

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 11185 of 2014

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Naresh Paswan Son of Late Dhibu Paswan Resident of village- Tekari, Post Office- Tekari, Police Station- Rajaun, District- Banka, at present Retd DTO residing at Chitkohra, Basti, Police Station- Gardanibagh, Patna.

.... Petitioner/s

Versus

1. The State of Bihar, through its Principal Secretary, Department of Transport, Government of Bihar, Patna.
2. The State Transport Commissioner, Bihar, Patna.
3. The Secretary, Transport Department, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : M/s Rajneesh, Abhinav Srivastava &
Ujjawal Bhaskar, Advocates

For the Respondent/s : Mr Vijay Kumar Verma, AC to GA II

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 03-01-2018

Heard counsel for the petitioner and the respondents.

The petitioner, who was then posted as District Transport Officer, Nawada was caught in a trap case. On the basis of the same charges, he was subjected to departmental proceedings. The charge memo is dated 16.09.2008 and the charges therein are substantially the same as leveled in the vigilance case. The petitioner, on the basis of said charge memo, was subjected to departmental proceeding which culminated into submission of an enquiry report dated 29.12.2008. In the enquiry report dated 29.12.2008, the enquiry officer, in paragraph 9 therein, had come to a conclusion that merely



because a first information report has been lodged against the petitioner and charge sheet has been submitted in the vigilance case, it was not possible to conclude the petitioner's guilt. Having opined so, the enquiry officer submitted the report that till such time the criminal case is not concluded, it is not possible to conclude the petitioner's guilt in the departmental proceeding. The disciplinary authority differed with the said findings. It is submitted that being dissatisfied by the findings of the enquiry officer, the disciplinary authority, on 09.10.2009, adopted a procedure alien to the procedure prescribed under the Bihar Government Servants (Classification, Control and Appeals) Rules, 2005 (for brevity *Bihar CCA Rules*) under which the proceedings were being conducted. The options available to a disciplinary authority disagreeing with findings of the enquiry officer are provided in Rule 18 of the Bihar CCA Rules, and no other action could be taken thereupon. In this connection, one unreported judgment passed in *CWJC No 842 of 2012 (Ram Prit Rai –Versus- The State of Bihar & Another)* has been relied upon by counsel for the petitioner. In the said judgment, this Court had the occasion to consider the options available to the disciplinary authority upon submission of the enquiry report. While considering the purport of Rule 18 of the Bihar CCA Rules, this Court has held that the Rules have to be followed and other modes of performance are forbidden.



In the instant case, the disciplinary authority has adopted a procedure which is not prescribed in the Bihar CCA Rules. By the said letter dated 09.10.2009, he has appointed another enquiry officer giving him a direction for submitting the report within two months. The disciplinary authority has directed a de novo enquiry, which is not permissible.

Pursuant thereto, the newly appointed enquiry officer has submitted a fresh enquiry report under letter dated 15.03.2011 holding the petitioner guilty of the charges that had been leveled against him. Copy of the enquiry report was served to the petitioner under letter dated 16.05.2011 and he was directed to give his comments within 15 days. The records disclose a peculiar state of affairs wherein disciplinary authority appears to be not satisfied with this finding also as it was not to his liking. Two letters were issued by the disciplinary authority on 09.09.2011, one which bears Memo No 3893, was issued to the enquiry officer calling upon him to obtain the relevant evidences from the Vigilance Department and prepare an enquiry report considering the evidence and submit the same to the department immediately. This again is an action which is not sanctioned by any of the provisions contained in the CCA Rules as the same does not provide for calling from such report without giving any opportunity to the delinquent. The other letter which is issued on the



same date is contained in Memo No 3891 whereby a show cause has been issued to the enquiry officer as to under what circumstances he submitted the enquiry report without relying on any evidence.

Coerced in the above manner, the enquiry officer has surprisingly submitted a third enquiry report in the same proceeding. The same was sent under letter dated 3.12.2011, this time discussing the charges along with the proposals made by the presenting officer. Thereupon, he recorded his finding in the third enquiry report. The disciplinary authority has once again, under letter dated 20.12.2012, communicated the third enquiry report to the petitioner and called for his comments thereupon. In the aforesaid manner, the proceedings have been conducted against the petitioner in utter disregard to the procedure prescribed under law and under the Bihar CCA Rules.

Concurrence has been sought for from the Bihar Public Service Commission (for brevity *BPSC*) by the letter (Annexure 19) which is dated 07.06.2013. Another fact relevant for the instant case is that the concurrence from the BPSC was never received by the authorities. However, it appears that the authorities were predetermined to inflict punishment upon the petitioner and vide order dated 12.02.2014, which is Annexure 1 to the writ petition, the petitioner has been inflicted punishment of withholding his entire pensionary benefits. Further, it has been ordered that for the period of



suspension that is from 30.07.2008 to 31.07.2009, the petitioner would be entitled to no benefits other than subsistence allowance. From the punishment order itself, it is evident that the disciplinary authority, in the instant case, has resorted to a de novo enquiry to record the finding of guilt against the petitioner. The same is evident from paragraph 4 of the impugned order. As noticed above, such a procedure is not permissible in Bihar CCA Rules more specifically Rule 18 thereof.

Counsel for the petitioner has also relied on the judgment of the Apex Court reported in *(2014) 3 Supreme Court Cases 502 (Dipak Babaria & Another –Versus- State of Gujarat & Others)* particularly paragraphs 60 and 61 thereof wherein the settled position of law has been reiterated that if the Rule/procedure prescribes a particular manner for exercise of power then the same can be done in that manner alone and all other methods are necessarily prohibited. The same is in the opinion of the Court a settled principle of law and importance of the same in respect to the Bihar CCA Rules cannot be over emphasized. Compliance with the Bihar CCA Rules ensures fairness in the conduct of proceedings against the petitioner. When the procedure is violated, as in the instant case, the conclusions arrived as a result of such procedural violation are arbitrary and unsustainable on the touchstone of fairness and cannot



be made the basis of imposing punishment upon the delinquent.

In view of the aforesaid discussions, this Court would be left with no option but to set aside the order of punishment dated 12.02.2014. The same is hereby quashed.

However, it would be open to the disciplinary authority to proceed afresh in accordance with the procedure prescribed in the Bihar CCA Rules after giving due opportunity to the petitioner applying the principles of natural justice.

In view of the quashing of Annexure 1 that is the order of punishment dated 12.02.2014, the petitioner would be entitled to all his consequential benefits.

With the aforesaid direction, the writ petition is allowed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.01.2018
Transmission Date	NA

