

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6 of 2016

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1. Yogendra Kumar Singh Son of Late Govind Prasad Singh, resident of C/o- Nageshwar Prasad Singh, Mohalla- Dhira Chauk, Near Devi Mandir, P.O.- Anishabad, P.S.- Gardanibagh, District- Patna- 800002

.... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Food and Consumer Protection Department, Old Secretariat, Patna
2. Under Secretary, Food and Consumer Protection Department, Old Secretariat, Patna
3. O.S.D. of Principal Secretary, Special Work Officer, Food and Consumer Protection Department, Old Secretariat, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ramendra Nath Mukhopadhaya, Adv.

For the Respondent/s : Mr. S.K.Mandal, S.C.24

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 02-03-2017

Heard Mr. R.N. Mukhopadhaya, learned counsel for the petitioner and Mr. Sunil Kumar Mandal, S.C.3 for the State.

With the consent of the parties, the writ petition has been heard with the view to final disposal at the stage of admission.

A rather peculiar set of events accompanies the present writ petition. The petitioner was allegedly apprehended by the vigilance sleuths while accepting a bribe amount of Rs. 2000/- giving rise to Vigilance P.S. Case No.16 of 2010 registered on 17.2.2010 under the provisions of the Prevention of Corruption Act, 1988. A copy of the F.I.R. is placed at Annexure-5. The petitioner being taken



into custody that an order of suspension was passed vide Memo No. 1428 dated 9.3.2010 present at Annexure-6 under Rule 9 of the Bihar Government Servant (Classification, Control and Appeal) Rules (hereinafter referred to as 'the Rules'). A chargesheet followed the order of suspension, a copy of which is placed at Annexure-8 bearing Memo No. 2577 dated 28.4.2010. The petitioner was charged on two counts namely, acceptance of alleged bribe amount of Rs. 2000/- as well as alleged act of misconduct as a Government servant. The petitioner was released from custody on 23.07.2010 and reported for duty and at the same time also filed his reply to the chargesheet rebutting the allegations vide Annexure-11 to the writ petition. It is in consideration of the circumstances that the suspension of the petitioner was revoked on 10.9.2010 vide Annexure -12 to the writ petition. The enquiry officer submitted his report, a copy of which is enclosed at Annexure-13 and the Enquiry Officer has reported that the Presenting Officer neither led any evidence to support the charge nor raised objection to the explanation given by the petitioner rather the Presenting Officer has said that there has never been any allegation against the petitioner on his integrity and that he has been made a victim of conspiracy. The Enquiry Officer has mentioned that while the charge No.2 is not fully established and the petitioner can be exonerated of the same, in so far as charge no. 1 is concerned, it is the



opinion of the Enquiry Officer that it should await the findings of the Vigilance Court on the criminal case. The petitioner was served with the second show cause by the Additional Secretary, Food and Consumer Protection Department bearing letter dated 17.3.2011, a copy of which is present at Annexure-14 and the petitioner on his part has given an exhaustive reply to the second show cause on 6.5.2011 present at Annexure-15.

This exercise thereafter came to a stand still and it is after lapse of almost 3 years that the petitioner was served with the another suspension order bearing Memo No.1038 dated 8.2.2014, a copy of which is impugned at Annexure-16. Along side, the petitioner was also served with the charge memo initiating fresh proceeding against the petitioner on the self same charges bearing Memo No.1921 dated 19.3.2014 present at Annexure-18 series which accompanies the charge memo dated 28.4.2010 present at Annexure-8. It is on the same charge memo thus that a second round disciplinary proceeding was initiated even when, the earlier disciplinary proceeding was yet to be taken to its conclusion.

Rightly the petitioner questioned such initiation through C.W.J.C.No.7815 of 2014 but unfortunately, before the matter could be taken up for consideration that the final orders were passed in the disciplinary proceeding whereby the petitioner has been dismissed



vide order bearing memo No.3282 dated 6.6.2014 impugned at Annexure-1 and as a consequence the writ petition was dismissed vide order passed on 2.7.2015 affording liberty to the petitioner to question the proceeding in an independent application. A copy of the order passed by the Bench is present at Annexure-24.

A rather brief submission has been advanced by Mr. Mukhopadhaya relying upon the provisions of Rule 18(1) of 'the Rules' to submit that the second round initiation of the proceedings relying upon the charge memo dated 28.4.2010 present at Annexure-8 is wholly without jurisdiction and contrary to the statutory provisions. He submits that there is no jurisdiction vested in the disciplinary authority to initiate fresh proceeding while keeping the earlier proceedings pending. Learned counsel has referred to paragraph 22 and 23 of the writ petition to submit that it is on this count that the petitioner had challenged the very initiation before this Court in C.W.J.C. No. 7815 of 2014 but it is unfortunate that before the matter could be taken up, the respondents have hurriedly passed the dismissal order. He submits that since the second round proceeding is void ab initio, the entire exercise is illegal and without jurisdiction.

Mr. Mandal learned State counsel while referring to the counter affidavit has submitted that although the counter affidavit does not specifically accept or deny the statement made in the writ petition but



paragraph 10 is a response to the second round initiation. However despite the effort made, Mr. Mandal has not been able to show any provision which enables the disciplinary authority to initiate fresh proceeding on self same charge memo in respect of which a proceeding has already been initiated but has been abandoned midway.

