

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(S) No. 6247 of 2011

Dr. Ram Naresh Prasad, son of late Gudri Sah Chourasiya, resident of C1-17F, City Centre, Sector-IV, Bokaro Steel City, P.O. and P.S. Bokaro Steel City, District- Bokaro. **Petitioner.**

Versus

1. The State of Jharkhand through its Chief Secretary, Project Building, P.O. and P.S. Dhurwa, District- Ranchi.
2. Secretary, Health Medical Education and Family Welfare Department, Government of Jharkhand, Project Building, P.O. and P.S. Dhurwa, District- Ranchi.
3. Deputy Secretary, Health, Medical Education and Family Welfare Department, Government of Jharkhand, Project Building, P.O. & P.S. Dhurwa, District- Ranchi. **Respondents.**

CORAM : HON'BLE MR. JUSTICE ANANDA SEN.

For the Petitioner : Mr. A.K. Sahani, Advocate.
For the State : Ms. Shivani Verma, Advocate.

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05/30.06.2016: In this writ petition, the petitioner has challenged the order as contained in Memo No. 361(4) dated 25.08.2009 (Annexure-6 to the writ petition), whereby, the petitioner has been imposed with a punishment of withholding of two increments with cumulative effect and Censure and further he has been deprived of salary for the suspension period i.e. from 05.12.2008 to 25.08.2009.

The petitioner was appointed on 15.7.1981 on the post of Medical Officer, Primary Health Centre, in the district of Giridih. Vide notification dated 5.12.2008, he was put under suspension while he was working as Deputy Superintendent of Sub-Divisional Hospital, Chas, Bokaro and a decision was taken for initiation of a Departmental Proceeding.

The allegation against the petitioner was that he demanded bribe for submitting postmortem report and there were financial irregularities against him.

A departmental proceeding was initiated against the petitioner in which, he replied to the show cause notice, denying the allegations levelled against him. After conclusion of the inquiry, the Inquiry Officer vide Inquiry Report dated 20.6.2009 submitted his findings that the charges are not proved against the petitioner. After receipt of the report of the Inquiry Officer, the impugned order dated 25.08.2009 was passed by

which, the petitioner was inflicted with two punishments:

1. Censure.
2. Stoppage of two increments with cumulative effect.

It was also ordered vide memo No. 48(2) dated 28.01.2011 that the petitioner, over and above the said punishment, will not be entitled to get salary for the period of suspension i.e. from 05.12.2008 to 25.08.2009. The petitioner made a representation against the said order also. The petitioner superannuated from service with effect from 31.7.2010. Challenging the said order of punishment, this writ petition has been filed.

The main contention of the petitioner is that the Inquiry Officer has not found the petitioner guilty and therefore, no punishment could have been inflicted. He further submits that no show cause notice was issued to the petitioner by the authority concerned before coming to the conclusion that the petitioner should be punished. He further submits that the order of withholding the salary during the suspension period on the aforesaid background is also bad.

The State justified their action by filing counter affidavit and submits that there was an allegation against the petitioner that he demanded bribe for submitting the postmortem report and further he committed some financial irregularities. It has been mentioned that the petitioner conducted the postmortem report of one late Vivek Srivastava on 19.7.2008 but submitted the report to the police station concerned after 38 days i.e. on 27.08.2008. The State in their counter affidavit also submits that the petitioner was careless and showed lack of alertness in financial work. He lastly submits that on these allegations, the petitioner has been punished.

After going through the record and after hearing the parties, I find that the charge-sheet was submitted against the petitioner alleging financial irregularities and also alleging that the petitioner demanded bribe for submitting the postmortem report. The nature of the financial irregularities has not been specified, it has only been stated about "lack of alertness" in the financial work. The allegation is most vague. Departmental enquiry was conducted by the Inquiry Officer. The Inquiry Officer submitted the enquiry report stating that the charges are not proved against the petitioner. After receipt of the enquiry report, the impugned

order of punishment was passed. This clearly suggests that the disciplinary authority differed with the findings of the Inquiry Officer. It is well within the jurisdiction of the Disciplinary Authority to differ with the report of the Inquiry Officer but while differing with the report of the Inquiry Officer, reasons must be assigned and before taking any further action against any delinquent, show cause notice has to be served to the employee, intimating that the Disciplinary Authority is differing with the enquiry report, that too with reasons.

In this case, admittedly, after differing with the enquiry report, no notice has been issued to the petitioner. Further there is no reasons assigned why the Disciplinary Authority has differed with the enquiry report and has issued the punishment order. Thus, this Court finds that there is serious violation of the principle of natural justice. In this case the impugned order of punishment could not have been passed without issuing show cause notice to the petitioner, moreso, when the Disciplinary Authority has differed with the findings of the Inquiry Officer. Further, this Court also finds that the forfeiture of the salary of the petitioner during the suspension period is also bad and without any reason.

In that view of the aforesaid findings of this Court, the impugned order dated 25.08.2009 is hereby, set aside. The petitioner is entitled to get all the consequential benefits, which was withheld by the State because of the impugned order. All the benefits shall be paid to the petitioner within a period of six weeks from the date of production of a copy of this order before the authority concerned.

With the aforesaid observations and directions, this writ petition stands **allowed**.

(ANANDA SEN , J)

Anu/-