

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22283 of 2013

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Ashok Kumar Tripathi, Son of Late G. N. Tripathi, Resident of 124, Subhan Colony, Near Azad Chowk, P.S. - Khorabar, District - Gorakhpur (U.P.) Presently posted as District Supply Officer, Arwal, Bihar. Petitioner.

Versus

1. The State of Bihar through the Chief Secretary
 2. The Principal Secretary, General Administration Department, Govt. of Bihar, Patna
 3. The Joint Secretary, General Administration Department, Govt. of Bihar, Patna
 4. The Deputy Secretary, General Administration Department, Govt. of Bihar, Patna
 5. The District Magistrate, West Champaran, Bettiah
 6. The Additional Collector, West Champaran, Bettiah. Respondents
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Appearance :

For the Petitioner/s : Mr. Chitranjan Sinha, Sr. Advocate

: Mr. Shekhar Singh, Advocate

For the Respondent/s : Mr. Upendra Pratap Singh, AC to SC -25

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 11-12-2015

Heard learned counsel for the petitioner and the respondents.

2. Petitioner joined Bihar Administrative Service in the year 1989. He seeks quashing of the order, dated 18.02.2013, contained in Memo No. 2772 issued by Joint Secretary, General Administrative Department, whereby a de novo enquiry has been directed under Rule 18 (1) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred as 'the Rules, 2005') with all consequential benefits.

3. As a fall out of order, dated 18.02.2013, another enquiry was done and a report was communicated vide forwarding

letter, dated 08.06.2015. The petitioner has challenged the enquiry report, dated 08.06.2015 through I.A. No. 4811 of 2015.

4. Before I examine the grounds on which the petitioner has assailed the impugned orders, it would be relevant to notice the facts of the case in brief:

5. The petitioner joined the Bihar Administrative Service in 1989. Between 30.09.1995 to 26.05.1998, he was posted as Circle Officer, Ram Nagar, West Champaran, Bettiah. The Government vide its letter, dated 12.12.2000 sought explanations with respect to allegations contained in Prapatra (K), appended to letter, dated 05.05.1999 of District Magistrate, West Champaran.

6. The petitioner vide letter, dated 24.01.2002, requested for supply of 17 documents for making proper reply to the charges. The Deputy Secretary, Personnel and Administrative Reforms Department vide his letter, dated 02.05.2002 also requested the District Magistrate, West Champaran, Bettiah to provide necessary documents requested by the petitioner. A reminder was sent to the District Magistrate on 22.08.2002. On 04.09.2003, the petitioner was intimated by the department to submit his explanation within a fortnight. The Deputy Secretary, Personnel and Administrative Reforms Department again reminded the District Magistrate, West Champaran, Bettiah about non-supply of documents

sought by the petitioner. On 26.02.2007, the District Magistrate supplied some documents. The petitioner in order to avoid any further complications submitted his reply through letter dated 25.07.2007 (Annexure-13).

7. Not being satisfied with the reply, Personnel and Administrative Reforms Department vide his Memo no. 11482, dated 19.11.2007 decided to initiate disciplinary proceeding. Charge-sheet was prepared by the Personnel and Administrative Reforms Department on 16.10.2008. The petitioner submitted his reply/explanation on 10.02.2009 denying the charges. On 01.09.2012, the Additional Departmental Enquiry Commissioner submitted enquiry report exonerating the petitioner of the charges. Charge no.1 was not found to be proved and charge nos. 2, 3, 4 and 5 were not found to be proved in absence of evidence. On receipt of enquiry report, the General Administration Department directed for de novo enquiry under Rule 18 (1) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005. The Departmental Enquiry Commissioner vide his order, dated 06.03.2013 fixed 05.04.2013 for hearing of the matter. The petitioner again made a written request for the documents. The petitioner submitted another representation on 21.08.2013 that he is being harassed due to the prolong enquiry continuing against him since last 14 years, which has

not yet been concluded.

8. As no order was passed on his representation, the petitioner moved this Court by filing the instant writ application. However, during the pendency of the writ application, the enquiry proceeded and he was found guilty of the charge. The enquiry report was forwarded to the disciplinary authority by the enquiry officer vide his letter, dated 20.05.2015. On receipt of the enquiry report, the disciplinary authority communicated the same to the petitioner vide letter, dated 08.06.2015.

