

Dr. Sanjeev Kumar Chawla Vs. State of Up and Ors

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Court : Allahabad

Decided On : Jan-29-2011

Judge : Sunil Ambwani; Mrs. Jayashree Tiwari, JJ.

Appeal No. : CIVIL MISC. WRIT PETITION NO.43818 OF 2010

Appellant : Dr. Sanjeev Kumar Chawla

Respondent : State of Up and Ors

Judgement :

1. We have heard Dr. Sanjeev Kumar Chawla-the petitioner appearing in person. Learned Standing Counsel appears for the State respondents.
2. The petitioner was appointed as Medical Officer in the Medical and Health Department, Government of U.P. in the year 1994. He was posted at Almora upto December, 2000, and thereafter in district Gautam Budh Nagar where he joined on 8.1.2001. In this writ petition the petitioner has challenged the order dated 17.5.2010 and the corrigendum dated 22.5.2010, by which he has been dismissed from service, after a disciplinary enquiry initiated vide charge sheet dated 15.2.2007, alleging unauthorised absence from duty without getting the leave sanctioned; failing to reach in time on duty in July, 2006 in 'Pulse Polio Programme'; falsely showing his presence in the OPD register for treating five patients on 5.8.2006, and threatening the subordinate staff. The petitioner was also charged with proceeding for training to 'Arvind Netra Chikitsalaya' Madurai,

Tamilnadu without obtaining permission and in threatening Dr. Sunil Kumar, Medical Officer to kill him. The petitioner was placed under suspension on 14.2.2007, and was attached to the office of the Additional Director, Medical Health and Family Training, Meerut Region, Meerut. The disciplinary enquiry was held under the U.P. Government Servants (Discipline and Appeal) Rules, 1999.

3. The petitioner filed the Writ Petition No. 55804 of 2008 in which by an order dated 14.11.2008 the order of the petitioner's dismissal was set aside with directions to proceed with the enquiry from the stage of the charge sheet which was annexed with the counter affidavit in the writ petition.

4. It is stated in the impugned Office Memorandum dated 17.5.2010 dismissing the petitioner from service that the State Government, in compliance with the judgement decided to proceed with the departmental enquiry afresh, and directed the Additional Director, Medical Health and Family Planning, Meerut Region, Meerut to complete the enquiry. In the enquiry report dated 29.8.2009, all the seven charges against the petitioner were found to be proved. The enquiry report was directed to be handed over to the petitioner by the order of the State Government dated 13.10.2009 to Chief Medical Officer, Gautam Budh Nagar for filing his representation. The petitioner read the notice and refused to accept the enquiry report on which the show cause notice was published in two daily newspapers. Since the petitioner did not give any reply and continued with his uncooperative attitude to keep the enquiry pending, the disciplinary authority considered the enquiry report, decided to dismiss him from service vide order dated 7.1.2010 and sent it for approval/consultation to the Public Service Commission, U.P. The Commission approved the punishment by its letter dated 24.4.2010 on which the Governor of U.P. by Office Memorandum signed by the Secretary to the Government, U.P. decided to terminate his service. By a corrigendum dated 22.5.2010 in para-1, the dates in the Office Memorandum dated 17.5.2010 were corrected.

5. The petitioner submits that the entire disciplinary actions were initiated on account of the rampant corrupt practices prevalent in the Medical and Health Department to which the petitioner refused to become a party. Dr. R.B. Agarwal,

Deputy Chief Medical Officer, Gautam Budh Nagar demanded illegal gratification from him to permit him to do private practice. The petitioner was not interested in private practice and refused to pay the money on which Dr. Agarwal was annoyed with him. He was not given permission to join the Postgraduate Diploma Course on which he filed a Writ Petition No. 1367 (SB) of 2001 in which orders were passed on 23.1.2002 to release petitioner's salary stopped by Dr. Agarwal. A Contempt Petition No. 1799 of 2001 was filed by the petitioner in which notices were issued to Chief Medical Officer Dr. M.S. Upadhyay, who had to appear in person and to pay the salary to the petitioner on which the department got annoyed and his past actions were suddenly treated to be misconduct for taking disciplinary action.

