

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1488 of 2017

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Brij Bihari Singh, Son of Bishwanam Singh, Resident of Mohalla- Akashwani
Marg. Khajpura, P.S.-Shastrinagar, District-Patna.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Excise and Prohibition Department, Government of Bihar, Patna
2. The Commissioner, Excise and Prohibition Department, Government of Bihar, Patna
3. The Special Secretary, Excise and Prohibition Department, Government of Bihar, Patna
4. The Deputy Commissioner of Excise and Prohibition Department (Magadh Division), Government of Bihar, Patna
5. The Excise Superintendent, Nawada

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Amit Kumar Singh, Adv.

For the Respondent/s : Mr. Sriram Krishna, AC to SC-11

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 13-10-2017

Heard Mr. Amit Kumar Singh, learned counsel for the petitioner and Mr. Sriram Krishna, learned AC to SC-11, for the State.

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

In the nature of the order which this Court proposes to pass, it will not be required to delve deep into the merits of the case. Suffice it to say that a proceeding was initiated against the petitioner, who happens to hold the post of Excise Inspector under the Department of Registration, Excise and Prohibition, Govt. of Bihar, bearing Memo No. 4193 dated 5.9.2016, a copy of which is present at Annexure P/6. A plain reading of the resolution of the State Government would confirm that the proceedings were initiated under



Rule 17(2) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Rules').

The grievance of the petitioner is that although Rule 17(2) of 'the Rules' provides for an exhaustive procedure for holding disciplinary proceeding which includes appointment of the Enquiry Officer, the examination of witnesses, leading of evidence, submission of the enquiry report under the provisions of Rule 17 and followed by the procedure provided under Rule 18, wherein the disciplinary authority is mandated to seek an explanation on the enquiry report but these procedures have been given go-bye by the disciplinary authority while passing the impugned order vide order of punishment bearing notification No. 5718 dated 11.11.2016 impugned at Annexure P/9 to the writ petition.

The arguments have been contested by Mr. Krishna, learned State Counsel, to submit that since the petitioner has been visited with minor penalty under Rule 14(5) of 'the Rules', hence there was no requirement to serve copy of the enquiry report on the petitioner.

I have heard learned counsel for the parties and have perused the records and in my opinion, the submission advanced by the learned State Counsel to defend the impugned order though is correct on principle but is contrary to the procedure adopted in the present case for imposition of penalty and the stipulations present



under Rule 17 read alongside Rule 19 of 'the Rules', which inter alia provides for the procedure to be followed in case of imposition of major penalties and minor penalties respectively. Obviously when the proceeding was initiated against the petitioner, the disciplinary authority may not have formed any opinion as regarding nature of penalty to be imposed and that may be the reason that the proceedings were initiated under Rule 17(2) of 'the Rules', which prescribes the procedure for imposition of major penalty. But once the disciplinary authority has chosen to follow the procedure provided under Rule 17, then the same cannot be abandoned midway simply on grounds that the penalty to be imposed was in the nature of a minor penalty. In fact even Rule 19 provides for twin procedure for imposition of minor penalties and the discretion is left on the disciplinary authority whether to proceed under Rule 19(1)(a) whereunder he has been given liberty to draw a summary procedure for imposition of such penalty or to follow the exhaustive procedure present under Rule 17 as per stipulation underlying Rule 19(1)(b).

In so far as the present case is concerned, the resolution dated 5.9.2016 at Annexure P/6, whereby proceeding was initiated against the petitioner itself confirms that the disciplinary authority has chosen to follow the exhaustive procedure of Rule 17 of 'the Rules' and thus once having exercised the discretion to follow the exhaustive procedure, the disciplinary authority cannot abandon the same



midway to summarily dispose of the proceeding without following the statutory stipulations present in Rule 17. Clearly the order of penalty is de hors the procedure as according to the petitioner and not contested by the respondents, neither the copy of the enquiry report was supplied to the petitioner as mandated under Rule 18 of 'the Rules' nor the petitioner has been given liberty to represent against the enquiry report.

In the undisputed circumstances discussed, the order of penalty bearing Memo No. 5718 dated 11.11.2016 is confirmingly passed de hors the statutory procedure and thus cannot be upheld and is accordingly quashed and set aside. The matter is remitted to the disciplinary authority, if so advised, to proceed in the matter afresh from the stage of service of copy of the enquiry report as mandated under Rule 18 of 'the Rules' and take the matter to its logical conclusion in accordance with law.

The writ petition is allowed.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	31.10.2017
Transmission Date	NA

