *intra court* appeal has been preferred against the judgment dated 25.08.2018 passed by the learned Single Judge in CWJC No. 5334 of 2001, whereby the writ petition preferred by the respondents/writ petitioner was allowed and the punishment order dated 05.12.2000 as well as the appellate order dated 24.01.2001 was quashed .

5. In the writ petition, the writ petitioner had sought the following reliefs:

“4(a) That the respondents be directed to pay to the petitioner terminal benefit namely leave encashment, General Provident Fund amount and gratuity, consequent upon the quashing the order dated 24.1.2001 and 5.12.2000 with penal interest at current market rate.

(b) That the writ in the nature of certiorari be issued quashing the appellate order dated 24.1.2001 as contained in Annexure-1.

(c) That the writ in the nature of certiorari be issued quashing the order dated 20.12.2000 and 5.12.2000 as contained in Annexure-2 and 3.



(d) That the respondents be directed to accept resignation of the petitioner and pay his terminal benefits as he completes the qualified period of service.

(e) That any other relief or reliefs for which the petitioner is entitled be granted by this Hon'ble Court."

6. The brief facts of the case are that the writ petitioner joined as a Junior Medical Representative with Hindustan Antibiotics Limited in the year 1985. He continued in service to the satisfaction of the authorities concerned and his case was even recommended for promotion to the post of Regional Manager. However, a charge-memo dated 19.11.1999 was issued to him in relation to the period 1992 to 1995, alleging irregularities during his tenure in the Nepal area. The allegations, inter alia, pertained to supply of medicines to the distributors without confirmed orders, slow movement of stocks, acceptance of part payments against liquidations of stocks, and grant of special rates to distributors while adjusting outstanding dues. An enquiry was conducted by the Enquiry Officer, who submitted his report dated 13.9.2000 holding all the charges proved. Thereafter, a second show cause notice dated 09.10.2000 was issued to the petitioner, wherein it was acknowledged that the enquiry proceedings had been conducted



in his absence. The petitioner was called upon to submit his reply to the enquiry report and to show cause as to why he should not be dismissed from service. Subsequently, the General Manager (Marketing), by order dated 05.12.2000, dismissed the petitioner from the services with effect from 05.12.2000, without issuing any further notice. The petitioner preferred an appeal, which was dismissed by the Managing Director of the Hindustan Antibiotics Limited by order dated 24.1.2001.

7. The learned Writ Court, after hearing the parties, passed the following orders:

*“3. The learned counsel for the petitioner has raised a small point for consideration to the effect that the petitioner was promoted as Area Executive in the marketing division by an order issued by the Chief General Manager (Marketing), who is the appointing authority of the petitioner herein, however, the punishment order dated 5.12.2000 has been passed by the General Manager (Marketing), hence on this ground alone, the order of punishment dated 5.12.200 is fit to be set aside since the petitioner could not have been dismissed by an authority who is lower in rank to the appointing authority. Reference in this regard has been made to a judgment reported in AIR 1964 SC 600 (**Moti Ram Deka Vs. G.M., North East Frontier Railway & Ors.**). The next issue raised by the learned counsel for the petitioner is that bare perusal of the punishment order dated 5.12.2000*



would show that neither any opportunity of hearing was given to the petitioner nor any reason whatsoever has been furnished in the said order of dismissal, hence the order of dismissal is fit to be set aside on this ground alone. Reference in this regard has been made to a judgment reported in (2002) 10 SCC 351 [**State of Bihar & Ors. Vs. Lakshmi Shankar Prasad**] and the one reported in 2005(3) PLJR 304 [**Md. Hassan Ansari vs. The State of Bihar & Ors.**] The last submission made by the learned counsel for the petitioner is that once the appellate order dated 24.1.2001 does not deal with any of the issues raised while filing the memo of appeal on 7.1.2001, the appellate order dated 24.1.2001 is perverse and fit to be set aside.

4. The respondents have not controverted the aforesaid pleadings and submissions made by the learned counsel for the petitioner, hence the grounds raised by the learned counsel for the petitioner for assailing the order of punishment dated 5.12.2000 and the appellate order dated 24.1.2001 are held to be cogent and legal, thus for the reasons discussed herein above in the preceding paragraphs, as argued by the learned counsel for the petitioner, the order of punishment dated 5.12.2000 and the appellate order dated 24.1.2001 are held to be illegal and perverse and are accordingly quashed.”