6. It is stated by Dr. Chawla that he was selected to attend Postgraduate Diploma Course, which was to continue upto May, 2004. He was transferred to District Siddharth Nagar. He filed a second Writ Petition No. 560 (SB) of 2002 challenging the transfer order and payment of salary, which was disposed of on 25.2.2003. He was allowed to join at District Gautam Budh Nagar after completing the course but his salary was not paid. He filed 2nd Contempt Petition No. 978 of 2003 in which notices were issued to the respondents including the Director General, Medical & Health to appear in person. Only a part payment was made and the contempt petition was consigned on assurance. He was not assigned the job as specialist on which he filed the third Writ Petition No. 72523 of 2005 also claiming the salary, TA/DA and posting as specialist doctor. He was transferred from Gautam Budh Nagar to Lucknow in the year 2006. A representation was made by him and thereafter a 4th Writ Petition No. 4149 of 2006 was filed which was allowed on 23.1.2006. In spite of the orders as aforesaid the petitioner was not allowed to join at Gautam Budh Nagar, and was not paid the salary. The petitioner filed an application in Writ Petition No. 72523 of 2005 which was clubbed with other writ petitions in respect of posting of Medical Officers and in which an order was passed on 18.4.2006 for compliance of the High Court's order. The application was disposed of on 15.5.2006 with liberty to the petitioner to file a separate writ petition. A 3rd Contempt Petition No. 1524 of 2006 was filed in which a detailed order was passed summoning Dr. G.P. Sharma for ensuring compliance and payment of salary.

7. The petitioner was nominated for being sent by W.H.O for training to Chennai for 60 days. He came back and joined duties on 11.1.2007. He was posted at Community Health Centre Kasna Dadha and joined there on 17.1.2007. He worked upto 31.3.2007 but was not paid salary. He filed another writ petition on which orders were passed to release his salary. Finally he was placed under suspension on 14.2.2007 in contemplation of some disciplinary enquiry placing him under attachment with the Additional Director, Medical Health and Family Welfare, Meerut Region, Meerut. It is stated in para-30 that the suspension order and the charge sheet were not served upon him. On receiving the letter dated 5.11.2007 he came to know that a charge sheet was issued against him and he was asked to show cause as to why he should not be punished. The copy of the enquiry report was not annexed to the show cause notice. By order dated 15.2.2007 the petitioner was dismissed from service. He filed the 5th Writ Petition No. 25873 of 2008 for quashing the order as well as enquiry report, which was both ex-parte. The writ petition was allowed by the Court on 23.5.2008, with the directions to approach the State Government, which may take a final decision in continuous of the notice dated 5.9.2007 after considering the petitioner's reply. Though a final order was passed against the petitioner, he had chosen to challenge the suspension order. The Court allowed him to make a representation and the State Government to take a final decision in continuation to the notice dated 5.11.2007 after considering his reply within two months. A modification application No. 195981 of 2008 was filed in the same writ petition for payment of suspension allowance. The application was rejected on the ground that the non-payment of suspension allowance is a separate cause of action.

8. A 4th Contempt Petition No. 284 of 2008 was filed in which notices were issued. The petitioner insisted that he was not served with the order of suspension. By the Office Memorandum dated 15.9.2008 after considering the charges in the charge sheet dated 15.2.2007 and the enquiry report and further on the ground that explanation of the petitioner dated 25.11.2007 was not sufficient, the enquiry report was submitted and the petitioner was dismissed from service. The petitioner filed the 6th Writ Petition No. 55804 of 2008 (as referred to above) which was allowed on 14.11.2008. The Court found that the enquiry was concluded ex-parte against the petitioner. The enquiry report was not served upon him. The Court set

aside the dismissal order dated 15.9.2008 and the enquiry report dated 5.4.2007 and directed that the enquiry be held from the stage of the explanation given by the petitioner in reply to the charge sheet.

