

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 9072 of 2015

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Md Abrar Ahmad Khan, Son of Late Moulana Abdul Matin Khan, resident of village - Sultanpur, PS - Desri, District – Vaishali, at present posted as Revenue Karamchari, Goroul Anchal, PS – Goroul, District Vaishali.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Commissioner, Tirhut Division, Muzaffarpur.
3. The District Magistrate, Vaishali.
4. Sub-Divisional Officer, Hajipur -cum- Enquiry Officer, Hajipur, Vaishali.
5. Anchal Adhikari, Bhagwanpur Anchal, PS - Bhagwanpur, District Vaishali.
6. Anchal Adhikari, Goroul Anchal, PS – Goroul, District - Vaishali.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr Ramesh Kumar Choudhary, Advocate
For the Respondent/s : Mr Ramadhar Singh, GP XXV

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 23-10-2019

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

2 It is admitted from the records, in view of the averments made in the counter affidavit filed by the respondents, that second show cause notice was not submitted to the petitioner along with copy of the Enquiry Report prior to the order of punishment dated 01.08.2013 issued by the District Magistrate.

3 The counter affidavit takes a surprising and unique stand, to say the least, that upon service of the Enquiry Report by



the Enquiry Officer, the Disciplinary Authority can straightway issue order of punishment in view of the provisions contained in Rule 18 (6) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (for brevity, Bihar CCA Rules, 2005).

4 The stand, at best, is a desperate attempt to sustain the order of punishment in view of admitted position that second show cause notice was not issued prior to the order of punishment. The Disciplinary Authority, in the instant case, where it was not differing with findings of the Enquiry Officer, as per Rule 18 (3) of the Bihar CCA Rules, 2005, was obliged to forward, or cause to be forwarded a copy of the Enquiry Report together with its own findings, if any, in the same manner as is contemplated in case of disagreement with findings of the Enquiry Officer, as contemplated under Rule 18 (2) of the Bihar CCA Rules, 2005.

5 Rule 18 of the Bihar CCA Rules, 2005 is being reproduced for easy reference:

“18. Action on the inquiry report. –
(1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recoded 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.



(2) *The disciplinary authority, after receipt of the enquiry report as per rule 17 (23) (ii) or as per sub-rule (1), shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own finding on such charge, if the evidences on record is sufficient for the purpose.*

(3) *The disciplinary authority shall forward or cause to be forwarded a copy of the inquiry report, together with its own findings, if any, as provided in sub-rule (2), to the government servant who may submit, if he or she so desires, his or her written representation or submission to the disciplinary authority within fifteen days.*

(4) *The disciplinary authority shall consider the representation or submission, if any, submitted by the government servant before proceeding further in the manner specified in sub rules (5) and (6).*

(5) *If the disciplinary authority having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in clauses (i) to (v) of rule 14 should be imposed on the government servant, it shall, notwithstanding anything contained in rule-19, make an order imposing such penalty.*

(6) *If the disciplinary authority, having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry is of the opinion that any of the penalties specified in [clauses (vi) to (xi) of Rule 14] should be imposed on the Government servant, it shall make an order imposing such penalty and it shall not be necessary to give the government servant any opportunity of making representation on the penalty proposed to be imposed:*



(7) Notwithstanding anything contained in sub-rule (5) and (6), in every case where it is necessary to consult the Commission, the Commission shall be consulted and its advice shall be taken into consideration before making any order imposing any penalty on the Government servant.

6 Bare perusal of Rule 18 of Bihar CCA Rules, 2005 would make it clear that the Disciplinary Authority could proceed under Rule 18 (6) of Bihar CCA Rules, 2005 only after he has accepted the Enquiry Report and allowed the petitioner an opportunity of showing cause by way of making representations against the findings of the Enquiry Officer. In a case where the Disciplinary Authority is differing with the findings of the Enquiry Officer, then before proceeding to pass orders under Rule 18 (5) (6) of Bihar CCA Rules, 2005, he was required to communicate the points of disagreement with his own tentative findings. The delinquent, thereafter, has the opportunity of making a written representation/submission before the Disciplinary Authority.

7 Before proceeding further in the manner prescribed under sub-rules (5) and (6), an obligation is cast on the Disciplinary Authority to make this opportunity effective and non-arbitrary. The Disciplinary Authority is, thus, required to consider the representation/submission of the Government Servant.



8 The third option under Rule 18 (1) of the Bihar CCA Rules, 2005 is to direct for a further enquiry. The same is not relevant for the instant proceedings.

9 In the instant case, copy of Enquiry Report has, admittedly, not been served on the petitioner. Therefore, there was no opportunity granted to the petitioner to make his representation in respect of the findings of the Enquiry Officer, let alone consideration of the same by the Disciplinary Authority. This was the only opportunity that the petitioner had to point out the infirmities in the procedure adopted by the Enquiry Officer, or in respect of findings of the Enquiry Officer, before the Disciplinary Authority arrives at its conclusion with regard to employee's guilt or innocence in respect of the charges.

10 The requirement of serving copy of the Enquiry Report and allowing the petitioner opportunity after submission of the Enquiry Report stands settled in the decision of the Apex Court in the case of *Managing Director, ECIL, Hyderabad & Ors -Vrs- B Karunakar & Ors, (1993) 4 Supreme Court Cases 727*.

11 Clearly, the action of the Disciplinary Authority is contrary to the Rules, as well as law laid down by the Apex Court in the case of *Managing Director, ECIL, Hyderabad (supra)*.



12 The order of the Disciplinary Authority dated 01.08.2013 is quashed. The Appellate Authority's order dated 06.01.2015, which merely reaffirms the illegal order of the Disciplinary Authority, is also quashed.

13 The matter is therefore, remitted to the Disciplinary Authority.

14 The petitioner would be placed under suspension immediately upon receipt/production of a copy of this order and opportunity be given to the petitioner by the Disciplinary Authority, as required under the Bihar CCA Rules, 2005 by communicating a copy of the Enquiry Report.

15 In view of the aforesaid infirmity in the procedure adopted by the Disciplinary Authority, the writ petition stands allowed with the aforesaid observations and directions.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	26.10.2019
Transmission Date	NA

