

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19264 of 2016

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Awadhesh Kumar Tiwari Son of Late Gauri Shankar Tiwari, resident of
Village- Allapur, P.s.- Manjhagarh, District- Gogalganj.

... .. Petitioner

Versus

1. The State Of Bihar
2. The Secretary, Building Construction Department, Bihar, Patna.
3. The Joint Secretary, Building Construction Department, Bihar, Patna.
4. The Joint Secretary-cum-Officers on Special Duty-cum-Chief Vigilance
Officer, Building Construction Department, Bihar, Patna

... .. Respondents

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Appearance :

For the Petitioner/s : Mr.Prabhu Nath Pathak
For the Respondent/s : Mr.Ram Balak Mahto- Ag

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 03-04-2019

Heard learned Counsel for the petitioner and the learned
Counsel for the respondent State.

The petitioner has been proceeded against on certain
charges while being posted as Executive Engineer at Building
Division in Sitamarhi. The Enquiry Officer after concluding the
enquiry submitted a report holding the charges not proved. Being
dissatisfied with the order of the Enquiry Officer, the Disciplinary
Authority has, in purported exercise of jurisdiction under Rule
18(1) of the Bihar CCA Rules 2005, directed for further enquiry by
resolution dated 24.1.2016. The said resolution has been
challenged by way of instant writ petition.



It is submitted that during pendency of the instant proceeding the petitioner having retired on 31.3.2018 the proceedings have been converted into one under Rule 43B. Counsel for the petitioner makes a submission based on the law laid down by the Apex Court in the case of ***Punjab National Bank & ors vs Kunj Behari Misra*** reported in ***1998(7) SCC 84***.

It is his submission that in a circumstance where the Disciplinary Authority disagreed with findings of the Enquiry Officer, he was required to assign tentative point wise reasons for differing with the decision of the Enquiry Officer so as to enable the petitioner to submit his representation against the same.

The proposition of law canvassed by the petitioner is axiomatic and cannot be disputed. Same would apply in the circumstance if the Disciplinary Authority would exercise jurisdiction under Rule 18(2) of the Bihar CCA Rules 2005 differing with findings of the Enquiry Officer on all or any of the charges and proceed to consider the matter himself.

The submissions, however, have no application in this case. The Disciplinary Authority in the instant case is not differing with findings of the Enquiry Officer, as contemplated under Rule 18(2) of the Bihar CCA Rules 2005.

In the instant case Disciplinary Authority is exercising discretion under Rule 18(1) of the Bihar CCA Rules 2005. He has



remitted the matter back to the stage of the Enquiry Officer to proceed to hold further enquiry. In such a situation where the Disciplinary Authority remits the matter to the stage of Enquiry Officer for further enquiry there is no requirement of issuing a second show cause notice upon the delinquent giving points of disagreement.

The resolution dated 24.10.2016, which has been impugned in the writ proceeding, clearly records reasons for directing further enquiry as per Rule 18(1) of the Bihar CCA Rules 2005. The Disciplinary Authority was of the opinion that the Presenting Officer has not discharged his obligation correctly before the Enquiry Officer and has not presented the case of the department properly. By recording such reasons resolution dated 24.10.2016 directs for further enquiry.

This Court does not find any infirmity in the said resolution. The writ petition is devoid of merit and the same is dismissed.

(Madhuresh Prasad, J)

SNkumar/-

AFR/NAFR	AFR
CAV DATE	N/A
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