9. It is stated by the petitioner that more than seven months had expired he had to file the 7th Writ Petition No. 28254 of 2009, which was disposed of with directions to conclude the disciplinary proceedings preferably within three months.

10. In para-50 it is stated that the enquiry officer Mr. G.C. Chaturvedi called the petitioner for hearing on one occasion, on which date he had appeared. No further date was fixed nor any further step was taken in the enquiry. Shri G.C. Chaturvedi retired on 31.7.2009 and one Shri C.M. Mewar, Additional Director, Medical health and Family Welfare was appointed as enquiry officer. In para-53 it is stated that Shri C.M. Mewar never fixed any date for hearing nor heard the petitioner giving him any opportunity of hearing in his defence. No witnesses were examined by him nor any opportunity ever provided to the petitioner to examine any witness. More than three months passed, in between which the petitioner was directed to be sent for training under a W.H.O sponsored programme. The petitioner was relieved on 28.8.2009 and completed his two months' long training from 1.9.2009 to 31.10.2009. The show cause notice, if any issued to him, as alleged on 29.8.2009 was not served upon him. On 4.11.2009 the Special Secretary, Medical & Health Department wrote a letter to the enquiry officer to serve upon him the show cause notice. The petitioner made enquiries from the post office and the postman, and was informed, as it is stated in para-60 that the show cause notice did not contain any copy of the enquiry report. The petitioner thus submitted his reply to the show cause notice as best as he could in the absence of enquiry report dated 17.11.2009.

11. On 16.12.2009 another show cause notice was served upon him. The petitioner immediately sent a reply on 16.12.2009 that the show cause notice did not contain the documents. He also made an application under (The) Right to Information Act, 2005 demanding copy of the enquiry report in response to which he received a letter dated 22.4.2010 stating that the copy of the enquiry report was also furnished to him and has also been filed with the counter affidavit in contempt

petition No. 4372 of 2009. In para-66 the petitioner states that neither the enquiry report was served upon him by hand or otherwise nor was annexed to the counter affidavit in contempt petition No. 4372 of 2009. The impugned order was passed on 17.5.2010 and the corrigendum was issued on 22.5.2010.

12. In this 8th writ petition the petitioner alleges his persecution by the entire Department of Medical and Health, which has conspired to remove him from service. He was all along willing and was serving in the department. Since he did not fulfil the desires of the Additional Chief Medical Officer; Chief Medical Officer and Additional Director to give them money, in return to permit him to do private practice, they become hostile. Their personal appearance directed by the High Court further annoyed them. It is submitted by the petitioner that inspite of the directions of the Court the enquiry report was not given to him. The charges are trivial in nature. He was actually present in the Pulse Polio Programme and had never pressurised any employee working under him. No one was examined to support the allegation. Dr. Sunil Kumar was his colleague, with whom the petitioner has no enmity, and no reason whatsoever to threaten to kill him. The allegations made by him without appearing as a witness, that the petitioner had threatened to kill him on telephone, has been believed to be a misconduct by the petitioner. Dr. Sunil Kumar was made a witness against the petitioner to dismiss him. He has no enmity with the petitioner and was set up by the department.

13. In the counter affidavit of Shri Om Prakash, Deputy Secretary, Medical and Health Department, Government of U.P., the entire background of the case including filing of the writ petitions and contempt petitions is admitted. It is, however, stated that the petitioner was not cooperating with the enquiry officer. In paragraphs 36, 38, 39, 49 and 48 it is stated as follows:-

"38. That the contents of paragraph 52 and 53 of the writ petition are matters of record and can be verified from the same, hence need no comments. However, it is stated that the nomination of enquiry officer is not made by name rather the same is done on the basis of designation of enquiry officer. Dr. G.C. Chaturvedi was retired on

31.7.2009 and after his retirement the senior most Joint Director Dr. C.M. Mewar has taken over the charge of Additional Director, who is in his turn sent a registered letter dated 1.8.2009 to the petitioner for the purposes of enquiry but the petitioner himself did not turn up on the prescribed date hence it is wrong to say that he was not having any information. It is not domain of the petitioner to see that as to which authority is conducting the enquiry. The petitioner is trying to mislead this Hon'ble Court by giving wholly twisted and incorrect facts in paragraph under reply.

