

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12679 of 2010

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Smt. Neeta Kumari Pandey W/O Shri Upendra Pandey R/O Jagdishpuri, Lane No.4, P.O.- Ramana, P.S.- Mithanpura, Muzaffarpur-842002 (ERSTWHILE District Inspectoress Of Schools) Presently Principal, Zila School, Muzaffarpur

... .. Petitioner/s

Versus

1. The State of Bihar Through Secretary Human Resources Development Department, Government Of Bihar, Patna
2. The Director (Administration) Cum Joint Secretary Human Resources Development Department, Government Of Bihar, Patna
3. The Director (Administration) Cum Deputy Secretary Secondary, Primary & Adult Education Department, Govt. of Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shekhar Singh, Adv. Mr. Girijesh Kumar, Adv.
For the Respondent/s	:	Mr. Nirbhay Prashant, AC to SC-17

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 14-05-2018

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

In the present case, the petitioner prays for following relief:-

“I. For quashing the Memo of charge No. 3/AA/02-24/06 dated 12.06.2006 (Serial No.330 dated 12.06.2006) issued by the Human Resource Development, Bihar, Patna.

II. For quashing the letter no. 3/AA2-24/2006, Sec.-380 dated 26.6.2006 and the Inquiry proceedings/report upon said chargesheet and other consequential proceedings, issued by the Department of Human Resources Development, Bihar, Patna.

III. To quash the notification no. 3/AA2-24/06 (Part-II_ Sec-858 dated 7.9.2009 issued by the Department of Human Resources Development, Bihar Govt. whereby



the petitioner was awarded two major punishments allegedly under Rule-14(vi) of Bihar CCA Rules, 2005 in terms of the letter no. 428 dated 3/6/2008 issued by Departmental Inquiry Commissioner.

IV. To quash the Final order bearing no. 3/AA-2-24/06 (Part-2) 201 dated 22.2.2010 passed by the Director (Administration) cum Joint Secretary, Human Resources Development Department, Govt. of Bihar, Patna in Review Petition No. T-7/5-11-09 dated 5.11.2009. The petitioner is further praying for issuance of a writ/order/direction in the nature of a writ/order/direction in the nature of mandamus or any other appropriate writ.

V. To direct the respondent-State to quash the letter no. 796 dated 27.11.2007 from the office of Director (Administration cum Joint Secretary), Ministry of Human Resource Development, whereby without assigning any reason the Inquiry Report submitted by Shri Pancham Lal, Departmental Inquiry Commissioner was summarily rejected and a re-inquiry was directed to be conducted by the departmental inquiry Commissioner Sri S.P. Keshav and quashing of the Inquiry Report No. 428 dated 3/6/2008 issued by second Departmental Inquiry Commissioner, Sri S.P. Keshav."

In the present case, the petitioner was selected in 35th Batch of Bihar Public Service Commission, was allotted the Bihar Education Service for Class-2 post of Bihar Education Cadre. Accordingly, she joined the service on 25.5.1990. Her first posting as District Inspector of School, Singhbhum of joint Bihar and, accordingly, she took charge from Ms. Urshla Baa, who was the



predecessor holding the post of District Inspector of School and there she found that four matric trained teachers were appointed by her predecessor which required the extension of their services. Accordingly, in exercise of power under Section 97(XI) of Bihar Education Code and in terms of Circular No. 1441 dated 3.11.1979 issued by the Director, Secondary Education, Bihar, granted their extension. It has been said that it is not the petitioner only but, such extensions were made in 46 districts by the Inspectors of School, was never termed or declared improper or illegal which was being practiced right from beginning under the knowledge of the Department, such practice was being followed by different Inspectors of Schools in the entire State of Bihar. The petitioner suddenly received letter no. 330 dated 12.6.2006 from the Director, Ministry of Human Resource Development Department along with the copy of letter dated 30.11.2004 of C.B.I. to the Secretary, Government of Bihar comprising with self-contained note. The letter itself discloses certain preliminary enquiry was conducted by the C.B.I. did not find any criminality in action by the public servants. This letter was annexed with the show-cause notice dated 12.6.2006 containing six charges made against the petitioner, on receipt of the show-cause, the petitioner filed reply bearing No. TS-1/25.7.2006 along with annexures to the enquiry



