
(2011) 128 FLR 1098

Patna High Court

Case No: C.W.J.C. No. 1033 of 2008

Dr. Rakesh Kumar @
Rakesh Kumar

APPELLANT

Vs

State of Bihar and
Others

RESPONDENT

Date of Decision: Sept. 16, 2010

Acts Referred:

- Civil Services (Classification, Control and Appeal) Rules - Rule 55, 97

Citation: (2011) 128 FLR 1098

Hon'ble Judges: J.N. Singh, J

Bench: Single Bench

Final Decision: Allowed

Judgement

J.N. Singh, J.

By Annexure-4 dated 28.2.2005, which is a notification of the Department of Health, Petitioner was put under suspension for some allegations of dereliction of duty and certain charges against him. It was mentioned that resolution with regard to initiation of departmental proceeding shall be issued separately. Hence, by Annexure-5 dated 6.4.2005, resolution was issued placing the Petitioner under a departmental proceeding in terms of Rule 55 of the Civil Services (Classification, Control and Appeal) Rules. A copy of the charge memo was annexed with the resolution and the Petitioner was directed to submit his reply within three weeks. Conducting Officer and Presenting Officer were also appointed. The charge memo showed that, from different sources complaints had been received in respect of some immoral act by the Petitioner which were forwarded to him through letter No. 2126(9) dated 22.11.2004. A copy of the said letter was cited as evidence.

It was stated in the charge memo that by the said letter reply was sought for from him within one week, but he had not filed the same for which he was also guilty of

disobedience and indiscipline. Letter No. 2126(9) dated 22.11.2004 is the next document which shows that two complaints of the villagers of Aurangabad had been received, copies whereof were annexed with the said letter, and Petitioner was asked to submit his explanation. The first complaint with the said letter shows that some villagers had complained to the Minister of the Department that the Petitioner was not attending to the patients in the hospital and was inducing the patients to visit his private clinic for treatment and he used to demand illegal gratification. The second complaint shows that the villagers had complained that the Petitioner was absent from duty from 20th August, 2004 to 28th August, 2004 without any reasons disclosed which showed his irresponsible conduct.

2. Petitioner submitted his reply to the charge memo and thereafter proceeding as per Rule 55 was initiated. After the conclusion of the proceeding the enquiry officer submitted his report, vide Annexure-6 dated 8.7.2005. The enquiry report shows that the enquiry was held against the Petitioner in respect of only one charge as was contained in the charge memo enclosed with the said resolution dated 6.4.2005. It shows that no separate charge was framed against the Petitioner for his alleged unauthorized absence from 20th August, 2004 to 28th August, 2004. As noticed in the enquiry report, Petitioner had explained his conduct in respect of his absence from duty during the period. He stated that, he was on earned leave between 11.8.2004 to 9.9.2004, duly sanctioned by the Civil Surgeon vide his letter No. 2205 dated 7.10.2004.

3. The statement of the Presenting Officer has also been noticed in the enquiry report. In the statement, the Presenting Officer accepted that from 11.8.2004 to 13.8.2004 Petitioner was absent on casual leave which was later on converted into earned leave till 9.9.2004. The statement of the Presenting Officer shows that, thereafter, he took a stand that in subsequent periods i.e. 2.10.2004 and 3.10.2004, 8.11.2004 to 17.11.2004 and 10.12.2004 to 11.12.2004 he was found absent unauthorizedly. It was accepted by the Presenting Officer that for 30 days i.e. 11.8.2004 to 9.9.2004 the Petitioner was sanctioned earned leave by the Civil Surgeon. In respect of allegation of inducing the patients to visit his private clinic and get treatment there, it is stated by the Presenting Officer that the same could not be substantiated as no complaint had been received by the Civil Surgeon and the allegation of asking illegal gratification may be imaginary.

4. In view of the statements of the Petitioner as well as the Presenting Officer, the enquiry officer concluded that, so far as allegation against the Petitioner asking illegal gratification from the patients and inducing the patients to visit his private clinic for treatment was concerned, the same does not stand proved. However, the enquiry officer found the allegation against the Petitioner of being unauthorizedly absent from duty as proved. On receipt of the enquiry report, the second show-cause notice was issued to the Petitioner, vide Annexure-7. Petitioner filed his reply to the same vide Annexure-8. After consideration of the reply of the Petitioner order of punishment was passed against him vide notification contained in memo No. 586(9) dated 11.5.2006, a copy whereof is annexed as Annexure-9 to the writ application. Through this notification Petitioner had

been awarded punishment of warning, stoppage of one annual increment with cumulative effect and denying him full salary of the suspension period. Petitioner has challenged this punishment order in this writ application.

