

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7863 of 2014

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1. Dr. Subodh Kumar Son of Pran Mohan Singh Resident of Village - Manik Parthanda, P.S. Fullidumar, District - Banka, Junior Assistant Research Officer, Animal Health & Production Institute, Patna Petitioner/s

Versus

1. The State of Bihar

2. Principal Secretary, Animal Husbandry & Fisheries Department, Govt. of Bihar, Patna

3. Director, Animal Husbandry Govt. of Bihar, Patna

4. District Animal Husbandry officer, Vaishali (Hajipur) Respondent/s

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Appearance :

For the Petitioner/s : Mr. Naresh Dixit

For the Respondent/s : Mr. A. K. Rahi, AC to GP 21

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
CAV JUDGMENT
Date: 5-04-2018

Heard both sides.

The petitioner in this writ petition seeks direction to the respondents not to give effect to the second departmental enquiry report dated 11.03.2014 (Annexure-1). The petitioner by way of filing interlocutory application further seeks quashing of the order as contained in memo No 475 dated 01.12.2015 under the signature of Under Secretary whereby the petitioner has been removed from service (Annexure-4).

The petitioner was appointed as Veterinary doctor in the year 1997 and he was transferred to Patna as Junior Assistant Research Officer, Animal Husbandry Department, B.V. C. Campus, Patna in the year 2001. While the petitioner was residing in Government quarter No.7 a raid was conducted by vigilance officials and two post dated cheques and admit cards of different examinations were seized from the official residence of the petitioner and for that Vigilance case No. 19/2005 was registered. A departmental enquiry was also initiated and Dr. Sudhakar Jha was appointed as conducting officer. Dr. Sudhakar Jha submitted his enquiry report on 05.08.2010 but the disciplinary authority vide order as contained in memo No. 237 dated



08.06.2011 ordered for holding fresh departmental enquiry. Rajesh Kumar, Director, Animal Husbandry Department, Patna was appointed as conducting officer. Rajesh Kumar submitted his report without holding any departmental enquiry in accordance with law. The petitioner challenged the second enquiry report, as contained in Annexure-1, but during the pendency of the writ petition the petitioner was dismissed from service vide resolution, as contained in memo No. 475 dated 01.12.2015 on the basis of second enquiry report and petitioner challenged this order by filing I. A. No. 158 of 2016, which was allowed vide order dated 28.07.2017.

Mr. Naresh Dixit, the learned counsel for the petitioner, submits that in view of provisions as contained in Rule 18 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as the CCA Rules), no fresh enquiry can be directed to be held. The petitioner was departmentally proceeded and Dr. Sudhakar Jha was appointed as enquiry officer, who submitted report on 05.08.2010 but the disciplinary authority sat over the matter and ordered for fresh enquiry which is not permissible under the rules meant for departmental enquiry. It is submitted that the disciplinary authority is not authorized under the law to order for fresh enquiry and the order dated 08.06.2011 as contained in memo No. 237 (Annexure-7) is illegal. The second enquiry report is also illegal. The learned counsel for the petitioner placed his reliance on the judgment of this court in the case of **Niranjan Paswan v. The State of Bihar reported in 2017(3) PLJR 412**. The learned counsel for the petitioner further submits that if the petitioner is not found guilty in the first enquiry report and the disciplinary authority is not satisfied with the finding, the disciplinary authority, in view of provision under Rule 18 of the CCA Rules, may differ with the finding of the enquiry officer and give his own reasoning for differing with the finding of enquiry officer on the basis of evidence but the disciplinary authority cannot



order for fresh enquiry and appoint another person as conducting officer which is de-hors the law and placed his reliance on the judgement of Supreme Court reported in the case of **Union of India v. K. D. Pandey, (2002) 10 SCC 471**. The learned counsel for the petitioner submits that on the similar facts in the case of **Dr. Fateh Faiyaz v. the State of Bihar & Ors, 2016 (1) PLJR 370** a single bench of this court has also held that fresh enquiry is not permissible under Rule 18(1) of Bihar CCA Rules. He also placed reliance on the judgement reported in **2012 (2) PLJR 678 (Awashesh Upadhyaya v. State of Bihar)** in which this court has also relied on the judgement of Union of India v. K. D. Pandey (supra) and **Kanailal Bera v. Union of India reported in (2007) 11 SCC 517** and held that punishment on the basis of second enquiry report is illegal and not sustainable. It is submitted that order as contained in Annxure-4 is bad and not sustainable.