officer Sri Pancham Lal who was the Commissioner of Departmental Enquiry, whereafter, she filed clarification on 24.4.2007 regarding prior appointment of teacher by her predecessor, she explained, she did not appoint any person but only granted extension of the period of appointment and was not a party to the appointment. Sri Pancham Lal inquire into the matter and submitted his enquiry report dated 3.7.2007, found the charges were not proved against her which was submitted before the competent authority to take decision but, it appears that the Director (Administration) cum Joint Secretary vide Memo No. 796 dated 27.11.2007 recorded his disagreement with the report of the enquiry officer and directed for fresh/denovo enquiry (Annexure-D). By the same letter, the Commissioner, Departmental Enquiry was appointed as enquiry officer to conduct departmental enquiry afresh against her, whereafter, the Commissioner of Departmental Enquiry has submitted the report, charge no.1 & 6 were found partially proved, charge no.2, 3 & 5 were not found proved and charge no.4 was found proved. In order to understand the intricacy of the proceeding, it is relevant to quote all the charges leveled against the petitioner which reads as follows:-

“आरोप

1. आपने जिला विद्यालय निरीक्षिका सिंहभूम के कार्यकाल दिनांक- 05.11.90 से दिनांक 06.02.96 तक की अवधि में श्रीमती सनेहलता टहंगा श्रीमती शिवरानी मालिक श्रीमती था मिक



पूर्ति एवं श्रीमती गलोरों कुमारी कच्छर को शिक्षक के पद पर अस्थायी नियुक्ति की तथा उन्हें छः छः माह का अवधि विस्तार दिया गया जो कि अवैध एवं नियम विरुद्ध है एवं जिसके लिए आप दोषी हैं।

2. आपने इन शिक्षकों की नियुक्ति स्थानीय चयन समिति को अनुशंसा के आलोक में किया, जो नियमानुकूल नहीं है जिसके लिए आप दोषी हैं।

3. आपने इन नियुक्तियों में सीनीय नियोजनालय से आवेदन पत्र प्राप्त किया परन्तु नियुक्ति हेतु निर्धारित प्रक्रियाओं का अनुपालन नहीं किया जो कि पूर्णरूपेण नियम विरुद्ध है।

4. आप एल0एस0एस0 के शिक्षक पर पद नियुक्ति करने के लिए सक्षम पदा0 नहीं होने पर भी नियुक्ति की अतः इन अवैध नियुक्ति के लिए आप दोषी हैं।

5. आपने श्रीमती गलोरों कुमारी कच्छर की नियुक्ति में अधिकतम आयु सीमा का ध्यान नहीं रखा एवं उन्हें अधिकतम आयु से चार माह अधिक होने पर शिक्षक के पदपर नियुक्ति की जो कि नियम विरुद्ध है।

6. इस प्रकार आपके द्वारा अवैध रूप से नियुक्त किये गए शिक्षकों के वेतन निकासी से सरकारी राजस्व की क्षति हुई जिसके लिए आप दोषी हैं। इस प्रकार अवैध नियुक्तियों कर आपने अपने अधिकार एवं दायित्वों का दुरुपयोग किया है तथा इन अवैध नियुक्तियों में आपको संलिप्ता पुर्ण रूप से परिलक्षित होता है।”

The enquiry report was submitted to the disciplinary authority which was served upon the petitioner and, whereafter, she filed explanation (Annexure-12), explained her defence where she has taken a plea that she had not committed any misdemeanor as she had not appointed any person rather in exercise of power under Section 97, she had merely extended the period and she should be exonerated from all the charges. The disciplinary authority, considering the explanation submitted by the petitioner, awarded two punishments, firstly, stoppage of five increments with



cumulative effect and in future she would not be given important posting and, after that, she filed an appeal to the Principal Secretary cum Appellate Authority but, it was treated to be review application as there is no provision for appeal under the Discipline Appeal Rules, 2005 for the Class-1 officer and, the authority was not satisfied with the explanation extended and offered by the petitioner, rejected the the appeal cum review application vide order dated 22.2.2010.