5. Submissions of learned Counsel for the Petitioner are two fold. He submits that for denying full salary of suspension period, no separate show-cause notice was issued to him. The same having been passed in exercise of powers under Rule 97 of the Rules, as per judgment of the Division Bench in the case of [Dinesh Prasad Vs. State of Bihar and Others](#), and in the case of Shri Mahabir Prasad v. The State of Bihar and Ors. 1988 PLJR 82 a separate show-cause notice was essential for the same. That having not been done, this punishment is bad in law. Secondly, he submits that, even if, the earlier letter No. 2126 dated 22.11.2004 and the two complaints enclosed therewith are treated to be part of the charge, the charge against the Petitioner stands confined to (i) his immoral conduct in inducing the patients to visit his private clinic for treatment and for asking illegal gratification and (ii) for his unauthorized absence from duty from 20th August, 2004 to 28th August, 2004. Taking all these documents and charge memo together, he submitted that, it is apparent that there was no charge against the Petitioner of being absent from duty for any subsequent period. So far as absence from duty between 20th August, 2004 to 28th August, 2004 is concerned, the Presenting Officer has himself accepted before the enquiry officer that the Petitioner was sanctioned earned leave by the Civil Surgeon which covered the said period. He submitted that, so far as subsequent periods are concerned, the Presenting Officer had presented before the enquiry officer that the Petitioner was unauthorizedly absent. But for those periods the Petitioner was never issued show cause notice at any point of time and was never given any opportunity to explain the same. He submitted that the enquiry officer has noticed only one charge against the Petitioner i.e. his immoral conduct as framed and notified in the charge memo, which has been found by the enquiry officer as not proved. The enquiry officer has found the Petitioner guilty of unauthorized absence from duty. He submitted that this finding of the enquiry officer obviously cannot relate to the period 20th August, 2004 to 28th August, 2004, since the Presenting Officer himself accepted before the enquiry officer that the Petitioner was sanctioned earned leave for this period.

Hence, the finding of the enquiry officer of guilt on account of unauthorized absence of Petitioner has necessarily to relate to the period of his unauthorized absence during subsequent periods as presented by the Presenting Officer; but for that at no point of time any charge was framed nor the Petitioner was given any opportunity to show cause in that respect. Hence, he submits that the entire enquiry stands vitiated on account of violation of Principles of Natural Justice and since the finding of the enquiry officer of guilt against the Petitioner is in violation of Principles of Natural Justice, the punishment order also stands vitiated and is illegal.

6. Counter-affidavit has been filed in which the punishment order against the Petitioner has been sought to be justified. Pleadings in respect of the order of suspension, the framing of charge, steps taken in the enquiry and the punishment order have been made

in the counter-affidavit.

7. However, the counter-affidavit is conspicuously silent in respect of subsequent periods of absence of the Petitioner, as alleged by the Presenting Officer before the enquiry officer, and with regard to any charge framed in that respect and any opportunity given to the Petitioner in that respect. Learned Counsel for the Respondents also could not demonstrate from the records or from the pleadings made in the counter-affidavit that in respect of his absence during subsequent periods any charge was framed against the Petitioner or any opportunity was given to him to show cause.

8. After considering the documents available on record and the pleadings made, it is clear to this Court that in respect of his absence on 2.10.2004 and 3.10.2004, 8.11.2004 to 17.11.2004 and 10.12.2004 to 11.12.2004, for which the Presenting Officer claimed that the Petitioner was unauthorizedly absent, no charge was framed and no opportunity was given to the Petitioner to show-cause in that respect. The enquiry officer has noticed only one charge against the Petitioner as notified through the charge memo annexed with Annexure-5. Since this charge memo refers to letter No. 2126(9) dated 22.11.2004, the same may be taken as- a part of the charge. Therefore, the complaints enclosed with the said letter can also be treated as part of the charge. But the two complaints are confined to the immoral acts of the Petitioner of inducing the patients to visit his private clinic for treatment and for asking illegal gratification and his absence from duty from 20th August, 2004 to 28th August, 2004. This period of absence from duty was authorized and earned leave was sanctioned, is an accepted position. Therefore, the findings of the enquiry officer, finding the Petitioner guilty of unauthorized absence cannot relate to this period. For subsequent periods, apparently, there was no charge and no opportunity was given to the Petitioner. Therefore, this Court finds that the enquiry conducted and the findings arrived at by the enquiry officer are clearly vitiated on account of violation of Principles of Natural Justice. Since the punishment order is passed on such enquiry report, the same also stands vitiated.

9. In the circumstances, the punishment orders, as contained in Annexure-9, as well as the enquiry report, as contained in Annexure-6, are quashed. However, in case the Respondents intend to proceed with the enquiry, they will be at liberty to do so only after framing specific charges in respect of the allegations against the Petitioner and after giving him sufficient notice in compliance with the Principles of Natural Justice. If at all they intend to do so they must take steps for the same within two months from the date of receipt/production of a copy of this order, failing which they are restrained from proceeding in the matter afresh. The benefits to which the Petitioner was deprived of as a consequence of the punishment order, shall stand restored and the Petitioner shall be entitled to payment of all his dues in that respect before any further step is taken in the matter as per liberty granted hereinabove.

The writ application is allowed with the above observations and directions.