39. That the contents of paragraph 54 of the writ petition are not admitted and in reply it is submitted that after the suspension, the petitioner has not reported his joining at the place where he was attached i.e. office of Additional Director. So far as training of the petitioner after his suspension is concerned, suitable reply in this regard shall be given by Smt. R. Josh, Additional Director General, Health Service, Directorate, Nirman Bhawan, New Delhi who has sent telegram to the Joint Director (Eye Treatment), Health Services Directorate, Lucknow by nominating the petitioner for the training. It is further submitted that from the letter of C.M.O. dated 29.8.2009 which has been received in the office of Additional Director on 5.9.2009, it has been transpired that the petitioner has given a letter to the C.M.O. Gautam Budh Nagar for relieving him for training. It is further submitted that since the petitioner has not reported his joining in the office of Additional Director during his suspension period and as such the said letter was sent back to the Joint Director (Eye Treatment) for obtaining correct position and as such the petitioner treated himself to be relieved in view of his letter dated 28.8.2009. However, there is no provision of relieving of any person for training during his suspension period. The petitioner prior to this has gone for training without any permission of any competent authority.

40. That in reply to the contents of paragraph 55 and 56 of the writ petition, it submitted that it has not been clarified by the petitioner that under whose permission, he has applied for training. It is also relevant to mention here that while submitting such request letter, it was obligatory on the part of the petitioner apprise the higher authorities about his suspension as there is no provision under law to grant permission for training to any suspended government servant as the same may cause great hindrance in the disciplinary proceeding. The petitioner himself has not complied with the direction of this Hon'ble Court by not cooperating in the enquiry process and the petitioner has gone for training while he was attached with the office of Additional Director, Meerut Mandal after his suspension on account of which the enquiry which was required to be completed within three months as per direction of this Hon'ble Court, could not be concluded within time due to own latches of the petitioner.

48. That the contents of paragraphs 70, 71, 72 and 73 of the writ petition are not admitted and in reply it is submitted that for providing copy of the enquiry report, a letter was written to the C.M.O. Gautam Budh Nagar with the direction that the publishing the matter in two newspapers, service of the show cause notice upon the petitioner be ensured. Apart from this, copy of the notice along with relevant documents was also sent to the Additional Director, Medical Health and Family Welfare, Meerut Mandal, Meerut for being served upon the petitioner as the petitioner was attached in his office. Apart from this the copy of the show cause notice was also sent the petitioner through registered post on the address as given in writ petition No. 22425 of 2007 hence it could not be presumed that the said notice was not received by the petitioner. The petitioner is trying to mislead this Hon'ble Court by giving wholly twisted and incorrect fact in paragraph under reply. It is relevant to mention here that at the level of C.M.O. Gautam Budh Nagar, a notice was also published in the local newspapers

regarding issuance of said show cause notice."

14. In order to appreciate the contentions put forth by the petitioner, that the entire action is based on malafides and that the department has conspired to remove him by alleging hopeless charges, which were never proved, we have examined the charges framed against him. In the first charge referred to in the enquiry report following the decision of the Court to hold fresh enquiry against him, it was alleged that the petitioner was absent without taking leave and was negligent towards discharging his duties. In the second charge it is stated that in July, 2006 he did not reach in time in the Bisarakh area to perform the duty in 'Pulse Polio Programme'. The third charge relates to falsely recording in the OPD register of examining five patients and in making attempts to open the almirahs of the OPD register and to have misbehaved with his subordinates. The fourth charge relates to misuse of Government money in the 'Pulse Polio Programme' and in making complaints against his superior officer. The fifth charge relates to the proceeding for 'Arvind Netra Chikitsalaya Madurai, Tamilnadu, on his own without getting relieved by the Chief Medical Officer and thus remaining absent for 60 days. The sixth charge relates to threatening his colleague Dr. Sunil Kumar on telephone to kill him, and in misbehaving with fellow medical officer and staff. In this charge the allegation of not depositing registration fees in the Government account is also included. The seventh and last charge relates to failing to join on 16.5.2006 in pursuance to the letter sent to him by a registered post/speed post on 4.5.2006 and also by publication in the newspapers.