Learned counsel for the petitioner has addressed this Court on two aspects of the matter, firstly, procedural illegality in directing fresh and denovo enquiry. As per petitioner, under Rule 18 of the Bihar Discipline Appeal Rules, which confers the powers only for further enquiry in certain events, does not stipulate anywhere for empowerment of Disciplinary Authority for fresh enquiry and, as such, the disciplinary authority is bereft of power for giving such direction for fresh and new denovo enquiry. Further it has been submitted that if the disciplinary authority was not satisfied with the enquiry report, instead of giving direction for fresh enquiry, on the basis of material available on record, could have recorded finding of disagreement in a separate sheet would have served upon the petitioner on receipt of the explanation, the Disciplinary Authority could have



passed order in the proper procedure. Further it has been submitted that mere disagreement with the enquiry report will not enclithe the disciplinary authority to pass an order for the fresh enquiry as finding was recorded to his satisfaction, is the procedural illegality and wrong committed by the enquiry officer in conducting the departmental proceeding. Further he has said that the Disciplinary Authority could take decision for the fresh enquiry in certain eventuality, such as, if the enquiry conducted by the enquiry officer was inherently illegal or natural justice has not been followed or the documents, which were necessary for bringing the same in enquiry has been left out and in other incidental situation but, merely the disciplinary authority did not agree and did not like the report submitted by the enquiry officer, that does not give a jurisdiction ipsi dixit to pass an order for the fresh enquiry. Further submitted that the second enquiry also suffers from illegality on the score that the procedure provided under Rule 17 of the Discipline Control and Appeal Rule having not been followed. Merely the material which was earlier available/connected in the first enquiry is the basis for the report of the second enquiry which can best be said a different opinion. The Disciplinary Authority cannot pass an order for fresh denovo enquiry as because he could not achieve desired result, if this be allowed, then the enquiry



proceeding will never come to an end till the faovurable report submitted by the enquiry officer in favour of the employer. Learned counsel for the petitioner further submits that the enquiry officer has not conducted in terms of Rule 17 as neither the oral nor the documentary evidence has been recorded but, merely the findings has been given on the basis of materials available on record, from before. The petitioner has further taken a plea that though the 2nd show-cause was served but, without attaching the enquiry report and, as such, it violates the principle of natural justice as having been held in the case of *Managing Director, ECIL, Hyderabad & Ors. Vs. B. Karunakar & Ors.* reported in 1993(4) SCC 727.

In nutshell, complaint has been made of procedural irregularity, further submitted, three charges were found to be partially proved and one charge has been found proved. He has further submitted that in fact she never appointed any person but, only extended the period, cannot entail such a high degree of punishment which is highly disproportionate to the charge proved. In support of his submission, learned counsel for the petitioner has placed reliance on the judgment reported in the case of *Union of India Vs. K.D. Pandey & Anr. ; 2002 (10) SCC 471, K.R. Deb Vs.*



The Collector of Central Excise, Shillong ; 1971 (2) SCC 102 and
Suresh Prasad Vs. The State of Bihar & Ors. ; 2008 (3) PLJR 531.

Per contra, learned counsel for the State has submitted that the ground which has been raised by the learned counsel for the petitioner is not available in view of the fact that when the second enquiry was directed to be held against the petitioner, she submitted her to the jurisdiction of enquiry officer as she never raised objection. Now when the enquiry proceeding has been concluded, report has been submitted and the punishment has been awarded, now he cannot be allowed to turn around, challenge the initiation of the enquiry proceeding. If she was so sanguine that the fresh enquiry proceeding could not have been done, the petitioner should have objected at the earliest but, she has not done, so, in the present juncture, her right to raise objection is treated to have been waived. Further it has been submitted that there is no irregularity in the proceeding as Sri Pancham Lal, who was the enquiry officer, did not conduct the enquiry fairly and properly and, as such, the disciplinary authority was compelled to give direction for the fresh and denovo enquiry giving all chance to the petitioner to controvert the charges leveled against her and, inasmuch as, she actively participated enquiry, all through and, ultimately, the punishment has been awarded to the petitioner, cannot be said to



be suffering from any illegality or irregularity but, is in accordance with law.

