

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 5921 of 2014

=====

Abhimanyu Singh Son Of Late Ram Janam Singh R/O- Village- Kobil, P.S.-
Islampur, District- Nalanda

.... Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary-Cum-Commissioner Of Commercial Taxes, Govt. Of Bihar, Vikash Bhawan, Bailey Road, Patna
2. The Principal Secretary-Cum-Commissioner Of Commercial Taxes, Govt. Of Bihar, Vikash Bhawan, Bailey Road, Patna
3. The Additional Commissioner of Commercial Taxes, Govt. Of Bihar, Vikash Bhawan, Bailey Road, Patna
4. The Under Secretary, Commercial Taxes Department, Bihar, Patna

.... Respondent/s

=====

Appearance :

For the Petitioner/s : M/s Abhinav Shrivastava, Ujjawal Bhushan,
Raushan, Kushagra Raj, Advocates

For the S t a t e : Mr H S Roy, AC to AG

=====

CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 03-08-2018

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

2 Under charge memo dated 02.02.2007, the petitioner was proceeded against by instituting a duly constituted proceedings drawn up under the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (for brevity, *Bihar CCA Rules*) on the allegations of having been arrested while accepting a bribe of Rs 25,000/- while he was posted as Assistant Commissioner Incharge, Bettiah in the Department of Commercial Taxes. The petitioner was



subjected to the enquiry, details of which need not be gone into in view of the nature of the dispute in the instant writ petition. Since suspension was unduly prolonged, petitioner had approached this Court earlier on two occasions. The second round of litigation travelled upto the Division Bench. The final order was passed on the petitioner's *LPA No 797 of 2011* on 19.08.2011. This Court, taking note of the prolonged suspension, has been pleased to modify the earlier order issued in the earlier writ petition and observed as follows:

“Considering the long period of suspension suffered by the respondent/petitioner, we direct the authorities and the Court concerned to expedite the trial of the writ petitioner so that it is concluded without any delay and preferably within six months. In case the trial continues beyond the aforesaid period, for no fault of the petitioner, he may approach the authority for revocation of his suspension and if the authority does not revoke the order of suspension, he may approach this Court again.”

3 Thereafter, the petitioner has duly communicated the said order to the Authorities and under order dated 04.12.2012, the Disciplinary Authority has issued a second show cause notice to the petitioner. The process was, thereafter, aborted by the respondents themselves and under letter dated 13.12.2013 bearing Memo No 156, the Authorities themselves revoked the petitioner's suspension and took a conscious decision that further proceedings in the departmental



enquiry would be subject to the final decision in the criminal proceedings arising out of Vigilance Police Station Case No 065 of 2006 wherein the petitioner was an accused. Till this decision, petitioner could not have been aggrieved.

4 It is only the actions of the authorities thereafter that have prompted the petitioner to approach this Court. The Disciplinary Authority under a Resolution dated 25.02.2014 bearing Memo No 36/c has issued a peculiar order. The order is purported to have been issued under Rule 18 (1) of the Bihar CCA Rules. At this juncture, this Court considers it appropriate to take note of the provisions of Rule 18 (1) of the Bihar CCA Rules which reads 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.

5 The option available to the Disciplinary Authority exercising jurisdiction under Rule 18 (1) of the Bihar CCA Rules, for some reasons which are to be recorded in writing, is to remit the case to the Enquiring Authority for “further enquiry” whereupon the Enquiring Authority is under an obligation to hold such “further enquiry”. The “further enquiry” is required to be conducted in



accordance with the procedure prescribed under Rule 17 of the Bihar CCA Rules as far as may be.