8. Learned counsel for the appellants submits that the learned Single Judge erred in holding that the punishment order was passed by an authority junior to the appointing authority. It



is submitted that the General Manager (Marketing) had been duly delegated disciplinary powers vide Part-III Order No. 281 dated 10.04.1991, prior to initiation of the proceeding, and therefore the dismissal order was passed by a competent authority. It is further submitted that adequate opportunity was granted to the writ petitioner, notices were issued and the petitioner was aware of the proceedings but chose not to participate.

9. Per contra, learned counsel appearing on behalf of the respondent/writ petitioner submits that the learned Single Judge rightly held that the order of dismissal dated to be unsustainable in law, as the same was passed by an authority not competent to impose the major penalty of dismissal. It is further submitted that no material establishing lawful delegation was produced before the Writ Court. It is further submitted that the dismissal order is ex facie non-speaking and does not disclose any independent application of mind, and that the principles of natural justice were violated.

10. The limited issue that arises for consideration before this Court is whether the learned Single Judge was justified in quashing the dismissal order dated 05.12.2000 on the ground that it was passed by the General Manager (Marketing),



who was not the appointing authority of the writ petitioner, in absence of any material placed before the Writ Court to establish lawful delegation of disciplinary powers and whether such finding warrants interference in exercise of *intra court* appellate jurisdiction.

11. We have heard learned counsel for the parties and have carefully perused the materials available on record, as well the impugned order. Upon such consideration, it transpires that the foundational fact of the case is not in dispute that the writ petitioner was appointed and promoted by the Chief General Manager (Marketing), who was the appointing authority. However, the order of dismissal dated 05.12.2000 was passed by the General Manager (Marketing).

12. The learned Single Judge held that a major penalty of dismissal cannot be imposed by an authority subordinate to the appointing authority and relied upon the decision of Hon'ble Supreme Court in *Moti Ram Deka vs. G.M., North East Frontier Railway & Ors., AIR 1964 SC 600*.

13. It is evident that no document evidencing delegation of disciplinary power in favour of the General Manager (Marketing) was placed on record before the learned Single Judge. The burden to establish competence of the



disciplinary authority lay squarely upon the employer, which was not discharged.

14. The dismissal order dated 05.12.2000, on its face, does not disclose reasons nor indicate independent application of mind to the reply submitted by the petitioner pursuant to the second show cause notice. The learned Single Judge also recorded that the respondents/appellants had not controverted the pleadings and submissions advanced on behalf of the writ petitioner. In such circumstances, the finding that the order was non-speaking and unsustainable cannot be said to be perverse.

15. Similarly, the appellate order dated 24.01.2001 was found to be non-speaking and not dealing with the grounds raised in the memorandum of appeal. The learned Single Judge, therefore, held both the punishment order and the appellate order to be illegal and perverse.

16. It is also noteworthy that even subsequently, in the review proceedings, no resolution or delegation order was brought on record to substantiate the plea that the General Manager (Marketing) was duly authorized. This fortifies the conclusion that the learned Single Judge decided the writ petition on the basis of the materials then available on record and in accordance with settled principles of service



jurisprudence.

17. We are also of the considered view that the competence of the authority imposing the penalty goes to the very root of the matter. When an order of dismissal is passed by an authority whose jurisdiction is under serious doubt, and when no contemporaneous material was produced before the Writ Court to substantiate lawful delegation, the learned Single Judge was justified in exercising judicial review. The argument of delegation, unsupported by record at the relevant stage, cannot be permitted to cure a foundational defect in jurisdiction.

18. This Court, in exercise of intra-court appellate jurisdiction, does not sit as a court of re-hearing on facts to substitute its own view merely because another interpretation may be possible. The scope of interference is limited to examining whether the judgment under appeal suffers from patent illegality or perversity. At this juncture, it is pertinent to take note of the decision rendered by the Hon'ble Supreme Court while deciding the case of *Narendra & Co. (P) Ltd. v. Workmen*, reported in (2016) 3 SCC 340, wherein following observation was made:

“5. .. Be that as it may, in an intra-court appeal, on a finding of fact, unless the Appellate Bench reaches a conclusion that the finding of the Single



Bench is perverse, it shall not disturb the same. Merely because another view or a better view is possible, there should be no interference with or disturbance of the order [Narendra & Co. (P) Ltd. v. Workmen, WP No. 41489 of 2002, decided on 14-3-2008 (KAR)] passed by the Single Judge, unless both sides agree for a fairer approach on relief.”

19. Upon independent scrutiny of the record, we find that the learned Single Judge applied the correct legal principles to the facts as presented before him. The reasoning does not disclose any error apparent on the face of the record.

20. The present intra court appeal, therefore, stands dismissed being devoid of any merit.

21. Pending application(s), if any, shall also stand disposed of.

(Sudhir Singh, J)

(Rajesh Kumar Verma, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	NA
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