Further submitted that the respondents have acted illegally as in the first enquiry, the enquiry officer has submitted the report finding that the charges were not proved against the petitioner. Instead of direction for fresh enquiry, the Disciplinary Authority should have taken steps on the settled principle of law of recording a separate finding of disagreement and could have asked an explanation, on consideration of explanation, take a decision in accordance with law. The order for fresh enquiry can be passed when in the previous enquiry the Enquiry Officer has not recorded the evidence on summoning of the prosecution witness in course of enquiry. If there would have serious procedural irregularity is found in the departmental proceeding, as the documents and material may have failed to attract the attention, relevant evidence though available may not have been led, violation of natural justice reflects on its face are some of the situations only illustrative, not exhaustive where the employer can pass an order for fresh enquiry. Merely because the Enquiry Officer has submitted the report in favour of the Delinquent in ipsi dixit it cannot be directed for fresh or denovo enquiry without having recorded proper reason for the same. Reliance in this connection



may be placed on the judgment in the case of Devendra Pratap Narain Rai Sharma Vs. State of Uttar Pradesh & Ors. reported in AIR 1962 SC 1334 wherein it has been held that the State Government is competent to direct a fresh enquiry against the appellant for dereliction of duty even if such dereliction was in the period relating to which proceedings were previously started and the appellant had been dismissed from service and an adjudication on merits by a quasi-judicial body, may or may not debar commencement of another enquiry in respect of the same subject matter. It has further been held that the employer was competent to order for a fresh enquiry. It is relevant to quote paragraph nos. 7, 8 & 9 which reads as follows:-

"(7) In our view, the State Government was competent to direct a fresh enquiry against the appellant for dereliction of duty even if such dereliction was in the period relating to which proceedings were previously started and the appellant had been dismissed from service. The appellant was not in the earlier proceedings exonerated by the High Court in respect of the alleged misconduct charged against him, and, in any event, charge against him in the second enquiry was different from the charge in the first enquiry. The High Court had in the suit challenging the order passed in the first enquiry expressly observed that on the question as to misconduct and the punishment, no opinion was expressed. The suit filed by the appellant was decreed only on the ground that he had not been afforded a reasonable opportunity of



showing cause against the charge against him and also the punishment decided to be imposed upon him.

(8) Authorities on which reliance was placed by counsel for the appellants, namely, Dwarkachand v. State of Rajasthan, Nanak Chandra Bairagi v. Supdt. of police, Sibsagar and Mohan Singh Chaudhari v. Divisional Personal officer, Northern Railway, Ferozepore Cantt, do not support the plea that the second enquiry is, in the circumstances of the case, barred. An adjudication on the merits by a quasi-Judicial body may or may not debar commencement of another enquiry in respect of the same subject matter. But in this case we are concerned with the scope of the High court order. The binding effect of a judgment depends not upon any technical consideration of form, but of substance. The High Court in the appeal filed by the appellant in suit No. 163 of 1954 did not exonerate the appellant from the charges. The High Court decreed the suit on the ground that the procedure for imposing the penalty was irregular, and such a decision cannot prevent the State from commencing another enquiry in respect of the same subject matter consistently with the provisions of Arts. 310 and 311. In Dwarkachand's case, in a previous enquiry the public servant concerned had been exonerated; and in Mohan Singh Chaudhari's case a decision by the, civil court declaring illegal an order dismissing a public servant by an officer not authorised in that behalf was held binding on all the parties in proceedings under Art 226 till such decision was set aside in accordance with law. In Kanak Chandra's case it was held that an order in exercise of powers of revision by the Governor under the authority reserved to him setting aside on order of censure passed by a subordinate



authority and dismissing the public servant concerned from service did not amount to a second departmental enquiry. These cases do not lend support to the proposition that after an order passed in an enquiry against a public servant imposing a penalty is quashed, by a civil court, no further proceeding can be commenced against him even if in the proceeding can be commenced against him even if in the proceeding in which the order quashing the enquiry was passed, the merits of the charge against the public servant concerned were never investigated.

(9) If the State Government was competent to order a fresh enquiry, we see no reason why it would be incompetent to direct suspension of the appellant during the pendency of the enquiry."

