IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17601 of 2017

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Surendra Nath Tripathi son of late Kailash Tiwari resident of village Belauri, P.S. Mohania, District - Kaimur at present Revenue Karamchari, (under suspension) Collectorate, Kaimur.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Revenue Department, Old Secretariat, Patna.
2. The Commissioner, Patna Division, Patna.
3. The District Magistrate, Kaimur at Bhabua.
4. The Addl. Collector, Departmental Proceeding-cum-Conducting Officer, Kaimur at Bhabua.
5. The Circle Officer, Chand, Kaimur at Bhabua.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Gajendra Kumar Jha, Advocate Mr. Ram Bahadur Jha, Advocate
For the Respondent/s	:	Mr. S.C. Yadav – GP-15 Mr. Rakesh Kumar Shrivastava, A.C. to G.P.-15.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date : 22-11-2018

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

2. In the present writ petition, the petitioner is challenging the second show-cause dated 23.06.2018 (Annexure-8) through Interlocutory Application No. 4754 of 2018, whereby and where-under the petitioner was granted two weeks' time to file his explanation.

3. The point has been raised by the petitioner that the inquiry proceeding was conducted against the petitioner for the certain charges of taking bribe from the beneficiary arising from the mutation proceeding and the petitiner was caught hold red handed by the Vigilance Department, that laid to initiation of departmental proceeding, which was conducted by the In-charge Additional Deputy Collector and arrived to finding that charges have not been proved against the petitioner. Whereafter, the matter was referred to the Junior Officer, namely, Ramesh Chandra Chaudhary, Senior Deputy Collector, for his comment on the inquiry report. Accordingly, he has submitted his report dated 15.06.2018 and found that charge no.1 is proved against the petitioner. Again the matter has been referred to the Senior Deputy Collector-cum-In charge, Departmental Proceeding, for fresh inquiry.

4. The grievance has been raised by the petitioner that the manner and method that has been followed by the Collector is completely foreign to the procedure of the departmental proceeding. If the Collector, who is the Disciplinary Authority, was not satisfied with the inquiry report, instead of referring the matter to a third person for his comment, he could have himself examined the report and could have arrived to tentative finding of disagreement and asking the explanation from the petitioner and thereafter he could have taken decision according to the materials available on record. But instead of following this procedure he has wrongly referred the matter for comment to the Senior Deputy Collector, who has given his finding on 15.06.2018 and found the charges have been proved and whereafter he was not satisfied, he again handed over the matter for *de novo* inquiry to the same officer, who has already given the report dated 15.06.2018. In that circumstances, the result is known to all. It is not permissible that if an Inquiry Officer comes in favour of the delinquent, in that circumstance, a fresh de novo inquiry is to be undertaken. It is not the law that fresh inquiry proceeding will be conducted till the report comes in favour of the State, but fairness requires that if any material has been left out or any violation of natural justice is there that goes to the root of the matter, in that circumstance, only requires further inquiry not *de novo* inquiry should be done. Apart from that, Rule-18 of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 prescribes for further inquiry on the ground that the relevant material has not been brought during the inquiry proceeding. The procedure that has been followed by the Collector is completely unknown and strange to the departmental proceeding.

5. In such view of the matter the report dated

15.06.2018 submitted by the Senior Deputy Collector, In-charge, Departmental Inquiry, Kaimur (Bhabhua) and the order of the Collector dated 17.05.2018 for the de novo inquiry are quashed. The matter is remanded back to the Collector, Kaimur at Bhabhua, to follow the procedure prescribed under Rule 17 and 18 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005. The Collector is at liberty to record tentative finding of disagreement and asking explanation from the petitioner and take decision in accordance with law on the basis of materials available on record. The petitioner is at liberty to claim subsistence allowance as per Rule-10 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005.

6. With the aforesaid observations and directions, the writ petition is disposed of.

(Shivaji Pandey, J)

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AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	29.11.2018
Transmission Date	N/A.