

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2773 of 2017

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Dr. Kameshwar Prasad Son of Late Tetar Sahu, resident of Village and P.S. Kauakol, District Nawada at present posted as Incharge Medical Officer, Primary Health Centre, Dumra, P.S. Dumra, District- Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health, Government of Bihar, Patna.
2. Joint Secretary, Department of Health, Government of Bihar, Patna.
3. Under Secretary, Department of Health, Government of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shiv Kumar, Advocate
Ms. Sweta Burnwal, Advocate
For the Respondent/s : Mr. Ramadhar Singh, GP- 25

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
CAV JUDGMENT

Date : 16-02-2026

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

2. The petitioner, by filing the instant writ application, has challenged the order of punishment contained in Memo no. 496(9) dated 5.5.2016 issued under the signature of the Under Secretary, Health Department, Government of Bihar whereby the petitioner was inflicted with punishment of



stoppage of five increments with cumulative effect and of
censure.

3. The case of the petitioner in brief is that on the charges of having married for a second time in the lifetime of his first wife, the respondents proceeded against him under departmental proceeding serving on him a copy of the memo of charge along with the resolution dated 21.5.2012.

4. The petitioner filed a detailed reply to the same and the enquiry proceeded with the Conducting Officer submitting the enquiry report on 21.3.2013.

5. A copy of the enquiry report was served on the petitioner on 23.5.2013 to which the petitioner gave a detailed reply on 13.6.2013 (Annexure-5).

6. It is submitted by learned counsel appearing for the petitioner that adopting a procedure unknown to law, the petitioner was served with yet another notice on 3.11.2015 to which the petitioner again filed his reply on 8.12.2015.

7. The respondents thereafter came out with the order of punishment dated 5.5.2016, as stated above. It is against this order of punishment that the instant writ application has been filed.

8. It is submitted by Mr. Shiv Kumar, learned



counsel for the petitioner that the very initiation of the departmental proceeding against the petitioner is in teeth of Rule 17(4) and (5)(a) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 ('CCA Rules' in short) as the petitioner was not served with any notice nor was given any opportunity for filing a written statement as contemplated in Rule 17 of the CCA Rules.

9. Referring to the contents of the enquiry report wherein the Enquiry Officer himself sent a letter no.121 dated 22.11.2012 to the first wife of the petitioner to appear in the enquiry proceedings and to place her case, learned counsel for the petitioner submits that the Enquiry Officer did not act in an independent and fair manner as required under the CCA Rules. It is further submitted that besides the witness called by the Enquiry Officer himself, no other witness was examined and no oral or documentary evidence produced by the Presenting Officer and thus there is a clear violation of Rule 17(14) of the CCA Rules.

10. It is lastly submitted that though a detailed reply to the second show cause notice was filed on behalf of the petitioner, however, the order of punishment shows that not a single point raised by the petitioner therein has been considered



and an order imposing major punishment has been passed. It is finally submitted that the petitioner superannuated from service on 31.8.2020.

11. In support of his contentions, learned counsel for the petitioner has placed reliance on the judgments in the case of *Rama Shankar Chaudhary vs. The State of Bihar and Ors.*; 2018 (1) PLJR 91, *Girish Parsad Sah vs. The State of Bihar and Ors.*; 2018 (1) PLJR 144, *State of U.P. and Ors. vs. Saroj Kumar Sinha*; (2010) 2 SCC 772, *MMRDA Officers Association Kedarnath Rao Ghorpade vs. Mumbai Metropolitan Regional Development Authority and Anr.*; (2005) 2 SCC 235 and *Ratneshwar Mishra vs. The State of Bihar and Ors.*; C.W.J.C. no. 2162 of 2012 dated 29.2.2012.

