**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**Civil Writ Jurisdiction Case No.19030 of 2016**

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Anil Kumar Son of Late Ishwar Sharan Lall, resident of 54 A, Anandpuri, West Boring Canal Road, P.S. Srikrishnapuri, District - Patna

... ... **Petitioner**

**Versus**

1. The State Of Bihar through Chief Secretary, Government of Bihar
2. Principal Secretary and Commissioner, Commercial Taxes Department Government of Bihar
3. Mr. Rajesh Gupta Additional Departmental Inquiry Commissioner Cum Enquiry officer Government of Biha
4. Under Secretary, Commercial Taxes Department, Government of Bihar
5. Accountant General, Bihar, Patna

... ... **Respondents**

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**Appearance :**

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| For the Petitioner | : | Mr. Abhinav Srivastava, Advocate |
| | | Mr. A.D.Verma, Advocate |
| For the State | : | Mr. Revti Kant Raman, AC to SC |
| For the AG, Bihar | | Mr. L.P.K.Rajgrihar, Advocate |

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**CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD**
**ORAL JUDGMENT**
**Date : 28-02-2019**

Heard learned counsel for the petitioner as well as learned counsel for the respondents.

This Court on 27.11.2018, on the prayer made by learned counsel for the State had granted two weeks' time to file supplementary counter affidavit for rendering appropriate assistance to the Court. Today, when the matter is being taken up for consideration more than three months after the said order, still no supplementary counter affidavit has been filed.

The petitioner was proceeded against charge memo on 'Praptra Ka' dated 16.5.2008. Allegations in the charge memo are arising out of petitioner's alleged demand of bribe for processing certain refund in favour of some assessee. The petitioner at the relevant point of time was posted as Assistant Commissioner of Commercial Taxes. Certain other charges were also communicated in the charge memo for earlier periods. The petitioner in response to the said charge memo had requested the Presenting Officer to supply to the petitioner certain documents so as to enable him to submit his efficient response to the charge memo. Similar request was also made to the Disciplinary Authority (Annexure 8/3) on 13.8.2010. The documents requested for by the petitioner were as follows:-

> *"1.Photography of affidavit sworn by complainant Dr. B.K.Mishra to support his complaint petition, in view of Govt. order and vigilance (I.B.) own press release making affidavit mandatory along with a complaint petition against a Govt. servant.*
>
> *2.The copy of the order of deputation of verfier or preliminary investigatior to verify the veracity of charges levelled by complainant.*
>
> *3.The copy of order of constitution of trap team.*
>
> *4.The Station diary entry/docketing of complaint petition in tis case along with primary evidence provided by compliannant to support his allegation.*
>
> *5.The copy of test report issued by forensic science laboratory, or all bait money in the form of G.C. Notes, utilized in said trap case.*
>
> *6.The copy of receipt issued against money received by vigilance PS from complainant for chemical treatment along with copy of cash register maintained at Vig.P.S. for this purpose.*

*7.The copy of the order to issue the trap kit from the vigilance PS store to trap team for conducting trap.*

*8.The copy of the letter by which the trap kit both utilized and unutilized in said trap, deposited in vigilance P.S.*

*9.The copy of tour diary of police personal including verifier or preliminary investigator constable Santosh Kr.Singh.*

*10.सभी गवाहों के प्रारंभिक बयानों की पृथक एवं पूर्ण प्रतियां जिनके आधार पर यह मामला बनाया गया है। (सी.आर.पी.सी. की धारा 161(3) एवं सिविल सेवा (वर्गीकरण एवं नियंत्रण एवं अपील) नियमावली 2005 की धारा 17(3)(4) दृष्टव्य।*

*11.Copy of preliminary inquiry report, if any, available with the administrative department preceding to this departmental enquiry.*

*12.Statement of imputation of misconduct in support of article of charges.*

*13.Copy of Sanha lodged in Vig.P.S. after receipt of complain.*

*14.Copy of site plan of place of occurrence as per requirement of Police Manual Rule 173(A) 176(B).*

*15.Documents mentioned in column (10) of charge sheet no. 84/2007 filed in Special Case No. 20/2007.*

*16.Copy of letter through which said bait money in form of G.C. Notes were deposited in Malkhana as exhibits."*

The respondent authorities in response to the said claim of the petitioner have written to the officials of the Vigilance department including Superintendent of Police, Vigilance as well as the Principal Secretary, Department of vigilance by communication dated 16.3.2010 and 27.4.2010 respectively. The petitioner was not supplied with the documents requested for by him. Request made by him was never considered, or turned down by the authorities by alleging that the same was not relevant to the claim of the petitioner. No action was taken on the said request of the petitioner.

Counsel for the petitioner submits that by not making available the said documents the petitioner has been deprived of the opportunity to defend himself properly in the proceedings and as such the respondents have occasioned violation of procedure prescribed under Rule 17(11) of the *Bihar* Government Servants (Classification, Control & Appeal) *Rules*, 2005 (hereinafter referred to as the Bihar CCA Rules, 2011). The procedure adopted by the respondent authorities was unfair and in violation of the principle of Natural Justice.