In the case of Bhupender Pal Singh Vs. Director General of Civil Aviation & Ors. reported in (2003) 3 SCC 633 wherein it has been held that enquiry was conducted without giving proper opportunity of cross examination i.e. fair treatment was not given is good ground for fresh enquiry.

Again the case of Union of India & Ors. Vs. P. Thayagarajan reported in (1999) 1 SCC 733 came for consideration. In this case, the Court has held that if in 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. This proposition has been derived placing reliance on the judgment passed in the case of K.R. Deb V. CCE reported in (1971) 2 SCC 102. It is relevant to quote relevant portion of paragraph nos. 7 & 8 which reads as follows:-

“7. ----- What Shri Tulsi urged with reference to the decision in K.R. Deb [(1971) 2 SCC 102] is that there is no power in the Disciplinary Authority to set aside an earlier enquiry and to order a fresh enquiry. We may, in particular, refer to para 12 of the said decision which is as follows :

"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 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".

[emphasis supplied].

8. A careful reading of this passage will make it clear that this court notices that if in a particular case where there has been no proper enquiry because of some serious defect having crept into the



inquiry or some important witnesses were not available at the time of the inquiry or were not examined, the Disciplinary Authority may ask the Inquiry Officer to record further evidence but that provision would not enable the Disciplinary Authority to set aside the previous enquiries on the ground that the report of the Enquiry Officer does not appeal to the Disciplinary Authority. ----”

In the case of Chairman-cum-Managing Director, Coal India Limited & Ors. Vs. Ananta Saha & Ors. reported in (2011) 5 SCC 142, a liberty was given for fresh enquiry. Herein, the Court has held that de-novo enquiry, meaning thereby that the entire earlier proceedings including the charge-sheet issued earlier stood quashed. In such a fact- situation, it was not permissible for the appellants to proceed on the basis of the charge-sheet issued earlier. In view thereof, the question of initiating a fresh enquiry without giving a fresh charge-sheet could not arise. The Court has further held that it is a settled legal proposition that if initial action is not in consonance with law, subsequent proceedings would not sanctify the same. In such a fact-situation, if the foundation is removed, the superstructure would fall automatically. It is relevant to quote paragraph nos. 28 and 32 which reads as follows:-

“28. The High Court had given liberty to the appellants to hold de-novo enquiry, meaning thereby that the entire earlier proceedings including the chargesheet issued earlier stood quashed. In such a fact- situation, it was not permissible for the appellants to proceed on the basis of the chargesheet



issued earlier. In view thereof, the question of initiating a fresh enquiry without giving a fresh chargesheet could not arise.

32. It is a settled legal proposition that if initial action is not in consonance with law, subsequent proceedings would not sanctify the same. In such a fact-situation, the legal maxim "sublato fundamento cadit opus" is applicable, meaning thereby, in case a foundation is removed, the superstructure falls.

In the case of Vijay Shankar Pandey Vs. Union of India & Anr. reported in (2014) 10 SCC 589, there also the question arose with respect to holding of fresh enquiry placing reliance in the case of K.R. Deb (supra) and affirmed the view that in an event of serious defect crept into the inquiry or some important witnesses were not available at the time of the inquiry or for some other reason, the Disciplinary Authority may ask the Inquiry Officer for fresh enquiry but, there is no provision 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. It is relevant to quote paragraph nos. 24, 25, 26 & 32 which reads as follows:-

"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. The Collector of Central Excise, Shillong, (1971) 2 SCC 102, 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 inquiry 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”.

22. The Court held that:

“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 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, 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.R. 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.

32. Coming to the first reason - that the report is a cursory report. A copy of the report is not made available to the appellant. The content of the said report is not known. The only admitted fact about the report is that the appellant was exonerated of all the charges made against him. If such a conclusion is otherwise justified, whether the report is cursory or elaborate, should make no difference to the legality of the report. What matters is the



correctness of the conclusions recorded, not the length or the elegance of the language of the report which determines the legality of the conclusions recorded in it. Therefore this ground is equally untenable.”