12. It is submitted by learned counsel for the respondents that while the petitioner was working in the capacity of a Medical Officer in Sub-Divisional Health Hospital at Barh in district Patna, a written complaint was received in the department on 20.1.2008 through the Chief Minister's Secretariat filed by the first wife of the petitioner namely Smt. Savitri Devi that the petitioner had solemnized second marriage with one Nibha Devi. An explanation was sought from the petitioner vide letter dated 10.6.2010 asking him to file his reply



within 15 days, however, the petitioner failed to respond. Thereafter, based on the decision taken in the department, a departmental proceeding was initiated against the petitioner under the CCA Rules. Having conducted the proceedings strictly in accordance with the provisions of the CCA Rules as also in accordance with law, the Conducting Officer submitted an enquiry report on 21.2.2013 finding the charge levelled against the petitioner to have been proved. A second show cause notice was issued to the petitioner to which he filed his reply. Having considered the contents of the reply, the order of punishment, impugned herein, was passed.

13. It is submitted by learned counsel for the respondents that the petitioner has not made out any case for interference by this Court. It is not a requirement in law that all the points raised by the petitioner be considered by the disciplinary authority. There is no illegality in the order impugned, the petitioner having been given opportunity to present his case at each stage. So far as the judgments relied upon by the petitioner is concerned, the same are not applicable in the facts of the case. There being no merit in the writ application, the same be dismissed.

14. Heard learned counsel for the petitioner, learned



counsel for the respondents and perused the material on record.

15. The relevant facts in brief are that the respondents by resolution dated 21.5.2012 issued under the signature of the Under Secretary, Health Department, Government of Bihar took a decision to proceed against the petitioner in a departmental proceeding under the CCA Rules. Along with the resolution dated 21.5.2012, the petitioner was served with a memo of charge in Prapatra 'ka'. The charge against the petitioner was to the effect that inspite of the first wife of the petitioner being there, he solemnized a second marriage. Further charge was of torturing his first wife and not giving maintenance. A complaint was filed in the Chief Minister's Secretariat which was forwarded to the respondents and another matter was also going on before the Lokayukta, Bihar. A case had also been lodged in the Court of Judicial Magistrate 1st Class at Nawada.

16. The petitioner filed his reply denying the allegations levelled in the memo of charge. The enquiry proceeded and an enquiry report was submitted by the Conducting Officer on 21.3.2013 wherein the charge levelled against the petitioner was found to be proved.

17. The petitioner was served with a copy of the



enquiry report and a second show cause notice to which he submitted his reply. The respondents came out with an order of punishment dated 5.5.2016 imposing the punishment of withholding of five increments with cumulative effect which is a major punishment as also the punishment of censure. It is against this order dated 5.5.2016 that the instant writ application has been filed.

18. It has been argued by learned counsel for the petitioner that the respondents have not complied with the requirements as contained in Rule 17(4) and 17(5)(a) of the CCA Rules. Rule 17(4) clearly provides that a copy of the article of charge shall be delivered on the government servant stating therein the imputation of misconduct or misbehaviour along with the list of document and witnesses on the basis of which the charges are proposed to be sustained. An opportunity shall be given to the government servant to submit his written statement of defense and only thereafter the disciplinary authority shall proceed to record his findings on each charge and take such evidence as he may thinks fit.

19. In this context, the Court finds that no notice was issued to the petitioner as contemplated in Rule 17(4) and (5)(a) of the CCA Rules.



20. This Court in ***Rama Shankar Chaudhary*** (supra) held as follows:

“8. In my opinion, although the disciplinary authority has framed a charge in tune with Rule 17(3) of “the Rules” but he has neither sought an explanation from the delinquent on the charge in terms of Rule 17(4) nor there is a satisfaction on the part of the disciplinary authority for relegating the matter for enquiry in terms of Rule 17(5) by following the procedure provided under Rule 17(6). All these mandatory obligations have been thrown to the winds by the disciplinary authority in the present matter.”

21. Thus from the undisputed facts with respect to non-compliance of the provisions contained in Rule 17(4) and (5)(a) of the CCA Rules, the Court is of the opinion that the mandatory provision as contained therein has not been followed.