6 The learned counsel for the petitioner has submitted that though the provision of Rule 18 (1) of Bihar CCA Rules has been quoted for issuing the Resolution dated 25.02.2014 but in fact the Disciplinary Authority has embarked upon an exercise which is not conceived of in any of the provisions contained in Rule 18 of Bihar CCA Rules. Under the Resolution dated 25.02.2014, in fact he has initiated an enquiry de novo which is apparent from the fact that he has issued a charge memo on the prescribed proforma for initiating proceeding, i e, on "*Prapatra Ka*". The charges are same as has earlier been communicated to the petitioner under charge memo dated 02.02.2007. Certain additional evidence is mentioned in support of the charges which were not there in the earlier charge memo.

7 The petitioner's counsel has submitted that such proceedings de novo in a case where the report is not to the liking of the Disciplinary Authority has been deprecated. Relying upon decisions reported in the case of Union of India & Others –Versus- P Thayagarajan reported in AIR 1999 Supreme Court 449 as well as the decision of this Court, following the said judgment, in the case of Ram Prit Rai –Versus- State of Bihar & Another in CWJC No 842 of 2012, has submitted that such a procedure is prohibited. The Rules do



not mandate holding of successive/repeated enquiry at the instance of the Disciplinary Authority till such time a report is not submitted by the Enquiry Officer to the liking of the Disciplinary Authority.

8 Learned counsel for the respondent-State, on the other hand, has submitted that Resolution dated 25.02.2014 makes it abundantly clear that it was exercise of jurisdiction under Rule 18 (1) of the Bihar CCA Rules. Such a procedure is permissible and considering the nature of grave allegations against the petitioner, the Disciplinary Authority was well within his jurisdiction to take a decision against the petitioner.

9 Having considered the submissions made on behalf of the parties, this Court is inclined to accept the submissions made on behalf of the petitioner. The Resolution dated 25.02.2014 is in purported exercise of jurisdiction under Rule 18 (1) of the Bihar CCA Rules, but actually is nothing but a colourable exercise of power. The Authority did not have any opportunity or option under Rule 18 (1) to issue a fresh charge memo on *Prapatra Ka*. The Resolution dated 25.02.2014 cannot, by any stretch of imagination, be said to be exercise of jurisdiction under Rule 18 (1) of the Bihar CCA Rules. This Court has already considered the scope of the exercise of power under Rule 18 (1) of the Bihar CCA Rules which only contemplates “further enquiry”. Further enquiry does not and cannot mean that the



Disciplinary Authority would proceed to issue a fresh charge memo on the same charges for which the enquiry has been conducted and report has already been submitted by the Enquiry Officer. This Court is in agreement with the submissions made by the learned counsel for the petitioner and having considered the legal position in light of the decision in the case of *P Thayagarajan and Ram Prit Rai (supra)*, this Court finds that the Resolution dated 25.02.2014 is unsustainable for the reasons indicated hereinabove.

10 An additional submission has been made by the learned counsel for the petitioner that where the Statute or Rule provides a procedure of exercise of power, all other modes are prohibited. Learned counsel for the petitioner has relied upon decisions in the cases of *Dipak Babaria and Another –Versus- State of Gujarat and Others*, reported in (2014) 3 Supreme Court cases and *Pramod Kumar Drolia –Versus- Bihar State Electricity Board & Others*, reported in 2014 (2) PLJR 270. Such submission advanced on behalf of the petitioner also requires consideration in view of the fact that no unguided or uncanalized power is vested in any Authority. The Rules of conduct of enquiry, which have been prescribed under the Bihar CCA Rules, are there to ensure fairness in the conduct of proceedings and to ensure that no one, who is innocent, should be punished. The Authority would be well advised to discharge such



quasi judicial adjudicatory function in accordance with the Rules and such exercise of jurisdiction de hors the Rules, as has been done in the instant case by issuing the Resolution dated 25.02.2014, is contrary to established legal principles of fairness and natural justice.

11 The writ petition is allowed. The Resolution dated 25.02.2014 is quashed.

12 This, however, will not preclude the authorities from taking the decision in accordance with the procedure prescribed under the Bihar CCA Rules, 2005.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.08.2018
Transmission Date	NA

