

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5581 of 2017

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Nawal Kishore Singh, son of Sri Mundrika Prasad, resident of Village-
Englishpar, P.S.-Paraiya, District-Gaya

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Bihar, Patna
2. The High Court of Judicature at Patna, through its Registrar General, High Court, Patna.
3. The Registrar (Administration), Patna High Court, Patna
4. The District Judge, Nalanda at Biharsharif
5. The Enquiry Officer-Cum-1st Additional District and Sessions Judge, Nalanda at Biharsharif

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Indu Bhushan, Advocate
For the Respondent/s : Mr. Prashant Pratap- GP-2

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
CAV JUDGMENT

Date : 16-07-2019

The petitioner has sought quashing of the order dated 04.04.2017 passed by the District Judge, Nalanda contained in Memo No. 2780 dated 06.04.2017 in Departmental Inquiry No. 1 of 2002 whereby the Inquiry Report against the petitioner was found to be unsustainable in the eyes of law and was rejected and simultaneously a *de novo* enquiry has been ordered to be conducted. The order further declares that during enquiry, the petitioner shall remain suspended with



subsistence allowance. One Judicial Officer has been appointed as an Inquiry Officer and another Judicial Officer has been made a Presenting Officer. The venue and timing of enquiry has also been indicated in the aforesaid order.

2. The further prayer of the petitioner is for his reinstatement on the post of Clerk in the Judgeship of Nalanda.

3. The major challenge to the aforesaid order is on the ground that the learned District Judge, Nalanda, who is the Disciplinary Authority has exceeded the brief in as much as the Appellate Authority i.e. the High Court had directed him to conclude the enquiry from the stage of Inquiry Report and had not directed him to initiate a *de novo* enquiry.

4. The other ground of challenge is that such *de novo* enquiry is not permissible in the eyes of law.

5. The petitioner was appointed as an Assistant in the Judgeship of Nalanda at Biharsharif on 21.03.1985



and his services were confirmed on 19.04.1999. While the petitioner was posted as Office Clerk with 2nd Additional Sessions Judge, Nalanda, a memo dated 05.12.1997 was received in the Court of the learned 2nd Additional Sessions Judge, Nalanda, containing an order dated 30.11.1997 passed by the High Court in Cr. Appeal No. 582 of 1987. In the light of the aforesaid order of the High Court, the Presiding Officer dictated the order of bail to an accused and on the same day, the bail bonds of that accused was also filed and accepted. The matter rested there. At the time of final hearing of Criminal Appeal No. 582 of 1987 on 31.07.2002, the High Court was informed that one of the accused/appellant/Ramashish Singh had been released on bail in the year 1988. A report, thus was called for from the 2nd Additional Sessions Judge, Nalanda as to under what circumstances, the aforesaid accused/appellant/Ramashish Singh was released on bail when his bail had been earlier rejected.



6. It transpired that a fraud was played with the Court and an effort was made to identity the office Clerk.

7. It is in this background that a departmental proceeding was initiated against the petitioner who was served with a memo of charge on 06.08.2002.

8. It has been urged on behalf of the petitioner that with the memo of charge, no document or list of witnesses or evidence in support of the charge was ever served upon him. The petitioner was asked to reply to the show cause and an Inquiry Officer was appointed. No Presenting Officer however was named.

9. During the enquiry, only some of the documents which were asked by the petitioner to be furnished to him were supplied and the request for the other documents was rejected. In the enquiry, no oral evidence was taken.

10. The Inquiry Officer submitted his report on 03.10.2002 holding the petitioner guilty of the charge. The aforesaid report was accepted by the Disciplinary



Authority, who vide order dated 08.10.2002 dismissed the petitioner from service.

11. It has been argued on behalf of the petitioner that neither the copy of the Inquiry Report was supplied to him nor was he asked to show cause on any proposed punishment. The appeal of the petitioner was also rejected on 12.07.2005.