The petitioner has also attached the judgment passed in C.W.J.C. No.7292 of 2007 (Suresh Prasad Vs. The State of Bihar & Ors.) also reported in 2008 (3) PLJR 531 $\simeq$ 2008 (1) BLJR 1132 wherein identical issue came for consideration and placing reliance in the judgment passed in the case of K.R. Deb (supra), the Court has held that fresh/denovo enquiry can be order in the event of serious defect has crept or the essential witness was not examined during the enquiry or the delinquent could not get the proper opportunity of cross-examination, when there is inherent defect in the enquiry cannot withstand judicial scrutiny. It is relevant to quote relevant part of the aforesaid judgment which reads as follows:-

“8. The right of the employer to hold more than one departmental proceedings cannot be interfered with by the Court. This may be done in a case also where the earlier enquiry is still pending. But there has to be justification for it. It would only be in a case where there has been serious procedural irregularity in a departmental proceedings, documents and materials may have escaped attention, relevant evidence though available may not have been led, violation of principles of natural justice are some of the conditions to hold a fresh enquiry. Merely because the enquiry report is not palatable, it is not open to the authorities on their ipse dixit to hold a de novo



enquiry. To permit this to be done, will amount to a carte-blanche to the authorities to keep holding re-enquiries by appointing different Inquiry Officers till such time that a report to their satisfaction is furnished. This shall be more strictly construed when the delinquent has had the benefit of exoneration. In the present case, on the first occasion i.e. 30.9.2002 the only reason given is that the authorities were dissatisfied with the enquiry report. No reasons have been assigned for this dissatisfaction in light of what has been discussed above. The counter affidavit of the Respondents is of no help and does not set out any grounds in justification of the de novo enquiry beyond that mentioned in Annexure-11. Likewise, the order dated 22.5.2006 refers that the earlier Inquiry Officer due to work load was unable to hold the enquiry. This was clearly contrary to the communication dated 19.8.2003 of the second Inquiry Officer returning the records for lack of cooperation from the Presenting Officer. This makes the order dated 22.5.2006 nonest on the face of it for the reasons urged therein. In any event, the subsequent enquiry report is vitiated on another ground also. It is not in controversy that the petitioner in this re-enquiry submitted that he had already filed his show cause on 21.10.2002 and that he had nothing further to say in the matter. Nonetheless, the Inquiry Officer was required to hold a regular proceedings by consideration of evidence, witnesses, documents and the defence. He based his conclusion of the guilt of the petitioner only on the memo of charges and his show cause. Even there the petitioner has been exonerated on one charge while on the other two, there is no positive finding of guilt but only a finding of suspicion based on surmises and conjectures. Suspicion cannot replace proof.

9. In the facts of the case, the Court cannot be oblivious of the fact that departmental proceedings were



initiated against the petitioner on 2.6.1997. The enquiry report of exoneration came to be submitted on 18.3.1998. A fresh enquiry was sought to be commenced on 30.9.2002 when the Presenting Officer did not cooperate. A fresh enquiry was then initiated on 22.5.2006 leading to the enquiry report followed by the second show cause on 3.4.2007. The petitioner has had to face this ignominy from 1997 to 2007, ten years, despite his exoneration by the Inquiry Officer as far back as in 1998.

10. In (1971) 2 SCC (K.R. Deb v. The Collector of Central Excise, Shillong) the appellant was proceeded against departmentally. An enquiry report was submitted holding that the charge was not proved. Notwithstanding the report, a fresh Inquiry Officer was appointed to conduct a supplementary open enquiry, recording that the previous Inquiry Officer had not recorded the evidence of some prosecution witnesses during the course of the enquiry. This fresh enquiry also exonerated the appellant. The disciplinary authority then again wrote to the Inquiry Officer that the report was sketchy and that he has failed to appreciate the importance of the evidence of a prosecution witness. The Inquiry Officer then submitted a final report holding that the conduct of the appellant may not be aboveboard. But that no conclusive evidence was forthcoming. The disciplinary authority then proceeded to pass a fresh order appointing a new Inquiry Officer afresh. The report now was of the guilt of the appellant being proved. Notice was issued to show cause for dismissal, he was then dismissed. The Supreme Court held that it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the enquiry or some important witnesses were not available at the time of enquiry or were not examined for some other reason, the disciplinary authority may ask the Inquiry officer to record further evidence. Ignoring all the previous