I have heard learned counsel for the parties and I have perused the records.

There is no dispute on the sequence of events. There is also no dispute that the charge memo which is the foundation for the first round proceeding present at Annexure-8 is the charge memo for the second round proceeding initiated vide Annexure-18 series. It is also not in dispute that the first round proceedings has reached the service of a second show cause notice, vide Annexure-14 which is dated 17.3.2011 on the enquiry report dated 19.11.2010, a copy of which is placed at Annexure-13. The respondents are again silent as to the source of power for initiating a second round proceeding on the self same charge memo. The limitations to the power exercised by a disciplinary authority on submission of Enquiry Report stands explained in Rule 18 of 'the Rules' and even when the disciplinary authority has been vested with the jurisdiction to remit a matter back to the enquiry authority to hold further enquiry for the reasons to be



recorded in writing and even when the obligation is cast on the Enquiry Officer to hold further enquiry in the matter in the manner prescribed under Rule 17, there is absolutely no jurisdiction vested in the disciplinary authority to abandon a proceeding midway and to initiate fresh proceeding on the self same charge simply because the enquiry report does not satisfy him.

Law is well settled on the issue and reference is made to the judgment of the Supreme Court reported in (2014) 10 SCC 589 (Vijay Shankar Pandey vs. Union of India) and reference made to paragraph 24 to 26 thereof:

“24. Be that as it may, the question is whether the disciplinary authority could have resorted to such a practice of abandoning the enquiry already undertaken and resort to appointment of a fresh enquiring authority (multi-member)? The issue is not really whether the enquiring authority should be a single member or a multi member body, but whether a second inquiry such as the one under challenge is permissible. A Constitution Bench of this Court in **K.R. Deb v. CCE**., examined the question in the context of Rule 15(1) of the Central Civil Services (Classification, Control and Appeal) Rules, 1957. It was a case where an enquiry was ordered against a sub-Inspector, Central Excise (the appellant before this Court). The enquiry officer held that the charge was not proved. Thereafter the disciplinary authority appointed another inquiry officer "to conduct a supplementary open inquiry". Such supplementary inquiry was conducted and a report that there was "no conclusive proof" to "establish the charge" was made. Not satisfied, the disciplinary authority thought it fit that "another inquiry officer should be appointed to inquire afresh into the charge".

25. The Court in K.R. Deb held that: (SCC p. 105, para 12-13)

“12. It seems to us that Rule 15, on the face of it,



really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the *Disciplinary Authority may ask the Inquiry Officer to record further evidence*. But there is no provision in Rule 15 *for completely setting aside previous inquiries* on the ground that the report of the inquiring officer or officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion Under Rule 9.

13. In our view the Rules do not contemplate an action such as was taken by the Collector on February 13-2- 1962. It seems to us that the Collector, instead of taking responsibility himself, was determined to get some officer to report against the Appellant. The procedure adopted was not only not warranted by the Rules but was harassing to the appellant.

(emphasis supplied)

and allowed the appeal of K.K.Deb.

26. It can be seen from the above that the normal rule is that there can be only one enquiry. This Court has also recognized the possibility of a *further Enquiry* in certain circumstances enumerated therein. The decision however makes it clear that the fact that the report submitted by the enquiring authority is *not acceptable* to the disciplinary authority, is not a ground for completely setting aside the enquiry report and ordering a second enquiry.”

Reverting to the case in hand, there is no dispute that a disciplinary proceeding initiated against the petitioner upon service of chargesheet dated 28.4.2010 vide Annexure-8 has reached the stage of service of a second show cause dated 17.3.2011 vide Annexure-14



and in response where to the petitioner has also filed his reply vide Annexure-15 as back as on 6.5.2011. Now once the disciplinary authority has proceeded as per Rule 18(3) of 'the rules' to serve a second show cause on the enquiry report, he cannot turn around to set the exercise at naught.

The counter affidavit is absolutely silent as to the abandonment of the said exercise and why the said proceeding was not taken to its conclusion. The counter affidavit also does not explain the reason or the need to initiate fresh disciplinary proceeding on the self same charge memo dated 28.4.2010. Clearly the very initiation of a second round proceeding by the disciplinary authority on the same charge which is present at Annexure-8 vide Annexure-18 series is an arbitrary exercise, wholly without jurisdiction and contrary to the stipulations present under Rule 18 of 'the Rules' and as a consequence the entire exercise beginning the initiation vide order bearing Memo No.1921 dated 19.3.2014 including the enquiry report dated 2.5.2014 impugned at Annexure-22, the second show cause notice dated 15.5.2014 impugned at Annexure-22/1 and the final order passed thereon bearing Memo No. 3282 dated 6.6.2014 impugned at Annexure-1 are held per se illegal, contrary to the statutory provisions and wholly without jurisdiction and are accordingly quashed and set aside.



The choice now lies with the disciplinary authority whether or not to take the earlier proceeding to its logical conclusion or to drop the same.

The writ petition is allowed with the observation above mentioned.

(Jyoti Saran, J)

Bibhash/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	21.3.2017
Transmission Date	NA