9. The Disciplinary Authority (General Administration Department, Government of Bihar) while communicating the copy of enquiry report sought show-cause reply from the petitioner with respect to the findings recorded in the second enquiry report within 15 days. The petitioner has challenged the letter dated 08.06.2015 of the General Administration Department, Government of Bihar and the enquiry report. Also in challenge is the order, dated 18.02.2013 directing de novo enquiry and the enquiry report holding him guilty of the charges.

10. The petitioner submits that the very initiation of de novo enquiry is bad in law, as Rules 2005, which regulate disciplinary proceeding, do not bestow power on the disciplinary authority to start a de novo enquiry. He submits that the 2005 Rules,

particularly Rule 18(1) permit of only further enquiry, for which reasons have to be given.

11. He thus submits that the impugned notice dated 18.02.2013 directing de novo enquiry is bad in law. The petitioner in support of his submissions has relied upon a Division Bench judgment in the case of Santlal Chaudhary Vs. The State of Bihar & Ors., reported in 2014 (4) PLJR 662, The Bihar State Electricity Board and Ors. vs. Brij Mohan Prasad and Ors., reported in 2004(2) PLJR 291.

12. In support of his submissions that only for valid reasons and in limited circumstances, the second enquiry can be directed, the petitioner has relied upon the decisions in case of Union of India Vs. K.D. Pandey and Ano., reported in (2002) 10 SCC 471, Arun Kumar Sinha Vs. State of Bihar & Ors, reported in 2007 (3) PLJR 787, Suresh Prasad Vs. State of Bihar & Ors., reported in 2008 (3) PLJR 531, Vijay Shankar Pandey Vs. Union of India & Anr., reported in (2014) 10 SCC 589.

13. He next submits that even assuming that the respondent directed further enquiry, as only further enquiry is visualized under Rule 18 (1) of Rules, 2005, the report would not fall under the said category, as no additional material was placed before the enquiry officer.



14. He also contended that the enquiry officer erred in completely obliterating earlier views of the enquiry. In support of his submission, the petitioner has relied upon the decision in case of Rama Chaudhary Vs. State of Bihar, reported in (2009) 6 SCC 346, para. 17 and 18, K.R. Deb Vs. Collector of Excise Shillong, reported in (1971) 2 SCC 102 para 12, Union of India and Ors., Vs. P. Thayagarajan, reported in (1999) 1 SCC 733 para 8.

15. He further submits that there has been prolonged delay in initiation of the Departmental proceeding, on which ground alone the proceeding is liable to be quashed. Reliance was placed on decisions in case of State of M. P. Vs. Bani Singh & Another, reported in AIR 1990 SC 1308 and in case of P.V. Mahadevan vs M.D. Tamil Nadu Housing Board, reported in (2005) 6 SCC 636.

16. On the other hand, counsel for the State submits that the enquiry has been conducted in accordance with law, in which the petitioner has been granted sufficient opportunity to defend himself. The documents, which were relevant in the circumstances, were duly provided to him.

17. I have heard the counsel for the parties. Though the petitioner has raised a number of grounds, the writ application can be disposed of on a limited issue, whether it was permissible for the respondents to start a de novo enquiry. The disciplinary proceeding



against a government servant is conducted under the provisions of 'Rules, 2005'. The Rule 18 of Rules, 2005 deals with the "action on the inquiry report". Rule 18(1) of Rules, 2005 states that disciplinary authority may for the reasons to be recorded by it in writing, may remit the case to the inquiring authority for further inquiry and report and the authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 17 as far as possible. Rule 18(2) of Rules, 2005 states that if the disciplinary authority disagrees with the findings of the inquiring authority on any article of charge, it has to record its reasons for such disagreement and record its own finding on such charge. Section 18(1) and (2), which are relevant in the context are quoted herein below:

"Section 18 (1) The disciplinary authority, if it is not itself the inquiring authority may, for the reasons to be recorded by it in writing, may remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 17 as far as may be.

18(2) The disciplinary authority, after receipt of the enquiry report as per Rule 17 (23) (ii) or as per sub-rule (1), shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own finding on such charge, if the evidences on record is sufficient for the purpose."



