

Dr. Binod Kumar Kashyap Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Sep-03-2008

Judge : Mihir Kumar Jha, J.

Appellant : Dr. Binod Kumar Kashyap

Respondent : The State of Bihar and ors.

Disposition : Application dismissed

Prior history : Mihir Kumar Jha, J. 1. The petitioner in this writ application has assailed the validity and correctness of an order of punishment passed in pursuance of a departmental proceeding as contained in the departmental notification, Memo No. 2116 dated 16.11.2004 whereby and whereunder he has been subjected to the following four punishment: (a) Censor. (b) Stoppage of two increments with cumulative effect. (c) Recovery of 1/3rd of the amount of theft from the cash deposit in the office of the petiti

Judgement :

Mihir Kumar Jha, J.

1. The petitioner in this writ application has assailed the validity and correctness of an order of punishment passed in pursuance of a departmental proceeding as contained in the departmental notification, Memo No. 2116 dated 16.11.2004 whereby and whereunder he has been subjected to the following four punishment:

(a) Censor.

(b) Stoppage of two increments with cumulative effect.

(c) Recovery of 1/3rd of the amount of theft from the cash deposit in the office of the petitioner.

(d) Payment of subsistence allowance during the period of suspension.

2. The facts in brief giving rise to this application is that the petitioner, a member of Bihar Health Service, was initially appointed as Civil Assistant Surgeon in the year 1990 and subsequently he was made in-charge Medical Officer on 8.7.2002 in the Primary Health Centre (PHC), Durgawati at Kaimur where he was also vested with the power of Drawing and Disbursing Officer by an order of the Regional Deputy Director of Health, Patna Division, dated 6.9.2002. It is the case of the petitioner that while he was working in the capacity of the In-charge Medical Officer in Durgawati PHC he had proceeded on leave on 30.3.2003 for a period of two days, namely, 1.4.2003 and 2.4.2003 after handing over charge to one Dr. Arun Kumar, posted at Addl. PHC, Chehariya, Durgawati. The petitioner claims that on 31.3.2003 before proceeding on leave he had presented bills for encashment worth Rs. 11,30,000/- from the Treasury for the purpose of making payment of salary to the employees of Durgawati PHC but the petitioner had proceeded on leave with effect from 1.4.2003 without getting them encashed. The petitioner has further claimed that while he had over stayed on leave at Patna till 4th April, 2003 he had received an information that the bills presented by him in Bhabhua Treasury after being encashed were kept in the office of Drugawati PHC but they were stolen away in the night of 3th and 4th April, 2003 and accordingly, he had rushed to Durgawati on 4th April, 2003 and had instituted a police case being Durgawati P.S. Case No. 20/2003. The petitioner had simultaneously brought this fact to the notice of the Health Commissioner by his separate letter dated 5.4.2003.

3. The Health Department, however upon making a fact finding enquiry had placed the petitioner under suspension in contemplation of departmental proceeding by the order dated 5.9.2003 and subsequently a memo of charge dated 23.10.2003

was served on him with the following charge:

vkjksi fooj.kh

Mk0 fouksn dqekj d';lk] fpfdRlk inkf/kdkjh] izkFkfed Lok0 dsUnz nqxxZorh] dSewj }kjk fnukad 31&3&2003 dks inkf/kdkjh;ks @ deZpkjh;ks ds osru vkfn ,oa vU; jkf'k Hkqxrku gsrq yxHkx X;kjg yk[k rhl gtkj :lk;s dh fudklh dh xbZ A fudklh xbZ jkf'k fd cxSj Hkqxrku ,oa leqfpr j[k&j;[kko fd;s Mk0 d';lk fcuk flfoy ltZu] dSewj ls vodk'k Lohd`r djks; vukf/kd`r :i ls eq[;ky; ls ckj pys x;s A fnukad 3&4&2003 dks jkf= es Mk0 d';l dh ykijokgh ds dkj.k mDr izkFkfed Lok LF; dsUnz es ljdkjh jkf'k dh pksjh gks x;h A vr% Mk0 d';lk vius dr ZO; ds izfr mnklhurk] ykijokgh ,oa dr ZO;ghurk ds fy, izFke n`V;k nks'kh izrhr gksrs gS A