15. We find that in respect of each charge the reply given by the petitioner, and the findings appear to be premeditated. The manner, in which the enquiry report has been written, shows that the enquiry officer was biased against the petitioner. In respect to first charge the details of the dates, on which the petitioner was absent, have not been given. The reply of the petitioner, denying the charge and alleging that he was not absent without taking any leave on any date during his posing, the enquiry officer has found that Dr. Chawla has not cross-examined Dr. Arun Kumar, who was allegedly permitted by the petitioner to proceed on leave, and further in blaming the petitioner for failing to give details of the dates, when he was Medical Superintendent and the dates, when he was present in the Pulse Polio

Programme. The enquiry officer concluded that the petitioner has not given any factual answer with substantial evidence to relieve him from the charge.

16. In respect of the petitioner's reaching late and remaining absent in Pulse Polio Programme in July, 2006 and the reply of the petitioner, that he had worked in the Pulse Polio Programme with full devotion, the enquiry officer concluded that since the petitioner has not given the factual reply, and did not make any effort to receive the micro plan and mobility amount was not paid to him, the charge is proved.

17. There was no charge levelled against the petitioner for not making any efforts to receive the micro plan and mobility amount nor any such allegations could be inferred from the charge of remaining absent in the Pulse Polio Programme in July, 2006. It is apparent that when the petitioner asserted that he was present in the Pulse Polio Programme, the allegations of remaining absent was shifted and the charge was sought to be proved by stating, that he did not make any effort to receive the micro plan and the mobility amount. This allegation was never put to the plaintiff to give his reply. The enquiry officer found the charge to be proved without looking into the record or any material on record. He has rather referred to reply of the petitioner, and has found the charge to be established on the ground that the petitioner did not give any factual answers regarding his defence nor had tried to prove his presence by giving any information regarding obtaining micro plan or the knowledge of the concerned area.

18. In respect of charge no. 3 about making false entry of his presence on 5.8.2006 at the Community Health Centre and filling up OPD register to show that he had examined five patients on that day, the enquiry officer has disbelieved the statement of the petitioner, that a new OPD register was being produced by keeping the old OPD register in the almirah. On this charge also the enquiry officer observed that instead of giving a factual reply the petitioner had shifted the burden upon the Superintendent and relied upon the statements of Dr. Arun Kumar and some of the employees. Shri S.M. Mani Tripathi, Dental Hygienist denied his signatures on the letter in which the petitioner was reported to be absent.

19. In respect of charge no. 4 alleging misuse of the amount given by the Central Government in Polio Eradication Programme once again the enquiry officer has observed that the petitioner has not given any factual answer and simply blamed the Chief Medical Officer, and since the petitioner has not placed any materials on the allegation he cannot be relieved of the charge. In respect of charge no. 5 relating to petitioner's absence for 60 days from duties in proceeding for training to Arvindra Netra Chikitsyalaya Madurai, Tamilnadu without handing over the charge, the enquiry officer has notified the petitioner's answer that he was required to attend the training programme of the Central Government, for which he had received the telegram on 10.10.2006, and had filled up the charge certificate and got it received in the office of Chief Medical Officer. The enquiry officer, however, found the charge proved on the ground that the telegram dated 10.10.2006 did not bear the stamp of any post office and is not readable. He held that the petitioner had not taken permission from the Joint Director (Eye) Swastha Bhawan, Lucknow and had proceeded on leave for training without approval of the Directorate and filling up the charge certificate ex-parte. Again no material or documents were relied upon to prove the charge.