12. The petitioner thereafter approached this Court vide C.W.J.C. No. 9369 of 2005 against the order of dismissal and rejection of appeal. The aforesaid writ petition was disposed of by judgment dated 19.09.2014 holding as follows:-

"In the circumstances, this Court is of the opinion that the matter requires reconsideration by the Appellate Authority in the light of the pleadings and grounds taken by the petitioner in his memo of appeal in respect of procedural irregularities etc. and the submissions made by the learned counsel in support of them before the Court and noticed above. Since in his memo of appeal, petitioner has specifically raised the



issue that enquiry report was not supplied to him and he was not given opportunity to meet the findings in the report against him before he was awarded punishment on that basis, about which admittedly no attention was drawn of the Appellate Authority by the District & Sessions Judge in his parawise comments, this Court is of the opinion that it must be considered by the Appellate Authority at the first instance, before any plea of the respondents under 'no prejudice' theory, propounded by the Apex Court in ECIL (supra), should be considered by this Court. This Court is of the opinion that, had the petitioner not raised that issue in his memo of appeal and would have raised it for the first time before this Court, then only this Court, in terms of the said judgment of the Apex Court, was required to apply 'no prejudice' theory and confront the petitioner with the enquiry report and call upon him to establish prejudice caused to him. But once he raised this plea before the Appellate Authority, it was under legal obligation to consider it first.

15. As a result, this application is allowed. Order of the Appellate Authority, as



communicated to the petitioner through the letter of the District & Sessions Judge, Nalanda dated 12.07.2005, contained in Annexure-15, is set aside and the matter is remitted back to the Appellate Authority for reconsideration of the appeal of the petitioner afresh."

13. Thereafter, the petitioner filed a representation before the Registrar General, Patna High Court on 14.10.2014 for his reinstatement in service which was rejected vide order dated 18.09.2015 and communicated to him by the order of the District Judge, Nalanda on 24.09.2015.

14. The petitioner again challenged the aforesaid rejection of his representation for reinstatement vide C.W.J.C. No. 19762 of 2015 in which a Bench of this Court directed for filing of counter affidavit. The aforesaid writ petition is still pending.

15. It has been submitted by the petitioner that he was never informed about the result of the appeal preferred by him against the order dated 19.09.2014



passed in C.W.J.C. No. 9369 of 2005. However, the petitioner was communicated vide letter dated 14.09.2016 contained in memo No. 6469 that a copy of the Inquiry Report along with the order dated 12.09.2016 is being sent to him.

16. The petitioner received the Inquiry Report as also the order dated 12.09.2016 passed by the learned District Judge, Nalanda.

17. The order dated 12.09.2016 indicates that the case of the petitioner has been remanded to the Disciplinary Authority with a direction to complete the enquiry against the petitioner from the stage of submission of the Inquiry Report i.e. for supplying copy of the Inquiry Report and supply of the second show cause notice. The petitioner thereafter submitted his second show cause reply.

18. The Disciplinary Authority, vide order dated 04.04.2017 (impugned order) found that the entire departmental proceeding against the petitioner was



conducted without following the rules of domestic enquiry and therefore rejected the Inquiry Report as unsustainable in the eyes of law and directed for *de novo* enquiry with a new Inquiry Officer and a Presenting Officer.

19. The learned counsel appearing for the petitioner has argued that the Disciplinary Authority did not consider the second show cause reply of the petitioner and directed for a *de novo* enquiry which was neither permissible nor desirable. It has further been submitted that the Disciplinary Authority exceeded his jurisdiction and directed for a *de novo* enquiry in teeth of the decision of the High Court in appeal to continue the departmental proceeding from the stage of the Inquiry Report and giving of opportunity of the petitioner to file his reply to the second show cause.