4. The petitioner upon service of charge has submitted his reply to the Enquiry Officer partly explaining and partly denying the charges vide his written statement of defence dated 8.12.2003 wherein he had taken a plea that he was not unauthorizedly absent and in fact has proceeded on leave after submission of leave application and further that theft during his absence of the cash drawn from Bhabhua Treasury was committed in his absence for which he could not be held responsible inasmuch as such payment of salary to the doctors and employees at P.H.C. by way of age long practice was always being made in cash.

5. The Enquiry Officer after receipt of the said written statement of defence had conducted the departmental proceeding and had submitted his enquiry report holding that the charge against the petitioner of negligence and dereliction of duty was proved and his plea that he had proceeded on leave after getting it sanctioned was also not found to be correct. Two paragraphs of the enquiry report being relevant in this regard are extracted hereinbelow:

tgkaW rd Mk0 d';lk ij yxk;s x;s vkjksi vukf/kd`r :lk ls vuqifLFkr gksdj eq[;ky; ls ckjg pys tkus dk gS bl laca/k esa vkjksih ink0 }kjk vodk'k izfrosnu miyC/k djks;k x;k A Mk0 v:.k dqekj ls lgefr izklr gS tks vfr0 izkFk0 Lok0 dsUnz egfj;k] nqxxZorh esa inLFkfkfir gS vkSj ftlesa fnukad 1&4&03 ls 2&4&03 rd dh vof/k dk vodk'k Lohd`r djus dk vuqjks/k fd;k gS bl vkdfLed vodk'k vkosnu dks Mk0 d';l us iz/kku fyfid dks lqiqnZ dj fn;k Fkk A Mk0 d';lk us mYys[k fd;k dh iz/kku fyfid us mDr vkosnu i= dks

flfoy ltZu dk;kZy; ugh igqapk;k A fnukad 3&4&03 ,oa 4&4&03 esa NqV~Vh esa fcrk;h x;h vof/k dk Mk0 d';lk Li'V mRrj ugh feyk A miLFkkiu ink0 }kjk ;g lwfpr fd;k x;k fd vkjksi ink0 fnukad 31&3&03 dks dks'kkxkj esa feys Fks ,oa nqxxZorh dk ,d fyfid muds dk;kZy; eas fnukad 1&4&03 dks x;k Fkk ijUrq fdlh us mUgs izHkkjh fp0 ink0 Mk0 d';lk dh NqV~Vh esa tkus dh lwpuk ugh nh A

eUkro;

mijksDr rF;ks ls ;g Li'V gksrk gS fd Mk0 fouksn dkekj d';lk izHkkjh fp0 ink0 izkFk0 Lok0 dsUnz nqxxZorh fnukad 1&4&03 dks gh fcuk ljdkjh jkf'k esa mfpr j[k&];[kko fd;s cxSj eq[;ky; NksM+ fn;s ;fn mUgs fnukad 2&4&03 ,oa 3&4&03 dks vodk'k ekuk tk; rks bruh cM+h jkf'k ds fudklh dj vodk'k esa izLFkku ugh djuk pkfg, Fkk A ;g muds dr ZO; ds izfr mnklhurk] ykijokgh ,oa dRk ZO;ghurk dk mtkxj djrk gS ,oa fcuk NqV~Vh Lohd`r djks rFkk fcuk fu;af= ink0 dks lwfpr fd;s eq[;ky; NksM+ nsuk Hkh vukf/kd`r :i ls vodk'k esa jguk minf'kZr djrk gS A

vr% ;g vkjksi izekf.kr gksrk gS A

6. It would appear that after receipt of the enquiry report the petitioner was given a further show cause notice alongwith a copy of the enquiry report vide Government's letter dated 16.8.2004 directing to explain as to why in the light of the charges having been found to be proved in the report of the Enquiry Officer he should not be subjected to suitable punishment. It is the case of the petitioner that he had submitted his reply to the said show cause notice whereafter by the impugned order dated 16.11.2004 he was subjected to the aforementioned four punishments.