20. On charge no. 6 the enquiry officer found that the petitioner has not given clear reply with regard to threatening his colleague Dr. Sunil Kumar, and has simply stated that if he had threatened him why was Dr. Sunil Kumar not killed so far. The Sub Divisional Magistrate, Dadari had made enquiry on this charge in which Dr. Chawla did not appear as he had gone to Madurai for training. The Sub Divisional Officer had found in his report dated 27.11.2006 that the petitioner misbehaved with his staff and in view of behaviour and failing to appear in the enquiry, it was established that he had threatened his colleague. The enquiry officer did not record his own findings on the charge.

21. On 7th and last charge relating to neglect of the petitioner in taking over charge of Primary Health Centre, Badalpur communicated to him by the letter of the Chief Medical Officer, Gautam Budh Nagar on 4.5.2006 and the publication of the notice in the newspapers 'Dainik Jagaran' (Noida) and 'Amar Ujala' (Noida) dated 12.5.2006, the petitioner's reply, was that his transfer was made illegally and arbitrarily. It was complied with by him but that TA/DA was not paid and for which

the Chief Medical Officer had appeared in the High Court on 15.5.2006 and had apologized. The enquiry officer has found that the petitioner's reply that he had appeared for joining before the Chief Medical Officer, Gautam Budh Nagar on 1.5.2006 and that he was prevented from joining. From the letter of Dr. Chawla dated 9.5.2006 it was found that he had proceeded to Lucknow and that he had received the order of the Chief Medical Officer, Gautam Budh Nagar dated 4.5.2006 at Lucknow on 8.5.2006 informing him that he has been posted at Community Health Centre at Badalpur. He had requested for joining time to be spent on 9.5.2006, whereas in between the publication was made in newspapers intimating him to join at Badalpur and on these facts it was established that instead of joining he had made an attempt for availing joining time at Lucknow and had thereafter approached the High Court after sending the letter dated 9.8.2006 when he had received the order of joining on 4.5.2006; there was no reason for him to approach the High Court.

22. The petitioner has stated that the enquiry report was not given to him and that he has been served with a copy of the enquiry report with the counter affidavit only on 21.12.2010, on the date of hearing in the High Court.

23. The petitioner's allegation, that the enquiry proceeded ex-parte; he was not informed with the appointment of Dr. G.C. Chaturvedi as enquiry officer and thereafter Dr. C.M. Mewar after retirement of Dr. G.C. Chaturvedi on 31.7.2009 and that no effort was made to serve the enquiry report on him, appears to be established by the averments made in paragraphs-28 and 43 of the counter affidavit of Shri Om Prakash, Principal Secretary, Medical and Health Department, Government of UP. In these two paragraphs quoted as below, it is not denied that the petitioner was informed about the change of enquiry officer, and that the show cause notice was sought to be served by making a publication in the newspapers. Although it is stated that with great effort show cause notice could be served upon the petitioner on 16.12.2009, in which it was mentioned that the relevant enclosures would be obtained by the petitioner after visiting the office of the Additional Director and the petitioner has not done the same, we find that the enquiry was held in a strange manner in which no attempt was made by the enquiry officer and thereafter the disciplinary authority to inform the petitioner

either with the change of the enquiry officer, the dates fixed in the enquiry or to make any sincere efforts of service of enquiry report upon him. Instead of sending enquiry report to the petitioner at his known residential address an effort was made to publish the information in newspapers. Paragraphs 38 and 43 of the counter affidavit are quoted below:-

"38. That the contents of paragraph 52 and 53 of the writ petition are matters of record and can be verified from the same hence need no comments. However, it is stated that the nomination of enquiry officer is not made by name rather the same is done on the basis of designation of enquiry officer. Dr. G.C. Chaturvedi was retired on 31.7.2009 and after his retirement the senior most joint Director Dr. C.M. Mawar has taken over the charge of Additional Director, who in his turn sent a registered letter dated 1.8.2009 to the petitioner for the purposes of enquiry but the petitioner himself did not turn up on the prescribed date hence it is wrong to say that he was not having any information. It is not domain of the petitioner to see that as to which authority is conducting the enquiry. The petitioner is trying to mislead this Hon'ble Court by giving wholly twisted and incorrect facts in paragraph under reply.