enquiries on the ground that the report of the Inquiry officer did not appeal to the disciplinary authority was not sound, as the disciplinary authority has enough powers to reconsider the evidence itself and come to its own conclusion. The disciplinary authority clearly did not wish to take any decision with regard to the guilt himself but was attempting to find a surrogate to speak on his behalf. "The procedure adopted was not only unwarranted by the Rules but was harassing to the appellant." The appeal was allowed. The enquiry report and the order of punishment were set aside.

11. In (1999) 1 SCC 733 (Union of India and Ors. v. P. Thayagarajan) it has been held that "if in a particular case, where there has been no proper enquiry because of some serious defect having crept into the enquiry or some important witnesses were not available at the time of enquiry or were not examined, the disciplinary authority may ask the enquiry officer to record further evidence but that provision would not enable the disciplinary authority to set aside the previous enquiries on the ground that the report of the enquiry officer does not appeal to the disciplinary authority."

12. In 2002 (10) SCC 471 (Union of India v. K.D. Pandey and Anr.) relied upon by the petitioner, disciplinary proceedings was initiated. The delinquent was exonerated. The disciplinary authority examined the matter and found that four of the six charges could be substantially proved beyond doubt with the available documentary evidence. Fresh enquiry was ordered. The delinquent was dismissed. The Tribunal and the High Court were of the view that on the same materials a fresh opinion had been furnished and it was not a case of further enquiry. It was not a case where the earlier enquiry was held to be bad or that the management or the establishment did not have proper opportunity to lead evidence or that the findings



were perverse. It was held that thus, there was no justification to commence fresh enquiry on the same charges. The Apex Court held that what had been done was a second enquiry on the same set of charges and materials. If this process was allowed the enquiries could go on perpetually until the view of the enquiring authority is in accord with that of the disciplinary authority. This would clearly be an abuse of process of law. The appeal was dismissed.

13. In 1971 (4) PLJR 515 (*Ajodhya Prasad Pandey v. Union of India and Ors.*) relied upon by the petitioner, departmental enquiry was held against the delinquent. The petitioner was exonerated from the charges. The recommendation was accepted, when the file was put up to the higher authorities. The superior authority directed issuance of a fresh charge sheet purported to be on fresh allegations of facts. This was challenged that there were no fresh facts and all the circumstances were the same. The Court held that repeated charges had been framed against the delinquent on the same allegations of fact and to permit the same to continue will only be harassment to the petitioner. The respondents were, therefore, restrained from continuing with the fresh proceedings.

14. In 2004 (2) PLJR 291 (*The Bihar State Electricity Board and Ors. v. Brij Mohan Prasad and Ors.*) it has been held that earlier departmental proceedings were held against the petitioners. Evidence was adduced when the delinquent was exonerated. A fresh departmental proceedings came to be initiated in pursuance of certain observation of the Supreme Court in a case preferred by certain other persons when they were found to be guilty. The Division Bench held that in the earlier enquiry proper opportunity was given to the parties. All materials were placed and it was not the case of the Board that any of the materials were not available at that time or that there



had been any procedural irregularity. It was, therefore, held that the Hon'ble Single Judge was justified in his finding that there was no justification in law for a fresh enquiry. With regard to the participation in the second enquiry by the delinquent, it was in paragraph 18 as follows:

“18. So far as the second point is concerned if the proceeding is without jurisdiction in that case participation by itself does not debar the person to challenge the same. When the Board was not justified in initiating a second enquiry only because of their participation, the writ petitioners-respondents cannot be deprived of the right to challenge the same on the ground of lack of jurisdiction.”

15. Learned Counsel for the petitioner lastly relied upon a judgment of this Court in 2007(3) PLJR 787 (Arun Kumar Sinha v. State and Ors.). In the relevant extract at paragraph 6 of the judgment, it has been held "Once enquiry report is submitted it is open to the disciplinary authority to either accept it or reject it or accept or reject part of it and give reasons thereof." Again at paragraph 7 in the relevant extract it was held "Fresh enquiry cannot be ordered to fill up the lacuna left by the department itself."