7. Counsel for the petitioner has primarily sought to assail the order of punishment on the ground that the order of punishment being in form of major punishment, a regular departmental proceeding was required to be conducted but the Enquiry Officer had concluded the departmental proceeding only on the basis of queries made to the presenting Officer as also to the petitioner delinquent and as such, there was no proper departmental proceeding in terms of Rule 55 of the Civil Services (Classification, Control and Appeal) Rules. In this context counsel for the petitioner had stressed on this aspect that no oral evidence was adduced in

course of departmental proceeding and as such, it could not be said that there was a regular departmental proceeding.

8. This Court upon examination of the materials on record would find that from the show cause reply filed by the petitioner by way of his written statement of defence it would be clear that the charges were based on documentary evidence and as such merely because no oral deposition of witnesses was conducted, would not vitiate the departmental proceeding or would lead to a conclusion that no departmental proceeding was conducted.

9. At this stage requirement of Rule 55 of the Civil Services (Classification, Control and Appeal) Rules must be taken into consideration which reads as follows:

Without prejudice to the provisions of the Public Servants Inquiries Act, 1850, no order of dismissal, removal, compulsory retirement or reduction shall be passed on a member of a service (other than an order based on facts which have led to his conviction in a criminal court or by a Court-Martial) unless he has been informed in writing of the grounds on which it is proposed to take action and has been afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges which shall be communicated to the person charged together with a statement of the allegations on which each charge is based and on any other circumstances which it is proposed to take into consideration in passing orders on the case. He shall be required, within a reasonable time, to put in a written statement of his defence and to state whether he desires to be heard in person. If he so desires or if the authority concerned so direct an oral inquiry shall be held. At that inquiry oral evidence shall be heard as to such of the allegations as are not admitted and the person charged shall be entitled to cross-examine the witnesses, to give evidence in person and to have such witnesses called, as he may wish, provided that the officer, conducting the inquiry may, for special and sufficient reasons to be recorded in writing, refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and a statement of the findings and the grounds thereof.

This rule shall not apply where the person concerned has absconder or where it is for other reasons impracticable to communicate with him. All or any of the provisions of the rule may, in exceptional cases, for special and sufficient reasons to be recorded in writing be waived, where there is a difficulty in observing exactly the requirement of the rule and those requirements can be waived without injustice to the person charged.

The full procedure prescribed in this rule not be followed in the case of a probationer discharged in the circumstances described in Explanation II to Rule 49. In such cases, it will be sufficient if the probationer is given an opportunity to show cause in writing against the discharge after being apprised of the grounds on which it is proposed to discharge him and his reply duly considered before orders are passed.

10. From the reading of the aforementioned rules it would be clear that in course of such enquiry oral evidence has to be adduced in respect of such allegations as are not admitted and delinquent would be also entitled to cross-examine the witnesses produced by the department as also to give evidence in person and to have such witnesses called as he may wish in his defence. In this background when the written statement of defence of the petitioner is looked into it becomes clear that he had not disputed the actual allegations in the memo of charge and as with regard to his negligence in respect of safe custody of the amount withdrawn from the Treasury. All that he had intended to convey in the written statement was on account of some personal work he had to take leave all on a sudden for Patna on 31st of March, 2002 from Bhabhua Treasury itself and therefore, he having handed over his leave application to the Head Clerk and making some alternative arrangement by asking the Medical Officer posted at Addl. PHC to the office in his place during his absence had proceeded on leave. His further plea was that if during the period of his such leave a theft in his office at Drugawati PHC had committed in the night of 3rd/4th April, 2003 by some miscreants by breaking open cash box kept in the Almirah, he could not have been held guilty of any negligence or dereliction of duty.