43. That the contents of paragraph 63 of the writ petition are not admitted and in reply it is submitted that no such letter of the petitioner dated 30.12.2009 has been received. The show cause notice dated 13.10.2009 issued by the State Government was tried to be served upon the petitioner at the level of Joint Director, Additional Director and Chief Medical Officer, Gautam Budh Nagar and in this regard, a publication was also made in the newspapers. However, with great efforts, the aforesaid show cause notice could be served upon the petitioner on 16.12.2009 in which it has been mentioned that the relevant annexures would be obtained by the petitioner after visiting the office of the additional Director but the petitioner has not the same till 30.12.2009."

24. In paragraph-4 of the counter affidavit, it is stated that the Additional Director personally visited the residence of the petitioner on 10.11.2009 for service on the petitioner but he was informed by his wife that the petitioner was not available and hence show cause notice was published in daily newspapers. Thereafter in paragraph-5 it is stated that on 4.11.2009 when the petitioner requested for providing copy of the enquiry report and for which the State Government directed the enquiry officer to provide him a copy, the petitioner refused to accept the same and again he requested vide letter dated 5.11.2009 to provide copy of enquiry report to him but despite best efforts the petitioner did not receive the copy of the enquiry report. Hence the notice was published in the newspapers.

25. We find it strange as to why the State did not choose to send the enquiry report to the petitioner by post. It was first sought to be served upon him by the Additional Director visiting his residence, who did not leave a copy of the enquiry report with his wife. There is no averment in paragraph-5 about the person and the place where the petitioner was refused to accept the enquiry report on 5.11.2009 when the petitioner had himself made a request to give him the enquiry report on 4.11.2009. There appears no reason in the circumstances, as to why the notice was published in the newspapers.

26. We further find that publication in the newspapers 'Amar Ujala' and 'Rashtriya Sahara' dated 12.11.2009 provided that he may obtain a copy of the enquiry report from the Additional Director, Medical Health and Family Welfare, Meerut Division, Meerut. The respondents did not send the enquiry report to the petitioner. The replies given by the counter affidavit clearly support the contention of the petitioner that the Additional Director did not make any effort to send and to serve a copy of the enquiry report. He was simply creating evidence of serving the enquiry report on the petitioner.

27. The background of the facts, in which the petitioner had filed repeated writ petitions and contempt petitions in the matter of transfer, suspension and joining, clearly demonstrate that the entire department colluded to frame the petitioner. The manner, in which the departmental enquiry was conducted; the change of enquiry officer was not communicated to the petitioner, and that copy of the

enquiry report was never sent to the petitioner upto 21.12.2010, when it was served upon him annexed to the counter affidavit, also demonstrate and establishes that the departmental enquiry was initiated and concluded in an ex-parte manner to punish the petitioner. We find substance in the contention of the petitioner, that the appearance of the officers of the department in the contempt proceedings was taken as an act for which it was decided to punish the petitioner and that the entire proceedings were drawn in such a manner that the petitioner may not get an opportunity of hearing.