18. It is evident from bare perusal of the provisions that the disciplinary authority under Section 18(1) of Rules, 2005 is empowered for reasons to be noted to direct further inquiry in the matter. The Section does not provide for de novo enquiry, which is permissible only in limited circumstances, as laid down in the case of K. R. Deb Vs. Collector of Excise Shillong (supra) in absence of any rule to the contrary.

19. In the instant case, the Rules, 2005 does not provide/ permit for a de novo enquiry. The respondents, as such, erred in directing fresh enquiry/de novo enquiry in the matter. The petitioner has rightly relied upon a Division Bench judgment in case of Santlal Chaudhary Vs. The State of Bihar & Ors (supra), particularly para 8, which is quoted herein below:

“8. From a cautious reading of Rule 18 of the 2005 Rules, what becomes evident is that Disciplinary Authority cannot, under Rule 18 of the 2005 Rules, order a *fresh enquiry*; rather, Disciplinary Authority, if it is not itself the Enquiry Authority, may, for reasons to be recorded in writing, remit the case to the Enquiry Authority for *further enquiry* and report and the Enquiry Authority shall, thereupon, proceed with *further enquiry*, according to the provisions of Rule 17 of 2005 Rules as far as may be.”

20. It is relevant to state that if statutory rules are framed

for conducting a disciplinary proceeding, the authorities are circumscribed in their act by the provisions enshrined in such rules. They cannot act contrary and go beyond the same.

21. Counsel for the State submits that the disciplinary authority, in fact, meant further enquiry in terms of Rule 18 (1) of Rules, 2005 and much importance may not be attached to the language used in the show-cause notice, which may not be very happily worded.

22. I may broadly agree with the submission of the learned counsel for the State that merely because a show-cause is not happily worded and if the real intent can still be gathered from reading the document as a whole, the same cannot be rejected on the ground that it is not happily worded. A wrong use of word would not be-little its substance and effect.

23. This Court as such would proceed to examine whether the enquiry officer in fact conducted further enquiry or not. In case, he conducted further enquiry, the enquiry report cannot be faulted on that ground.

24. I find from the enquiry report enclosed with letter, dated 08.06.2015 (Annexure-25) that no additional materials were produced, much less any new witness was tendered by the prosecutrix. Besides this, the view taken by the earlier enquiry officer



has been completely obliterated and not taken into account in the second enquiry report. It would be apt to notice that further enquiry is distinct from a fresh enquiry in so much so that at least it has to be based on additional materials, which were not earlier before the enquiry officer. In case there were sufficient materials on record and the enquiry officer had failed to notice that the disciplinary authority can itself well differ with the views of enquiry officer and can proceed further in accordance with law.

25. The second enquiry, as such cannot be said to be a further enquiry in terms of Section 18(1) of the Rules, 2005 as well as the law laid down by the Hon'ble Apex Court in case of Rama Chaudhary Vs. State of Bihar, reported in (2009) 6 SCC 346, para. 17 and 18, K.R. Deb Vs. Collector of Excise Shillong, reported in (1971) 2 SCC 102 para 12, Union of India and Ors., Vs. P. Thayagarajan, reported in (1999) 1 SCC 733.

26. The Hon'ble Apex Court in case of K.R. Deb Vs. Collector of Excise Shillong (Supra) observed that the disciplinary authority erred in ignoring all materials collected in previous enquiry on the ground that earlier reports did not appeal or was not sound. Again in case of Union of India and Ors., Vs. P. Thayagarajan (Supra), the Hon'ble Apex Court observed that a disciplinary authority may ask enquiry officer to record further evidence but the

said provision would not enable the disciplinary authority to ignore the previous enquiry. The word 'further' has been explained by the Hon'ble Apex Court, though in reference to Section 173(8) Cr.P.C. in case of Rama Chaudhary Vs. State of Bihar (supra) to mean something additional, more or supplemental then what has been equated in course of investigation. In case of Union of India and Ors. Vs. P. Thayagarajan (Supra), the Hon'ble Apex Court was critical of tendering fresh opinion on the basis of the same set of facts.

27. Situated thus, and in view of the discussions made above, I have no hesitation in coming to the conclusion that the second enquiry has not been held in accordance with law. In the result, this application is allowed. The impugned enquiry report contained in Annexure-19 and second show-cause dated 08.06.2015 are set aside with liberty to the disciplinary authority to proceed afresh in accordance with law.

A.F.R.
Uday/-

(Samarendra Pratap Singh, J.)

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