11. This Court having taken into account the plea of defence in the written statement filed by the petitioner is, therefore, satisfied that no oral evidence was required to be adduced for proving the charge as the charge against the petitioner were based on documentary evidence. This view which has been taken by this Court stands supported from a Division Bench judgment of this Court in the case of Girjanandan Singh v. State of Bihar reported in 1987 PLJR 95.

12. It has, however, to be seen by this Court as to what were the charges against the petitioner and whether they were proved. It is an admitted position emanating from the written statement of defence of the writ petitioner that he was in-charge Medical Officer, who was directly under the control of the Civil Surgeon of Kaimur district. The, petitioner was in fact Drawing and Disbursing Officer and if he had to proceed on leave, he had to obtain a prior permission from the immediate controlling Officer, i.e. Civil Surgeon. Admittedly, the petitioner did not do so. This part of his admission is completely reflected from the following two paragraphs of his written statement of defence:

ekuuh; vISfud 'kY; fpfdRld lg eq[; fpfdRlk inkf/kdkjh dSewj HkHkqvK ds i=kad 12 rFkk 13 dze'k% fnukad 5&4&2003 rFkk 6&4&2003 esa of.kZr esjs fo:) vkjksiks ds lUnHkZ esa eq>s dguk gS fd eq>s vfr vko;'d dk;Zo'k fnukad 1&4&03 ls 2&4&03 dh vof/k es ?kj tkuk Fkk A vr% bl gsrq eSus fnukad 30&3&03 dks gh vfr0 izk0 Lok0 dsUnz psgqfV;k] nqXkZorh ds fpfdRld Mk0 v:.k dqekj dks vius ljdkjh vkokl ij cqykDj mUgs mijksDr vodk'k vof/k esa dk;Z djus gsrq lgefr ysdj rRdkyhu iz/kku fyfid Jh foHkh'k.k jke dks viuk vkosnu fuxZr iath ij pkDj vISfud 'kY; fpfdRld lg eq[; fpfdRlk ink0 dh Lohd`fr gsrq muds dk;kZy; esa Hkstus dk vkns'k fn;k Fkk A

eS fnukad 31&3&03 dks iz/kku fyfid rFkk vU; deZpkjh;ks ds lFk HkHkqvK dks'kkxkj x;k rFkk fofHkUu 'kh'kksZ ds fcyks dks ikl djkus gsrq ogkWa miyC/k Fkk A pwafd vius izk0 Lok0 dsUnz] nqXkZorh es fnukad 1&4&03 ls 21&4&03 rd dk NqV~Vh dk vkosnu] Mk0 v:.k dqekj dh lgefr ds lFk miyC/k Fkk] vr% eS HkHkqvK ls gh fnukad 1&4&03 ds lqcg djhc 7&30 cts cl }kjk iVuk pyk vk;k rFkk fnukad 3&4&03 ls 4&4&03 rd viuh vLoLFkrk ds dkj.k vius dk;Z ij yk SV ugh ldk A

13. From the aforementioned admission of the petitioner it becomes absolutely clear that he had never intended to obtain permission of the competent controlling

authority and had proceeded on leave on his own. Such conduct of the petitioner by itself would reflect that he was irresponsible officer who being the head of the Primary Health Centre being In-charge Medical Officer vested with the power of Drawing and Disbursing Officer had left his headquarters without seeking prior permission of his immediate controlling authority, namely Civil Surgeon, Kaimur at Bhabhua.

14. As a matter of fact his plea that he had given his leave application to his Head Clerk or that he had made alternative arrangement by way of seeking consent of one Dr. Arun Kumar posted in Addl. Primary Health Centre is also of no avail, inasmuch as the petitioner had taken these pleas by way of defence and therefore, he had to produce them by way of his defence witnesses. The petitioner never did so and in fact also never claimed to do so before the Enquiry Officer expressing his desire to produce witnesses in his defence.