20. In support of the aforesaid contention, learned counsel for the petitioner cited ***Vijay Shankar Pandey versus Union of India & Another AIR 215***



***SC 326; Jammu & Kashmir Bank versus B.R.Gupta
AIR 1994 SC 1515; State of Gujrat versus
Shantilal Mangaldas & Others AIR 1969 SC 634;
Union of India versus K.D. Pandey & Another
(2002) 10 SCC 471.***

21. On behalf of the respondents, it has been submitted that in obedience to the order passed by the High Court for starting a disciplinary proceeding from the stage of the Inquiry Report and furnishing of second show cause notice to the petitioner, the same was done by the Disciplinary Authority. Admittedly, the Inquiry Report was furnished to the petitioner and he was asked to submit his show cause reply, which he replied. The Disciplinary Authority thereafter was of the view that the enquiry was not conducted properly and that the petitioner did not get a fair deal and therefore set aside such Inquiry Report and directed for a *de novo* enquiry with a new Inquiry Officer and a Presenting Officer. Be it noted that in the earlier enquiry, there was no Presenting



Officer and no oral evidence was led.

22. It has further been submitted that ordering for *de novo* enquiry is not prohibited in all circumstances and if it is found that the Inquiry Report is defective to the marrow, there is no complete proscription in directing for a *de novo*/fresh enquiry.

23. It has also been submitted that the Inquiry Report did not exonerate the petitioner for him to raise the grievance of harassment. In fact, the order by which the Inquiry Report has been set aside, is heavily loaded in favour of the petitioner.

24. Lastly, it has been submitted that the Disciplinary Authority did not exceed his jurisdiction and only after observing and following the order of the Appellate Authority i.e. the High Court, the proceeding began from the stage of Inquiry Report but the Inquiry Report was not found to be satisfactory and therefore the same was quashed.

25. The learned counsel appearing for the



respondents has drawn the attention of this Court to the decisions rendered in ***Anant R. Kulkarni versus Y.P. Education Society & Others (2013) 6 SCC 515 and Nand Kumar Verma versus State of Jharkhand & Others (2012) 3 SCC 580***, which lay down that there is no complete bar to any second/*de novo* enquiry. If a proceeding is quashed on technical ground, fresh enquiry is permissible.

26. From the perusal of the documents and the submissions advanced on behalf of the parties, I am of the view that no fault could be found with the order of the Disciplinary Authority in setting aside the Inquiry Report and directing for a *de novo* enquiry.

27. In the case in hand, the Inquiry Report was based on no material. The procedural formalities were also not found to have been complied with. Basing opinion on such Inquiry Report would have been prejudicial to the interest of the petitioner and the entire process would have had to be undergone again.



28. There is no reason why any grievance should be raised by the petitioner with the aforesaid *de novo* enquiry when the earlier Inquiry Report is against the petitioner.

29. On general principle of law, only one enquiry is conceived of with respect to a charge of a particular misconduct.

30. In ***Union of India versus K.D. Pandey*** (supra), the Inquiry Report was found to have contained specific findings in favour of the employee and the Disciplinary Authority, only on finding that in the Inquiry Report, the employer did not have the opportunity of leading evidence and that the findings were perverse, remitted the matter for a further enquiry. This was found to be unjustified as it amounted to a second enquiry on the same set of charges resulting in an abuse of process. It was in this context that it was held that the Disciplinary Authority was not justified in rejecting the Inquiry Report as it did not appeal to it as being



unjustified. However, in later pronouncements of the Supreme Court (refer to ***Bhupinder Pal Singh versus D.G. Civil Aviation (2003) 3 SCC 636; UP Cooperative Federation Limited versus L.P. Rai (2007) 7 SCC 81, State of Assam versus J.N. Rao Viswas AIR 1975 SC 2277 and Anand Narayan Shukla versus State of MP AIR 1975 SC 1923***), it has been held that where the enquiry is found to be defective, the employer has a right to hold a fresh enquiry, particularly in view of seriousness of the charge. If for some technical, procedural or some other reasons, the enquiry is found to be bad, there is no principle of law that a second enquiry cannot be launched.

31. The rule of law therefore is that a disciplinary proceeding can be initiated from the stage where the infirmity in the proceedings creeps in.