On the contrary, the learned counsel for the State has submitted that vide resolution dated 08.06.2011 contained in memo No. 237 the disciplinary authority ordered for fresh enquiry but the petitioner did not participate in the inquiry and now the petitioner cannot challenge the enquiry report after he is found guilty. It is further submitted that during the pendency of this writ petition the petitioner has already been dismissed from service and there is no illegality in the departmental proceeding.

On the basis of submission of the parties, the question arises for consideration as to whether fresh enquiry is permitted under the law and on the basis of second enquiry report the dismissal of the petitioner from service is sustainable in the eye of law?

Admittedly, while the petitioner was working as Junior Research Officer, Animal Husbandry Department, a raid was conducted in his official residence and different incriminating articles were recovered for which Vigilance case No. 19 of 2005 was



registered. On the basis of report of Vigilance, a departmental enquiry, vide order dated 10.06.2010, as contained in memo No. 223, was also initiated. Dr. Sudhakar Jha, Regional Director, Animal Husbandry Department, was appointed as conducting officer who submitted his report on 05.08.2010. The disciplinary authority, having received the enquiry report of the Regional Director, Animal Husbandry Department, ordered for fresh enquiry and Rajesh Kumar, Director, Animal Husbandry Department, was appointed as conducting officer. Rule 17 of the Bihar CCA Rules prescribes the procedure for holding departmental enquiry for inflicting punishment. The procedure for inflicting major punishment is prescribed under Rule 14 (VI) to 14 (XI) of CCA Rules. Rule 18 of the Bihar CCA Rules reads thus:-

“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”.

From perusal of Rule 18, it appears that the disciplinary authority upon receipt of the enquiry report may refer the matter to the conducting officer for further enquiry if he finds that on any point of charge no enquiry is held or no finding is recorded. The disciplinary authority is further empowered to differ with the finding of the enquiry officer and give his own reasons for such difference from the finding of enquiry officer on the basis of evidence available on record. The disciplinary authority may further forward or cause to be forwarded a copy of the inquiry report, together with its own finding, if any, and point of difference to the delinquent Government servant and after hearing may pass order. Sub-rule (1) of Rule 18 speaks about the matter to be referred to the conducting officer for further enquiry but this rule does not empower the disciplinary authority to reject the report of enquiry officer out-rightly on mere contradiction and appoint another conducting officer for holding fresh enquiry. Therefore, the order of the disciplinary authority as contained in memo No. 237 dated 08.06.2011 (Annexure-1) directing to hold fresh enquiry and appoint another conducting officer de-hors the rules is not sustainable. This view finds support from the judgement of this court in the case of *Awadhesh Upadhyaya v. State of Bihar* (supra) as well as from the judgement of Supreme Court in the case of *Union of India v. K. D. Pandey* (supra).

The records of the case were called for and from perusal of the entire records, it is transpired that Rajesh Kumar, Director, Animal Husbandry Department, conducting officer, did not hold the enquiry in accordance with procedure laid down under Rule 17 of CCA Rules and submitted his report holding the petitioner guilty on the basis of



his own appraisal of records. The second conducting officer did not ask the presenting officer to produce any witness or document on which the disciplinary authority proposed to prove the charges against the delinquent. Therefore, I find that second enquiry report is based on no evidence and on such the order of punishment as contained in Annexure-4 is bad and not sustainable in the eye of law.

Accordingly, this writ petition is allowed and the second enquiry report, as contained in Annexure-1, and punishment thereupon, as contained in Annexure-4, are set aside. The matter is remitted to the disciplinary authority to proceed in accordance with law.

Let the original records be handed over the learned Counsel for the State.

(Prabhat Kumar Jha, J)

BKS/-

AFR/NAFR	NAFR
CAV DATE	23.08.2017
Uploading Date	13.04.2018
Transmission Date	N.A.