15. This Court in fact would also find that this was done by the petitioner deliberately because he had no such evidence that he had proceeded on leave with permission of the competent controlling authority. His such lame excuse gets exposed from his own plea taken in the written statement of defence, which reads as follows:

pawfd iz/kku fyfid Jh foHkh'k.k jke us esjk vkosnu i= fuxZr iath ij pkus ds mijkUr vISfud 'kY; fpfdRld lg eq[; fpfdRlk ink0 ds dk;kZy; esa Hkstk ugh Fkk] vr% eSus fnukad 1&4&03 ls 2&4&03 dk vkosnu i= rFkk lkFk es 3&4&03 ls 4&4&03 rd dh NqV~Vh dh vof/k foLrkj ds lkFk vkxzg ds lkFk dk vkosnu i= Hkh fuxZr iath ij pokdj vISfud 'kY; fpfdRld dk;kZy; esa buds }kjk Hkstk ij ogka Lohdkj ugh fd;s tkus ds dkj.k ;w0 ih0 lh0 ds }kjk nksuks vkosnu i= vISfud 'kY; fpfdRld dk;kZy; esa Hkst fn;k A

16. It is any one's guess as to how and when a defence of UPC (Under Postal Certificate) is taken by a person. Reference in this connection may be made to the observations of the Apex Court in the case of Gadakh Yashwant Rao Kankar Rao v. Bala Saheb Vikhe Patil reported in : AIR 1994 SC678 that a certificate of posting is easy to procure and does not inspire confidence. From the reading of his written statement of defence it would, therefore, be clear that the petitioner had never sought to even inform much less obtain prior approval of his controlling officer

before leaving his headquarters and that he proceeded on leave on 1st April and remained absent from duty on 4th April without there being any sanctioned leave to his credit. Such a conduct of the petitioner by itself would be sufficient to prove the charge of negligence, carelessness and derelictions of duty. It has to be always kept in mind that the petitioner was the In-charge Medical Officer and therefore, was under bounden duty to leave his headquarter only after getting leave sanctioned. It does not stand to reason that when the petitioner on his showing was present at Bhabhua Treasury on 31.3.2003 why could he not visit the office of the Civil Surgeon, Bhabhua for obtaining permission for leaving his headquarters and sanction of his leave.

17. Once this part of charge that the petitioner had left his headquarters, Durgawati PHC, without prior sanction and approval of leave by his controlling authority, is found to be proved, the second part of the charge only gets substantiated and automatically proved that no proper arrangement was made by him for safe custody of the amount of Rs. 11.30 lacs so drawn from the Government Treasury at Bhabhua. The explanation of the petitioner that the Head Clerk was authorized to take out the money from the Government Treasury and it was he who had kept it in the cash box in the Almirah in Durgawati PHC would go to show that the duty imposed upon him of Drawing and Disbursing Officer in the capacity of In-charge Medical Officer of Durgawati PHC were treated and taken by him rather too lightly. From the chain of events, it is clear that the amount from the Treasury could not have been withdrawn without authority, signature and presence of the petitioner, the , In-charge Medical Officer, having also power of a Drawing and Disbursing authority and if therefore he had already come to know of his personal family engagement at Patna on 30th of March, 2003 as has been claimed by him in his written statement of defence, it was all the more necessary for him either not to allow the amount to be withdrawn from the Government Treasury in his absence or else to have approached the Civil Surgeon, his immediate controlling officer for making an alternative arrangement for the safe custody of the amount so withdrawn by him during the period of his forced absence. The petitioner admittedly did not take either of the aforementioned steps and rather left everything in the hand of the Head Clerk and in such a situation the finding of the Enquiry Officer that the petitioner was negligent and careless towards his duty

cannot be said to be incorrect finding much less perverse. In the opinion of this Court, the charges against the petitioner being plain and simple were themselves proved on the own admission of the petitioner in his written statement of defence.