28. We further find that the respondents have failed to prove that the petitioner had absented himself from duties without taking leave and had not taken any interest in the Pulse Polio Programme in July, 2006. The charge nos. 1 and 2 were not proved against the petitioner. The charge no. 4, with regard to misuse of the amount for which the reference was given to only three vouchers of which the first two vouchers were of Rs. 600/- and the third was of Rs. 200/-, was also not established by any evidence. The charge of leaving the duties for attending training programme organized by the Central Government at Madurai in Tamilnadu without taking permission of the Directorate and filling up of the charge certificate, was also not established. The petitioner had received the training programme from the Central Government, and that he had filled up the charge certificate and produced it in the office of the Chief Medical Officer in proceeding for training. The enquiry officer did not make any attempt to find out whether the Directorate was informed and had communicated the training programme to the petitioner and that whether the charge certificate stated to be given by the petitioner was available in the office of the Chief Medical Officer. The charge for threatening Dr. Sunil Kumar has been sought to be proved on the basis of a report of the Sub Divisional Magistrate, which again is based upon the petitioner's absence, whereas the petitioner had clearly stated that he had proceeded to Madurai in Chennai for training during that period. The enquiry officer did not make any enquiry on this charge and relied upon the ex-parte report of the Sub Divisional Officer, Dadari. The motive for alleged threat to Dr. Sunil Kumar on telephone was not established. There was no material to show that there was any animosity between the petitioner and Dr. Sunil Kumar. The enquiry officer completely failed in establishing the charge only on the ground that the petitioner

did not give a reasonable reply to the charge.

29. The charge relating to the directions to join at the transferred place at Community Health Centre Badalpur was also not established. The petitioner had admitted the receipt of the letter and had requested for joining time, and there was nothing to show that the petitioner had not joined thereafter at Badalpur.

30. The entire enquiry proceedings were tainted with malafides and were not held in accordance with the Rule 7 of the UP Government Servants (Discipline and Appeal) Rules, 1999. The dates, on which the enquiry was fixed; the change of enquiry; the opportunity producing defence and the service of the enquiry report, have not been established on record. The allegations were sought to be proved only on the basis that the petitioner as delinquent officer did not give satisfactory reply to the charges.

31. The impugned order dated 17.5.2010 is based upon an incomplete ex-parte enquiry report, tainted with malafides.

32. In the counter affidavit, it is stated in paragraph-4 that the Additional Director personally visited the residence of the petitioner on 10.11.2009 for service of show cause notice along with enquiry report but he was informed by the wife of the petitioner that the petitioner was not available in the house, hence the show cause notice was published in two newspapers on 12.11.2009. This fact is contradicted by the statement in the impugned order dated 17.5.2010 by which the petitioner was dismissed from service. In paragraph-4 of the order, it is stated that the State Government by its letter dated 13.10.2009 directed the Chief Medical Officer, Gautam Budh Nagar to issue the show cause notice on Dr. Chawla for getting his reply available. The Additional Director, Medical and Health and Family Welfare, Meerut Division, Meerut sent the said letter to be served upon Dr. Chawla; he read the notice and refused to be accepted and thus the notice was published in two newspapers and that inspite of publication Dr. Chawla did not give the required cooperation and entered into unnecessary correspondence to keep the enquiry proceedings pending and to create obstruction in compliance with the orders of the High Court.

33. The counter affidavit of the Deputy Secretary, Medical and Health, Department has contradicted the statement of facts alleged in the impugned order, whereas it is stated in paragraph-4 of the counter affidavit, that the Additional Director himself went to the residence and the wife of the petitioner told him on 10.11.2009 that he is not present, the Secretary of the State Government had stated in the order that the show cause notice was sent to Dr. Chawla by the Additional Director; he had read it and had refused to accept it. These contradictions support the case of the petitioner that he was sought to be framed and that entire effort was made to create evidence that he had refused to accept the show cause notice with the enquiry report.

34. For the aforesaid reasons the writ petition is allowed. The impugned punishment order dated 17.5.2010, and corrigendum dated 22.5.2010, by which only the date 15.2.2007 is sought to be amended to be read as 15.9.2008, are set aside. Since we find that even if the enquiry report is accepted, none of the charges were proved against the petitioner by any evidence or material or the statement of the witnesses, we quash the entire enquiry proceedings including the charge sheet and the enquiry report. The petitioner shall be reinstated in service with all consequential benefits.

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