
(2009) 04 PAT CK 0016
In the Patna High Court
Case No : LPA No. 965 of 2008

The State of Bihar and Others

APPELLANT

Vs

Dr. Suresh Jha and Others

RESPONDENT

Date of Decision : 20-04-2009

Acts Referred:

Citation : (2009) 3 PLJR 403

Hon'ble Judges : J.B. Koshy, C.J.;Ravi Ranjan, J

Bench : Division Bench

Advocate : Shankar Kumar, for the Appellant; Pushkar Kr. Shahi, Santosh Jha for Respondent No. 1 and Mr. J.P. Karn, for the Respondent

Final Decision : Dismissed

Judgement

J.B. Koshy, C.J. and Dr. Ravi Ranjan, J.—Writ petitioner, a graduate in Medicine and Surgery (M.B.B.S.) of 1972 batch, having completed his post-graduation in 1977, was appointed in the Bihar Health Service on 8th September, 1977. After completing almost 25 years of unblemished service, he was put under suspension in contemplation of a departmental proceeding by an order dated 30th July, 2002. Charge-sheet was filed only on 12th June, 2004. Enquiry report was filed on 25th November, 2004. On 30th March, 2005 he was dismissed from service. The learned Single Judge considered the matter and set aside the order of dismissal. The main ground taken up by the learned Single Judge was undue delay in taking departmental proceeding. It is the admitted case that a show cause notice was issued to the first respondent on 14.5.1998 alleging that during 1991-92, he had purchased medicines in addition to the departmental allotment without sanction from competent authority. After about six years of the alleged incident, it is contended by the first respondent that no ordinary human being could remember whether the medicines in excess of the allotment were purchased, whether there was any authorization from competent authority, whether the medicines were purchased out of necessity, etc. and especially a post-graduate doctor engaged in Government service who had to treat thousands

of patients would not remember regarding the alleged purchases made by him after lapse of many years. In the reply to the show cause notice, the first respondent denied the allegation made against him and stated that even if he had purchased medicines in excess quantity, it must be with prior sanction from the Civil Surgeon. It was also stated that he does not remember the transactions made during 1991-92 and that he had not committed any wrong or violated anything.

2. After the receipt of the reply to the show cause notice dated 26.5.1998, no further action was taken against the first respondent till 30.7.2002 when he was also suspended from service pending enquiry. It was stated that the first respondent was under the impression that the charges leveled against him were dropped accepting his explanation. Charge-sheet was served to him on 12th January, 2004. Thereafter, an enquiry was conducted and the enquiry officer found him guilty. After issuing a second show cause notice, he was dismissed from service.

3. The learned Single Judge found that in view of the undue delay, the first respondent had no reasonable opportunity to defend himself and the delay itself vitiated the proceedings. The order dismissing the first respondent was issued only on 30th March, 2005 and it is true that even if there is valid reason for issuing show cause notice or charge-sheet or initiating disciplinary action, there is undue delay. The enquiry was conducted in 2004 after more than about ten years of the alleged misconduct, the first respondent cannot be expected to remember minute transactions. He was denied the opportunity to defend himself or rebut the charges. There is violation of the principles of natural justice causing actual prejudice to the delinquent employee. The teamed Single Judge also considered the decision in *The State of Madhya Pradesh Vs. Bani Singh* and another, regarding the inordinate delay in conduct of the enquiry. Of course there may be some delay for unavoidable reasons. But there should be an explanation for the delay. Here no explanation was given for the delay at all. Same view was taken in *State of Andhra Pradesh Vs. N. Radhakishan*, . After a long time perhaps the charge-sheet must have been issued against the first respondent to save somebody making him a scape goat. There is no convincing reason in issuing show cause notice after about seven years of the alleged misconduct and taking another four years to issue charge-sheet after consideration of the explanation. It further supports the contention of the first respondent that he was made a scape-goat after the report of the audit. Learned counsel for the appellants submitted that there is an admission in the reply to the show cause notice that the first respondent might have purchased medicines with the authorization of the Civil Surgeon. On going through the reply to the show cause notice, we do not find any such admission. The first respondent had denied the allegations. In the reply the first respondent is alleged to have stated that he does not remember whether any such incident had occurred or not and that if he had purchased medicines it should have been done with prior sanction of the Civil Surgeon. It cannot be taken as an admission. An admission to be binding upon

must be unconditional and unambiguous. There is no clear admission of the allegations stating that he is unable to remember things happened during 1991-92. If there was such an admission, as stated by counsel for the appellants, there is no explanation why no action was taken against him at that time. It shows that the authorities were not acting in good faith when action was taken against the first respondent. It is further contended that in the enquiry, the misconduct was proved. We have noticed that the enquiry was conducted after more than 13 years of the alleged misconduct. No reasonable opportunity was afforded to the first respondent to defend his case. Thus there is clear violation of the principles of natural justice. Apart from the inordinate delay, the learned Single Judge also found that in spite of the requirement to produce certain documents, on the basis of which the first respondent could defend himself, those documents were not produced. The learned Single Judge also took note that the first respondent was alleged to have issued certain purchase orders. The purchase orders alleged to have been issued by the first respondent were not produced. It was stated that they were based on a report from the MSD, Kolkata, but that report was not marked by examining the appellant as to delay. No witness was examined in the course of departmental proceedings by the department. The Departmental Enquiry Commissioner asked the charge-sheeted officer to prove his defence instead of proving the charges. The department produced a letter of Civil Surgeon, Madhubani dated 26.12.2001. The said letter was also not proved by examining him. He was not the Civil Surgeon who was on duty at that time of alleged misconduct stated to have been committed by the first respondent in 1991. The learned Single Judge correctly found that the departmental proceedings were also perverse and it dealt with matters not contained in the charges. After considering the entire proceedings, the learned Single Judge found that the enquiry was conducted against the principles of natural justice and that the undue and inordinate delay in issuing show cause notice and the charge-sheet itself vitiated the charges and caused prejudice to the first respondent. Absolutely no evidence was adduced to prove the charges and the findings of the enquiry officer are perverse and the disciplinary authority has not applied its mind. While appreciating contentions raised by the learned counsel for the appellants, the learned Single Judge found that none of the contentions is tenable and, therefore, set aside the disciplinary proceedings. We fully agree with the reasoning of the learned Single Judge. Since we are agreeing with the findings of the learned Single Judge, we are not reiterating all the reasons. The appeal is dismissed with costs, quantifying at Rs. 5,000/- to be paid to the first respondent either directly or through his counsel.