

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9135 of 2020

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Ashok Kumar Yadav, Son of Late Shambhu Prasad Yadav, Resident of Flat No. 204, Basudev Jhari Apartment, Mohalla-Vednagar, Bailey Road, P.S.-Rupaspur, District and Town-Patna-800014, Bihar

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Health, Govt. of Bihar, Patna.
3. The Joint Secretary, Department of Health, Govt. of Bihar, Patna.
4. The Managing Director, Bihar Medical Services Infrastructure Corporation Limited, 4th Floor, Bihar State Building Construction Corporation Limited, Hospital Road, Shastri Nagar, Patna.
5. The State Drug Controller, Drug Control Administration, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shekhar Singh, Advocate
For the Respondent/s : Mr. S.D. Yadav, AAG-9

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 08-12-2021

This writ application was filed on 08.12.2020 seeking a direction to the respondents No. 1 to 3 to consider the petitioner's request to grant him adequate time extension after the end of the lockdown period imposed due to spread of COVID-19 virus for submission of reply/ representation against the enquiry report submitted by the Enquiring Authority. A prayer was also made seeking a direction to the concerned respondent authorities to supply complete enquiry report so as to enable him to file proper reply/ representation as the copy of the



enquiry report supplied to him did not contain pages No. 7 to 13 of the said report.

2. During pendency of the writ application final order has been passed in the disciplinary proceeding with the issuance of resolution vide Memo No. 516(15) dated 26.03.2021 by the Health Department, Government of Bihar, whereby punishment of dismissal from service has been imposed upon the petitioner. The petitioner has sought for amendment in the writ petition by filing I.A. No. 01 of 2021 so as to challenge the said resolution dated 26.03.2021, which was allowed by order dated 28.06.2021.

3. Heard Mr. Shekhar Singh, learned counsel appearing on behalf of the petitioner and Mr. S.D. Yadav, learned AAG-9 for the State of Bihar.

4. The short facts of the case requisite for the present adjudication are that on the allegation of certain illegalities/irregularities committed by the petitioner while posted as Drug Inspector on deputation under Superintendent, Patna Medical College and Hospital, Patna in purchase of medicines, chemicals, re-agents, machines and equipments for the financial year 2008-09 and 2009-10, Vigilance Case No. 061 of 2013 came to be registered for the offences punishable under Sections 406/409/420/120-B of the Indian Penal Code read with Section



13(1)(D) of the Prevention of Corruption Act, 1988. The Government of Bihar, on a request made by the Vigilance Investigation Bureau, has granted sanction for petitioner's criminal prosecution on 22.05.2014. A departmental proceeding was subsequently initiated against him vide Resolution No. 1104 (15) dated 07.10.2016 issued by the Health Department, Government of Bihar, under Rule 17 of Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 [for short BGS(CCA) Rules]. The Enquiring Authority submitted his report on 14.02.2020, holding the charges framed against the petitioner in the departmental enquiry to be proved. Copy of the said departmental enquiry was communicated to the petitioner through departmental memo No. 408(15) dated 27.03.2020 requiring him to file his reply within 15 days. Before final order was passed in the disciplinary proceeding, the petitioner approached this Court by filing the present writ application seeking a direction to the respondents to allow him adequate time for filing his representation in response to the findings recorded by the Enquiring Authority.

5. It is the petitioner's specific case that complete copy of the enquiry report was not supplied to him and, therefore, it was not possible for him to properly deal with the findings



recorded by the Enquiring Authority. The lockdown, arising out of COVID-19 pandemic, was also taken as a ground which hindered the petitioner submitting his effective reply.

6. Though a specific plea has been taken in the writ petition that the report of the Enquiring Authority, which was supplied to the petitioner, was not complete, the State of Bihar has not controverted specifically the said statement in its counter affidavit filed in March 2021. In the counter affidavit it has been stated that as the petitioner failed to submit his representation on the said enquiry report, the Disciplinary Authority had no other option but to proceed further in the departmental proceeding and accordingly after obtaining necessary concurrence of Bihar Public Service Commission (BPSC), it has been decided to impose major punishment of dismissal from service.

7. As has been noted hereinabove, the order of dismissal has been passed on 26.03.2021, which is under challenge in the present case.

8. A supplementary counter affidavit has also been filed on behalf of the State of Bihar asserting therein that after adopting due procedure, major punishment of dismissal from service under Rule 14(xi) of the BGS(CCA) Rules has been imposed upon the petitioner.



9. Since, despite there being specific averment made in the writ petition that complete copy of the enquiry report was not supplied to the petitioner and no denial thereof was coming forth in the counter affidavit/ supplementary counter affidavit filed on behalf of the State of Bihar, by an order dated 02.11.2021, the State Drug Controller was asked to be personally present with specific stand as to whether full report of the Enquiring Authority was communicated to the petitioner through email on 27.03.2020, in the wake of the petitioner's claim that pages No. 7 to 13 of the said report were missing and, therefore, it was not possible for him to make his effective representation on the said enquiry report.

10. Pursuant to the aforesaid order, the State Drug Controller, Bihar appeared before this Court on 03.11.2021 with the original records of the departmental proceeding. The State Drug Controller, Mr. Ravindra Kumar, admitted before this Court that pages No. 7 to 13 of the enquiry report were not communicated to the petitioner while supplying the same through email to him, seeking his representation thereon.

11. There being no dispute in relation to the fact that complete copy of the enquiry report was not supplied to the petitioner so as to enable him to make his effective



representation against the findings of the Enquiring Authority, in my opinion, any decision based on such enquiry report cannot be sustained.

12. Accordingly, the resolution dated 26.03.2021, whereby punishment of dismissal from service has been imposed upon the petitioner, is hereby quashed being in breach of principles of natural justice as well as the provisions of Rule 18(3) of the BGS (CCA) Rules which obligates the Disciplinary Authority to forward a copy of the enquiry report to the delinquent government servant. Supply of truncated copy of the enquiry report is apparent non-compliance of Rule 18(3) of the BGS (CCA) Rules. Consequent upon setting aside of the impugned resolution, the petitioner shall be required to be reinstated forthwith. The Disciplinary Authority is hereby directed to ensure that a complete copy of the enquiry report is supplied to the petitioner within one month from today, allowing him 15 days time to submit his written representation, from the date of supply of the said enquiry report, as stipulated under Rule 18(3) of the BGS (CCA) Rules. Upon considering the petitioner's representation on the report of the Enquiring Authority the Disciplinary Authority shall be required to proceed in accordance with law.



13. This application is accordingly allowed with the aforesaid observations and directions.

14. Let original records produced by the State Drug Controller, Bihar be returned to learned AAG-9.

(Chakradhari Sharan Singh, J)

Rajesh/-

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| AFR/NAFR | NAFR |
| CAV DATE | NA |
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