

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7893 of 2014

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Rabindra Kumar Prakash son of Late Om Prakash resident of Chhoti Machhua Toli,
P.S. Danapur, District - Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary Department of Mines and Geology, Government of Bihar, Patna.
2. The Principal Secretary, Department of Mines and Geology, Government of Bihar, Patna.
3. The Joint Secretary, Department of Mines and Geology, Government of Bihar, Patna.
4. The Special Secretary, Department of Mines and Geology, Government of Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar, Adv.

For the Respondent/s : Mr. DEVENDRA KR SINHA

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 28-08-2017

Heard both sides.

2. The petitioner prayed for quashing of the order dated 14.02.2014, as contained in Memo No. 600 annexure-13 issued by the Joint Secretary, Mines and Geology Department, Government of Bihar by which the Joint Secretary informed the Additional Secretary-cum-enquiry officer that the disciplinary authority has pleased to reject the report of the enquiry officer and directed the enquiry officer to hold further enquiry on day-to-day basis under Rule 17 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter for the sake of brevity referred to as “the C.C.A. Rules, 2005”).

3. During the pendency of this writ petition, the petitioner



filed a petition for amendment of prayer and to quash the order dated 19.12.2014 as contained in memo No. 4596 (annexure-17) issued under the signature of Additional Secretary, Department of Mines and Geology Department, Government of Bihar by which following punishment have been inflicted:-

(i) Withholding the entire pension permanently.

(ii) No other allowance except the subsistence allowance will be payable during the suspension period. The petitioner was not entitled to get gratuity and un-utilized earned leave.

4. Learned counsel for the petitioner assailed both the orders, on the ground that enquiry officer hold enquiry and submitted report, but did not find the petitioner guilty of any charge. The disciplinary authority after having received the enquiry report may differ with the findings of the enquiry officer, but cannot reject the enquiry report without assigning any reason and ordered the enquiry officer to hold enquiry afresh.

Learned counsel for the petitioner further submits that Rule 18 of the C.C.A. Rules, 2005 provides that if the enquiry officer failed to enquire on any point of charge, the disciplinary authority upon receipt of the enquiry report, may ask the enquiry officer to make further enquiry on the aforesaid point of charge. Sub-rule (2) of Rule 18 further says that disciplinary authority may differ with the finding of the enquiry officer on the reasons stated by the enquiry officer and the enquiry shall officer record his finding on the basis of evidence



available on record, but the rule does not permit the disciplinary authority to ask the enquiry officer to hold enquiry afresh under Rule 17 and submit report. It is further submitted that even thereafter, the enquiry officer heard the petitioner and the presenting officer, but the presenting officer did not produce any new material. The enquiry officer, on the same material, submitted his report holding the petitioner guilty on the same set of evidence on which the same enquiry officer submitted report holding the petitioner not guilty of any charge. Therefore, the enquiry report is vitiated and the punishment on the same enquiry report is also not sustainable.

5. On the contrary, learned counsel for the State as well as the learned counsel for the Mines and Geology Department, Government of Bihar, filed counter affidavit, but learned counsel for the respondents could not be able to bring any fact to show that after remitting the case to the enquiry officer, the enquiry officer recorded any new evidence adduced on behalf of the presenting officer.

6. The only question arises for consideration is as to whether the disciplinary authority is under the law empowered to reject the enquiry report and remit the case to the enquiry officer for fresh enquiry? For better appreciation of the submissions and in order to decide the question, it is pertinent to reproduce Rule 18 of the C.C.A. Rules, 2005 which is as follows:-

18. Action on the inquiry report. –

(1) The disciplinary authority, if it is not itself the inquiring authority may, for 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.

(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.

(3) The disciplinary authority shall forward or cause to be forwarded a copy of the inquiry report, together with its own findings, if any, as provided in sub-rule (2), to the government servant who may submit, if he or she so desires, his or her written representation or submission to the disciplinary authority within fifteen days.

(4) The disciplinary authority shall consider the representation or submission, if any, submitted by the Government Servant before proceeding further in the manner specified in sub rules (5) and (6).

(5) If the disciplinary authority having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in clauses (i) to (v) of Rule 14 should be imposed on the Government Servant, it shall, notwithstanding anything contained in Rule 19, make an order imposing such penalty.

(6) If the disciplinary authority, having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry is of the opinion that any of the penalties specified in clauses [(vi) to (xi)] of Rule 14 should be imposed on the Government Servant, it shall make an order imposing such penalty and it shall not be necessary to give the Government Servant any opportunity of making representation on the penalty proposed to be imposed.

(7) Notwithstanding anything contained in sub-rules (5) and (6), in every case where it is necessary to consult the Commission, the Commission shall be consulted and its advice shall be taken into consideration before making any order imposing any penalty on the Government Servant.

7. From bare perusal of the sub-rule (1) of Rule 18, it appears that the disciplinary authority, if it is not itself the inquiring authority may for reasons to be recorded by it in writing, may remit the case to the inquiring authority for further enquiry 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. Sub-



rule (2) authorizes 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 reason for such disagreement and also record its own finding on such charge, if the evidences on record is sufficient for the purpose. But from perusal of the order dated 14.02.2014, as contained in Memo No. 600 (annexure-13), it appears that Joint Secretary informed the enquiry officer that the disciplinary authority has rejected his enquiry report and directed him to hold enquiry on day-to-day basis. The disciplinary authority did not state the reasons for remitting the case to the enquiry officer. The disciplinary authority did not find by recording his reasons that on any point of charge enquiry officer did not hold the enquiry and simply rejected the enquiry report. The provisions as contained in Rule 18 does not permit the disciplinary authority to reject the enquiry report without pointing out any material for further investigation and to order for fresh enquiry. It further appears that the disciplinary authority remitted the case to the enquiry officer for further fresh enquiry. The enquiry officer did not record any fresh evidence. The presenting officer also did not produce any new material in order to prove the charges made against the petitioner and on the same evidence, the enquiry officer submitted the report holding the petitioner guilty of the charges. It is also surprising that the same enquiry officer on the same set of evidence earlier submitted enquiry report holding the petitioner not guilty on any of



the charge.

8. Having considered the facts aforesaid, I am of the considered view that the order of the disciplinary authority to reject the enquiry report and to order for fresh enquiry is without jurisdiction and illegal and thereafter the enquiry report submitted by the enquiry officer on the same material holding the petitioner guilty is also absolutely illegal. The disciplinary authority cannot direct the enquiry officer to submit report of his own choice against the proceedee government servant. Therefore, the order dated 14.02.2014, as contained in Memo No. 600 (annexure-13) and the order dated 19.12.2014, as contained in Memo No. 4596 (annexure-17) are bad and not sustainable in the eyes of law. Accordingly, both the orders are set aside. Thus, the writ petition is allowed.

The matter is remitted to the disciplinary authority to proceed further in accordance with law.

(Prabhat Kumar Jha, J.)

Vinita/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.09.2017
Transmission Date	NA

