

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1142 of 2015

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Allama Mukhtar S/o- Mohammad Thair Ansari, R/O- Mohalla- Bara Pathar,P.S.-
Dehri-on-sone, Town & District- Rohtas.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of Personnel & Administrative Reforms, Government of Bihar, New Secretariat, Bailey Road, Patna.
2. The Principal Secretary cum Commissioner, Department of Personnel & Administrative Reforms, Government of Bihar, New Secretariat, Bailey Road, Patna.
3. The Deputy Secretary, Department of Personnel & Administrative Reforms, Government of Bihar, New Secretariat, Bailey Road, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bindhyachal Singh
Mr. Satya Prakash

For the Respondent/s : Mr. P.K. Verma, AAG-5
Dr. Mankeshwar Tiwari, AC to AAG-5

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
ORAL JUDGMENT

Date: 16-05-2016

Heard counsel for the petitioner and learned
counsel appearing for the State.

1. The petitioner is a member of Bihar
Administrative Service. The writ application was initially filed
for the following reliefs:-

a) *For issuance of a writ in the nature of
certiorari for quashing of the notice, dated
21.08.2014 bearing Memo No. 11544 and the
entire proceedings in furtherance thereto whereby
an attempt has been made by the respondents to
initiate disciplinary proceedings afresh against the
petitioner upon misinterpretation of Rule 18 (2),
(3) & (4) of the Bihar Government Servants
(Classification, Control & Appeal) Rules, 2005 and*

false and misconceived assumption of authority and competence in law.

b) *For issuance of a writ in the nature of mandamus directing the respondents to revoke the order of suspension and issue necessary directions to the petitioner for joining his service in light of the order, dated 24.09.2013, passed by a bench of this Hon'ble Court in C.W.J.C. No. 14443 of 2008.*

c) *For a declaration that the order, dated 24.09.2013, passed by this Hon'ble Court in C.W.J.C. No. 14443 of 2008, having been accepted and not assailed in appeal by the respondents, has attained finality and the impugned notice, dated 21.08.2014, seeking explanation from the petitioner in connection with re-initiation of disciplinary proceedings is within teeth of the said order of this Hon'ble Court and accordingly liable to be struck down for the ends of justice.*

d) *For a declaration that the respondents have no authority in terms of Rule 18 (2), (3) & (4) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005, to reinitiate disciplinary proceedings against the petitioner afresh for the same transaction, same set of charges and enquiry report in connection therewith already accepted once by the respondents.*

e) *For any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of this case.*

2. During the pendency of this writ application, the petitioner was dismissed from service vide order, dated 21.07.2015, passed by the General Administrative Department,

Government of Bihar. The order of dismissal has been challenged by way of I.A. Application being I.A. No. 6719 of 2015. The relief claimed in the I.A. application would form part of the main writ application.

3. The petitioner has assailed the impugned orders on more than one ground, whereas counsel for the State has justified the impugned actions.

4. Before I consider the relative merits of the case advanced by both the parties, it would be relevant to notice the facts of the case in brief.

5. While the petitioner was posted as Block Development Officer-cum-Circle Officer, Atri Block within Gaya district, on 20.06.2007, he was arrested on the charge of accepting bribe of Rs.10,000/- from one Dhananjay Kumar Singh.

6. It is to be noted that under Rashtriya Bagwani Development Mission, some of the villagers of Bairaka filed applications for advancement of loan. The application of the villagers were forwarded to the Block Development Officer-cum-Circle Officer, Atri Block, for verification of title on 23.05.2007. It has been alleged that though the petitioner was in receipt of the applications, still, he held on to the file and did not submit any opinion of his own, for ulterior considerations. Being aggrieved, one of the villagers namely, Dhananjay Kumar Singh, filed a complaint with the Vigilance Bureau which



laid a trap and Petitioner was arrested on 20.06.2007, on the charge of accepting bribe of Rs.10,000/- from him. Consequent to the arrest, a vigilance case was instituted as Vigilance P.S. Case No. 78 of 2007 under Section 7/13 (2) read with Section 13 (1) (D) of the Indian Penal Code. A departmental proceeding was also instituted against the petitioner. Charges are contained in Prapatra 'ka' which has been annexed as Annexure-B to the 2nd Supplementary Counter Affidavit.

7. The charge, in nutshell, is that the petitioner demanded a sum of Rs.20,000/ from the applicant, Dhananjay Kumar Singh, for favour of consideration of his application. On 19.06.2007, the deal was settled for Rs.10,000/- and the delinquent was arrested on 20.06.2007, for accepting bribe of Rs.10,000/-.

8. One of the grounds advanced by the petitioner is that the money was not recovered from his conscious possession, but the same lied scattered on the ground. The Inquiry Officer, on conclusion of the inquiry, exonerated the petitioner of the charges. The disciplinary authority, on consideration of the inquiry report, remitted the matter to the Inquiry Officer for conducting fresh inquiry, as there was no finding with respect to lapse and negligence. The order was passed under Rule 18(1) of the Bihar CCA Rules, 2005.