Let us examine the present case on the outline of elucidated herein above. In the present case, the first Enquiry Officer has submitted the enquiry report in favour of the petitioner having not found the charges were proved, without assigning any reason, the Disciplinary Authority vide Memo No. 796 dated 27.11.2007 (Annexure-D to the counter affidavit of the State) directed for fresh enquiry as because he was not in agreement with



the findings recorded by the enquiry Officer. If the Disciplinary Authority was not in agreement, he could have gone into the proceeding and could have examined the oral and documentary evidence, recorded his own findings of disagreement asking explanation, considering the same would have passed separate order in accordance with law but, in the present case, one of the major hurdle is as the Disciplinary Authority directed for fresh enquiry vide order dated 27.11.2007 the petitioner submitted himself to the jurisdiction of enquiry, fully participated in the enquiry without any demur, the enquiry officer conducted the enquiry, submitted the enquiry report, at no stage, any objection was ever raised, ultimately recorded the following finding, the charge no.1 & 6 partially proved, charge nos. 2, 3 & 5 not proved and charge no. 4 found to be proved. The charge no.4 deals with that the petitioner was not competent to appoint LSS teacher but appointed them and, as such, he is responsible for the illegal appointment which has been found to be proved. Right from the very beginning, she has taken a plea that the petitioner had not appointed any teacher rather she had only extended the period. Actually, they were appointed by her predecessor, namely, Ms. Urshala Baa and took the plea that she in exercise of power conferred under Section 97 (XI) of the Bihar Education Code, she



extended the period. This aspect of the matter was not examined by the Disciplinary Authority as she is taking a plea from beginning that she had not appointed any person but, the extension was made by her. The Enquiry Officer did not take care to find out whether appointments were made by her or it was extended, as the finding has been recorded under the assumption that appointments were made by her, further, neither the oral evidence has been recorded nor any documentary evidence has been brought through proper witness which is requirement of law, is evidently clear from Rule 17 of the Disciplinary Appeal Rule, 2005, which adverts, examination of witness and proving of documentary evidence through witness, the Enquiry officer did not adhere the procedure as provided under Rule 17 of 2005 Rules and, as such, illegality has been crept in the departmental enquiry and any finding without due consideration suffers from illegality and perversity and any finding based on without consideration of the material evidence suffers from illegality.

Rule 17 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 reads as follows:-

“17(14). On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and



may be cross-examined by or on behalf of the Government Servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses, as it thinks fit."

Under the judicial review, the Court will not act as an appellate authority but will examine as to whether the materials which are to be taken into consideration has been left out or any material which was not required to be taken into consideration has been taken into consideration or the findings are against the weight of evidence or the findings recorded are so perverse, no prudent person in any situation would arrive to such finding. In the present case, the facts are that the charge-sheet mentions appointment of teacher whereas she has taken a plea that she has never made appointment rather she had extended the period, so the main issue is as to whether she has made an appointment or extended the period, was required to be gone into while holding the charge no.4 proved but this aspect of the matter has not been gone into by the Enquiry Officer nor by the Disciplinary Authority. The Hon'ble Apex Court in the case of Roop Singh Negi vs. Punjab National Bank and others; (2009) 2 SCC 570 wherein the Court has held that while proving the charge of misconduct, the employer has to



bring on record the oral and documentary evidence, in absence of the same, the enquiry would vitiate.

Having given overall anxious consideration, this Court is of the view that the proper procedure of enquiry has not been followed as well as proper issue which was required to be framed, has not been framed, recorded cursory findings, which cannot withstand the judicial scrutiny and, as such, the order passed by the Disciplinary Authority as well as the order passed by the appellate authority are quashed and if so like they may conduct a fresh enquiry.

If the respondents intend to go for fresh enquiry, that should be completed within a period of six months from the date of receipt/production of a copy of this order.

If the respondents prefer silent, looking to the entire fact and circumstances of the case and the time consumed, they would pass an order in accordance with law.

In the result, this writ application stands allowed to the extent indicated above.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.05.2018
Transmission Date	NA