Earlier when the petitioner had approached this Court for relief in respect of the same proceedings in the writ proceedings arising out of C.W.J.C.No. 12017 of 2010 this Court by order dated 12.8.2010 has taken note of the fact that documents have not been supplied to the petitioner in the departmental proceeding. However, to enable the respondent authorities to conclude the proceedings in accordance with law this Court in the earlier proceedings issued a mandamus to the respondents to conclude the proceedings within a period of six months. Proceedings continued to linger thereafter. Under notification dated 22.7.2016 issued by the Commissioner cum Principal Secretary, Commercial Taxes Department, Government of Bihar (respondent no.2) four major punishments have been awarded to the petitioner in purported exercise of jurisdiction under section 43(b) of the Bihar Pension Rules, 1950. Order has been passed under the provisions of the Bihar Pension Rules as the petitioner attained the age of superannuation during currency of the proceedings on 31.1.2014. Full pension, entire gratuity and entire unutilized leave encashment have been withheld. Except subsistence allowance petitioner has been found to be not entitled to any other benefits for the period of suspension, i.e., from 01.08.2007 till 31.08.2011.

Learned counsel for the petitioner submits that in the entire proceedings the documents as requested for were never made available to the petitioner. Said discrepancy in the procedure was noticed in the earlier writ proceedings of the petitioner and in spite of specific mandate of this Court to conclude the proceedings in accordance with law, the documents were never made available to the petitioner.

This Court would find that the plea of the petitioner regarding non supply of documents stands admitted in view of the stand taken by respondent authorities in paragraph 10 of the counter affidavit filed on behalf of the respondent no.2 and 4.

Stand of the respondents in paragraph 10 of the counter affidavit is being re-produced hereinbelow:-

> *"That the reply to the statements made in paragraph no.12 and 13 of writ petition, it is stated that the concerned documents were not in the custody of Commercial Tax Department, rather it was in the custody of Vigilance Department. The Commercial Tax Department had requested the S.P. Vigilance (Investigation Bureau) Bihar, Patna vide Memo No. 89/C dated 16.03.2010 (i.e. Annexures-8/4 of the writ) to make available these documents to the petitioner. Thereafter, the Department had further requested the Principal Secretary, Vigilance Department vide memo no. 126/C dated 11.05.2010 (i.e.. Annexure-8/1 of the writ)."*

There is no statement that thereafter petitioner was supplied with the documents which were required by him in the proceedings. Admitted position that emerges from the pleadings on record is that documents requested by petitioner were not supplied to him. It is also clear that authorities had not rejected copies of the documents by assigning any reasons.

For non compliance of the procedure prescribed under Rule 17(11) of the Bihar CCA Rules, 2005, order passed under Rule 43(b) of the Bihar Pension Rules stands vitiated. Neither the documents were made available nor any opportunity was given to the petitioner to inspect or examine the same. No issue has been raised regarding documents being requested by the petitioner as being unnecessary or irrelevant for the purpose of enquiry. In view of such situation, proceedings against the petitioner suffered on account of violation of the procedure prescribed under Rule 17(11) of the Bihar CCA Rules, 2005.

Learned counsel for the respondent State in the proceedings today has objected to the petitioner's approaching this Court directly without following the procedure of Rule 24(2) of the Bihar CCA Rules, 2005. He submits that this Court may not exercise its jurisdiction in favour of the petitioner for such matter where the statutory alternative remedy is available to him. In the instant case, procedural lapse stands admitted from the pleadings available on the record.

The instance of procedural lapse in the departmental proceedings was taken note of by this Court in the earlier writ proceedings arising out of C.W.J.C.No. 12017 of 2010. As such, this Court would not consider it appropriate to relegate the petitioner to the statutory alternative remedy, more so in view of the fact that the departmental proceedings remained pending for such a long time in spite of specific direction of this Court.

Order dated 22.7.2016 stands quashed. This Court would observe that it would be open to the respondents to proceed against the petitioner afresh after considering the petitioner's claim for documents requested for by him.

In view of the delay already having occurred in the instant proceedings, this Court would observe that if the respondents propose to proceed against the petitioner after complying with the said requirements, the same should be done positively within a period of three months.

The issue of consequential arrears only, payable to the petitioner would abide by the proceedings to be conducted against the petitioner. Current pension, however shall be paid to the petitioner within four weeks from the date of receipt/production of a copy of this order.

If the respondents fail to proceed in accordance with law within the aforesaid period, consequential arrears should also be paid to the petitioner on lapse of three months.

Writ petition stands allowed.

**(Madhuresh Prasad, J)**

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| **AFR/NAFR** | NAFR |
| **CAV DATE** | NA |
| **Uploading Date** | 06.03.2019. |
| **Transmission Date** | NA |