32. In Anant R Kulkarni (supra), the Supreme Court in paragraphs 13 and 14 held as follows:-

"13. It is settled legal proposition that



once the court sets aside an order of punishment on the ground that the enquiry was not properly conducted, the court should not severely preclude the employer from holding the inquiry in accordance with law. It must remit the case concerned to the disciplinary authority to conduct the enquiry from the point that it stood vitiated, and to conclude the same in accordance with law. However, resorting to such a course depends upon the gravity of delinquency involved. Thus, the court must examine the magnitude of misconduct alleged against the delinquent employee. It is in view of this that courts/tribunals are not competent to quash the charge-sheet and related disciplinary proceedings before the same are concluded on the aforementioned grounds. (Vide ECIL v. B. Karunakar Hiran Mayee Bhattacharyya v. S.M. School for Girls, U.P. State Spg. Co. Ltd. v. R.S. Pandey and Union of India v. Y.S. Sadhu.)

14. The court/tribunal should not generally set aside the departmental enquiry, and quash the charges on the ground of delay in initiation of disciplinary



proceedings, as such a power if dehors the limits of judicial review. In the event that the court/tribunal exercises such power, it exceeds its power of judicial review at the very threshold. Therefore, a charge-sheet or show-cause notice, issued in the course of disciplinary proceedings, cannot ordinarily be quashed by the court. The same principle is applicable in relation to there being a delay in conclusion of disciplinary proceedings. The facts and circumstances of the case in question must be carefully examined taking into consideration the gravity/magnitude of the charges involved therein. The Court has to consider the seriousness and magnitude the charges and while doing so the court must weigh all the facts, both for and against the delinquent officers and come to the conclusion which is just and proper considering the circumstances involved. The essence of the matter is that the court must take into consideration all relevant facts, and balance and weigh the same, so as to determine, if it is in fact in the interest of clean and honest administration that the said proceedings are allowed to be



terminated only on the ground of delay in their conclusion. (Vide State of U.P. v. Brahm Datt Sharma, State of M.P. v. Bani Singh, State of Punjab v. Chaman Lal Goyal, State of A.P. v. N. Radhakishan, M.V. Bijlani v. Union of India, Union of India v. Kunisetty Satyanarayan, Ministry of Defence v. Prabhash Chandra Mirdha and LIC v. A. Masilamani.)”

33. Similar views have been expressed by the Supreme Court in Nand Kumar Verma (supra) in paragraph 26:

"26. In our opinion, having accepted the explanations and having communicated the same to the appellant, the High Court could not have proceeded to pass the order of initiating departmental proceedings and reverting the appellant from the post of Chief Judicial Magistrate to the post of Munsif. On general principles, there can be only one enquiry in respect of a charge for a particular misconduct and that is also what the rules usually provide. If, for some technical or other good ground, procedural or otherwise, the first enquiry or punishment or exoneration is found bad in



law, there is no principle that a second enquiry cannot be initiated. Therefore, when a completed enquiry proceedings is set aside by a competent forum on a technical or on the ground of procedural infirmity, fresh proceedings on the same charge is permissible."

34. From the facts of this case, there cannot be any doubt that the charge against the petitioner is very serious and therefore every opportunity must be given to the petitioner to bring forth materials in his defence.

35. This Court further finds that the infirmity had crept in the departmental proceedings at the stage of enquiry and therefore a fresh/*de novo* enquiry only serves the interest of the petitioner as also of the organization.

36. There is no prejudice to the petitioner as the quashed Inquiry Report did not exonerate him but held him guilty.

37. I also find that the Disciplinary Authority has not exceeded his jurisdiction in expanding the scope of



the limited remand of the Appellate Authority i.e. the High Court. The Disciplinary Authority began the proceedings from the stage from where it was directed by the High Court but since he has a discretion in the matter, he found that the Inquiry Report itself is vitiated and therefore set aside the same and directed for a fresh enquiry.

38. No fault could be found with the aforesaid order of the Disciplinary Authority under challenge.

39. The writ petition as also I.A. No. 7616 of 2018 seeking stay of the continuation of the departmental proceeding against the petitioner, are hereby dismissed.

(Ashutosh Kumar, J)

Shageer/-

AFR/NAFR	AFR
CAV DATE	14/05/2019
Uploading Date	16/07/2019