22. Further on perusal of the contents of the enquiry report, it transpires that a letter bearing no. 121 dated 22.11.2012 was written by the Conducting Officer to the first wife of the petitioner asking her to appear. She appeared



pursuant thereto and put forward her case. It may be observed here that as per Rule 17(14) of the CCA Rules, the oral and documentary evidence in support of the articles of charges are to be produced on behalf of the disciplinary authority and the witnesses are to be examined by or on behalf of the Presenting Officer and thereafter cross-examined by the government servant. So far as the Enquiry Officer is concerned, he has to act as an independent person.

23. The Hon'ble Supreme Court in the case of **Saroj Kumar Sinha** (supra) held as follows:

“28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have



not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.”

24. In the opinion of the Court, by himself writing the above-mentioned letter dated 22.11.2012 to the first wife of the petitioner, who happens to be the complainant herein, the Enquiry Officer did not act independently.

25. It further transpires from the contents of the enquiry report that the petitioner did not get an opportunity to cross-examine his first wife for which another date was fixed. However, on the next date when the petitioner was present, the complainant i.e. his first wife was absent.

26. Besides the first wife of the petitioner who was called by the Enquiry Officer, it is not disputed by learned counsel for the respondents that no other witness was examined nor produced by the Presenting Officer. As such, the findings in the enquiry proceedings are fit to be rejected on this ground also. Reference may be made to the judgments in the case of ***Rama Shankar Chaudhary*** (supra), ***Girish Parsad Sah*** (supra) and the judgment of this Court in the case of ***Ratneshwar Mishra*** (supra).

27. It may be observed here that so far as the first



wife of the petitioner is concerned, besides having been called by the Enquiry Officer herself and no opportunity to cross-examine having been given to the petitioner, nevertheless even the Enquiry Officer has not dealt with the evidence led by her. Further no other witness having been examined, the charges were not proved and as such, the Enquiry Officer in his conclusion was of the opinion that the charge against the petitioner can be treated to be proved.

28. On the petitioner having been served with a copy of the enquiry report, he submitted his reply to the second show cause on 13.6.2013. The respondents came out with the order of punishment on 5.5.2016.

29. From a bare perusal of the order of punishment dated 5.5.2016 passed by the disciplinary authority, it transpires that there is no consideration of the points raised by the petitioner in his reply to show cause.

30. In the case of ***MMRDA Officers Association Kedarnath Rao Ghorpade*** (supra), the Hon'ble Supreme Court held as follows:

“5. Even in respect of administrative orders Lord Denning, M.R. in Breen v. Amalgamated Engg. Union [(1971) 1 All ER 1148 : (1971)



2 QB 175 : (1971) 2 WLR 742 (CA)] observed : (All ER p. 1154h) “The giving of reasons is one of the fundamentals of good administration.” In Alexander Machinery (Dudley) Ltd. v. Crabtree [1974 ICR 120 (NIRC)] it was observed:

“Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at.”

Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the “inscrutable face of the sphinx”, it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is



spelling out reasons for the order made, in other words, a speaking-out. The “inscrutable face of the sphinx” is ordinarily incongruous with a judicial or quasi-judicial performance (Chairman and Managing Director, United Commercial Bank v. P.C. Kakkar [(2003) 4 SCC 364 : 2003 SCC (L&S) 468]).”

31. For all the reasons as stated and discussed hereinabove, the Court is of the opinion that there is serious lacuna in conduct of the departmental proceeding in so far as there is clear cut violation of Rule 17(4), 17(5)(a) and 17(14) of the CCA Rules. In the conduct of the departmental proceeding, the Enquiry Officer has also not acted in an independent manner as held in the case of **Saroj Kumar Sinha** (supra). The reply to the second show cause notice filed by the petitioner not having been considered by the respondents is also in teeth of the judgment in the case of **MMRDA Officers Association Kedarnath Rao Ghorpade** (supra).

32. For the reasons stated hereinabove, the order of punishment contained in Memo no. 496(9) dated 5.5.2016 issued under the signature of the Under Secretary, Health Department, Government of Bihar is not sustainable and is set



aside.

33. The writ application is allowed with all consequential benefits.

(Partha Sarthy, J)

saurovkrishna/-

AFR/NAFR	NAFR
CAV DATE	10.2.2026
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