9. Being aggrieved, the petitioner challenged



the order by moving this Court in C.W.J.C. No. 14443 of 2008. This Court vide order, dated 24.09.2013, quashed the order, dated 10.09.2013, passed under Rule 18(1) of the 2005 Rules, by Disciplinary Authority, observing that the matter cannot be remitted for *denovo* inquiry on a fresh charge with respect to the same matter. Consequent to the order, dated 24.09.2013 of this Court, the disciplinary authority re-considered the matter. This time, the Disciplinary Authority chose to differ with the findings recorded in the inquiry report for the reasons mentioned therein and sought petitioner's response to the tentative disagreement with respect to the findings recorded by the Inquiry Officer. The petitioner submitted his reply defending the findings of the Inquiry Officer. The disciplinary authority, not being satisfied with the explanation offered by the petitioner, vide its order, dated 21.07.2015, dismissed him from service.

10. The petitioner has assailed both the impugned order of punishment, dated 21.07.2015 as well as 2nd show-cause notice, dated 21.08.2013. Learned counsel submits that once the Authority has exercised the option under Rule 18(1) of Bihar CCA Rules, consequent to consideration of inquiry report, it would be precluded from exercising further action under Rule 18(2) and 18(3) of Bihar CCA Rules, in absence of any power of review. In support of his submission, learned counsel has placed reliance upon a judgment passed in



the case of **Nand Kumar Thakur Vr. the State of Bihar & ors.**, reported in **2014 (4) PLJR 210 para 58**. He next submits that order of the disciplinary authority, dismissing the petitioner from service, is based on no legal material. While dismissing the petitioner, the disciplinary authority has not been able to establish as to how the charge of demanding and accepting bribe, is established.

11. On the other hand, Mr. P.K. Verma, learned Additional Advocate General-5 appearing on behalf of the State, has justified the impugned actions. He submits that earlier the disciplinary authority decided to hold *denovo* inquiry with respect to some more charges arising out of the same matter, which has been held to be unsustainable in law and was accordingly, set aside by this Court vide order, dated 24.09.2013, passed in C.W.J.C. No. 14443 of 2008. Merely because, the disciplinary authority decided to proceed under Rule 18(1), which was quashed by a bench of this Court, it is not precluded from taking action under other provisions of law. Learned counsel submits that various materials brought on record, i.e., the complaint filed by Dhananjay Kumar Singh, vigilance bureau pre-trap and post-trap report and the evidence of witness, would establish the charge of demanding and accepting bribe, beyond all reasonable doubts. He next submits that standard of proof in disciplinary proceeding is different vis-à-vis the standard of proof required in criminal

proceeding.

12. I have heard counsel for the parties. The petitioner was proceeded in the departmental proceeding for the charge of demanding and accepting bribe as contained in Annexure-B to the 2nd supplementary counter affidavit. The Inquiry Officer, on consideration of the evidence on record, exonerated the petitioner. On receipt of the inquiry report, the disciplinary authority remitted the matter for *denovo* inquiry under Rule 18(1), which was quashed by this Court. The resultant effect was that there was no final order in the departmental inquiry. As final order is necessary to be passed in departmental proceeding to bring it to its logical conclusion, the disciplinary authority would be within its right to differ with the findings of the inquiry report for the reasons to be recorded in terms of Rule 18(2) of the Bihar CCA Rules. The disciplinary authority has given reasons for differing with the findings recorded by the Inquiry Officer and I do not find any error in the same. The submission of the petitioner that as the disciplinary authority at one stage did not proceed under Rule 18(2), would imply acceptance of the inquiry report and would bar all further actions under the provisions, is misconceived and submission of Mr. Bindhyachal Singh, learned counsel appearing for the petitioner, to that effect is devoid of merit and is rejected. Thus, I find and hold that the 2nd show-cause notice issued by the disciplinary authority, dated 28.06.2013,

was in accordance with law.

13. The other submission of the petitioner is that the order of punishment is bad in law as the disciplinary authority has not supplemented reasons recording finding of guilty for demanding and accepting bribe. It is true that no detailed reasons have been given for the findings recorded. Nonetheless, I find that the respondents have brought on record a number of documents, namely, complaint made before the vigilance bureau, pre-trap and post-trap report of the vigilance and evidence of prosecution witnesses in support of the charge of demanding and accepting bribe to prove the guilt of the delinquent.

14. Learned counsel for the State has rightly submitted that the scope of this Court in judicial review is limited to correction of procedure and error of law. This Court would not go into sufficiency or otherwise of the material on which the disciplinary authority has recorded its findings and would equally not substitute its own findings for the findings recorded by the disciplinary authority.

15. It cannot be said that the findings of guilt have been recorded on no material or materials not germane to the facts of the case. Thus, submissions of the petitioner that the money was not recovered from his conscious possession needs to be rejected in view of materials on record provided by the prosecution.

16. This takes us to the last submission of the petitioner that the punishment of dismissal from service is too harsh and excessive. The petitioner submits that the inquiry officer did not find charged proved against him and as such, the extreme punishment of dismissal from service may be reconsidered. The submission of the petitioner is not completely devoid of merit. Furthermore, there is no prior act of omission and commission, except for the incident in question.

17. In view of the above, the matter is remitted to the disciplinary authority for reconsideration of punishment of dismissal from service.

18. With the aforesaid observation, the writ application is disposed of.

(Samarendra Pratap Singh, J)

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