18. In this context it has to be also noted that the Enquiry Officer had not only afforded the petitioner a reasonable opportunity of hearing in enquiry but had also given a chance to explain his conduct orally and only after recording his statement he had analyzed the evidence in form of documents filed by the presenting officer. The procedural part of the enquiry thus cannot be said to be vitiated and infact the petitioner has also not questioned the same in the writ application. It has to be recorded that the Enquiry Officer in his enquiry report had recorded that on 17.12.2003 the petitioner as also Civil Surgeon, Kaimur and the presenting officer had appeared before him alongwith the documents and evidence and on recording statement of the presenting officer as also the petitioner he had proceeded to examine the charges. This part of the procedure adopted by the enquiry officer has not been controverted in the writ application and therefore, this Court would proceed to record that there was no infirmity in the procedural part of the enquiry especially when no oral evidence was sought to be relied by the department and its presenting officer.

19. The Enquiry Officer in fact had also meticulously examined such evidence as would be found from the enquiry report wherein he had also found that the petitioner in the capacity of In-charge Medical Officer and his Head Clerk Bibhisan Ram had not even maintained the cash book from the date of 8.9.2002 till the date of suspension of the petitioner, as a result of which even this fact could not be ascertained as to how much amount in cash was being paid either by way of salary or pension to the employees of PHC. Such finding coupled with the finding that the petitioner had left his headquarters without making any proper arrangement for safe custody of the amount withdrawn from the Government Treasury would, therefore, only establish that the charges against the petitioner in the departmental proceeding were conclusively proved.

20. This Court in exercise of its power under Article 226 would not venture to weigh the evidence or go into the aspect of sufficiency of evidence. It is plain and

simple that the petitioner being In-charge Medical Officer and having power of Drawing and Disbursing Officer did not live to the expectations of the powers and responsibilities of his post and his deliberate negligence and dereliction of duty by both leaving his headquarters without prior permission and getting leave sanctioned from the competent controlling authority and/or without making proper arrangement of safe custody of the amount withdrawn from the Government Treasury, proved, to be detrimental to the interest of the government in form of theft and consequential loss of government amount.

21. Coming to the last of the submissions of the counsel for the petitioner that the punishment is disproportionate to the charges framed against the petitioner, this Court would observe that the petitioner has not been held liable for refund of the entire amount of the theft, rather only 1/5th amount of theft. This would only go to show that respondents had applied their mind even on the question of proportionality of the punishment. Similarly stoppage of only two increments on cumulative basis against a Drawing and Disbursing Officer who had left the headquarters without prior permission leaving a huge amount of cash withdrawn by him from treasury in custody of the Head clerk of his office, cannot be said to harsh or excessive. An order of punishment of Censor of such an officer was only logical outcome of the findings holding charge of negligence and dereliction of duty, to have been conclusively proved against the petitioner. The respondents in fact were fully justified for not paying the petitioner anything beyond subsistence allowance for the period of suspension, i.e. 5.9.2003 to 16.11.2004 after holding the petitioner guilty of charge.

22. The plea of the petitioner that the impugned order is not a reasoned order has to be again noticed for its being rejected for the simple reason that it is not the requirement of law that where the Government/punishing authority is in agreement with the findings of the enquiry officer, it is still required to pass a reasoned order. Reference in this connection has to be made to a Constitution Bench judgment of the Supreme Court in the case of the State of Assam and Anr. v. Bimal Kumar Pandit reported in : (1963)ILLJ295SC .

23. Thus, this Court having given its anxious consideration to all the aforementioned relevant aspects and the submissions of the counsel for the parties would find no merit in this application and in the result, this writ application must be and is hereby dismissed.

There would be, however, no order as to costs.

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