

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.265 of 2018

In
Civil Writ Jurisdiction Case No.7893 of 2014

-
1. The State of Bihar through the Secretary Department of Mines and Geology, Government of Bihar, Patna.
 2. The Principal Secretary, Department of Mines and Geology, Government of Bihar, Patna.
 3. The Joint Secretary, Department of Mines and Geology, Government of Bihar, Patna.
 4. The Special Secretary, Department of Mines and Geology, Government of Bihar, Patna.

... .. Appellant/s

Versus

Rabindra Kumar Prakash, son of Late Om Prakash, resident of Chhoti Machhua Toli, P.S. Danapur, District - Patna.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Abhinav Srivastava, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 07-01-2019

Heard learned counsel for the State of Bihar, Department of Mines, the appellant herein, and Sri Abhinav Srivastava, learned counsel for the respondent-petitioner.

From the records of the writ petition, it is evident that the respondent-petitioner was subjected to an enquiry on account of the allegations made against him for having demanded a bribe of Rs.90,000/- and having been caught accepting a bribe of Rs.40,000/- in respect of a mining case. The complaint was made by one Mr. Ajit



Kumar @ Bablu Modi and the respondent-petitioner is alleged to have been caught in the trap accepting the alleged bribe of Rs.40,000/-.

A disciplinary proceeding was initiated and an enquiry report came to be submitted on 16th January, 2018 by Mr. Ghanshyam Prasad Daftuar, Additional Secretary of the Department who, after analyzing the evidence that was led during the enquiry, was of the opinion that the charge against the respondent-petitioner could not be established as the respondent-petitioner could not have either demanded the bribe or accepted the same in the given circumstances of the case.

This report of the enquiry officer reached the disciplinary authority who, vide order dated 14th February, 2014, remitted the matter back to the enquiry officer for proceeding again on day to day basis in terms of Rule-17 of the Bihar Government Servants (Classification, Control and Appeal) Rules 2005 (hereinafter referred to as the 2005 Rules). Pursuant to the aforesaid remittance, a fresh enquiry report was submitted by the same enquiry officer on 26th February, 2014 holding the respondent-petitioner to be responsible and also prima facie guilty on the basis of the pre-trap and the post-trap memorandums that were on record. It was also observed that it will not be appropriate for the enquiry officer to delve into the issues relating to the merits of the trap and, accordingly, recommended for taking appropriate action.



On the strength of the said enquiry report, a second show cause notice was issued to the respondent-petitioner on 21st March, 2014 and, accordingly, feeling aggrieved, the respondent-petitioner filed the writ petition giving rise to the present appeal. The challenge raised was that the order dated 14th February, 2014, whereby the matter had been remitted back to the enquiry officer, did not contain any reasons and was, therefore, in violation of Rule-18 of the 2005 Rules and, secondly, the issuance of the show cause notice was also vitiated on account of non-compliance of the procedure prescribed in the 2005 Rules as also the fact that the enquiry report which was submitted on 14th February, 2014 did not contain any material or discussion so as to prove the charges.

The learned Single Judge, after having appreciated the arguments, came to the conclusion that there was a clear violation of Rule-18 of the 2005 Rules which requires that the disciplinary authority, if does not agree with the report of the enquiry officer, it will have to record reasons and then remit the case to the enquiry officer for holding further enquiry whereupon the enquiry shall proceed as per Rule-17 of the 2005 Rules. The learned Single Judge found the order dated 14th February, 2014 to be deficient on account of non-compliance of the aforesaid provisions and, accordingly, quashed the said order as well as the consequential order dated 19th December, 2014 whereby the entire retiral benefits were withheld permanently.



The learned Single Judge further observed that the matter is remitted to the disciplinary authority to proceed further in accordance with law.

Learned counsel for the appellant-State of Bihar contends that the reasons for returning back the matter to the enquiry officer was evident inasmuch as the enquiry officer, while submitting the first enquiry report on 16th January, 2014 had transgressed his limits as prescribed in law by commenting upon the merits of the trap case itself and, therefore, the disciplinary authority disagreeing with the same rightly remitted the matter back to the disciplinary authority. It is, therefore, submitted that no error was committed and the order dated 14th February, 2014 remitting the matter back to the enquiry officer does not suffer from any legal infirmity so as to warrant interference by this Court.

Rebutting the submissions, Sri Srivastava, learned counsel for the respondent-petitioner, submits that a perusal of the order dated 14th February, 2014 would leave no room for doubt that no reasons, much less a cogent reason, was even spelt out in the said order before remitting the matter back and, consequentially, the same has been rightly quashed by the learned Single Judge with other consequential directions.

The learned Single Judge has quoted Rule-18 in extenso in the impugned judgement and, therefore, the same need not be reproduced again. A perusal thereof would, therefore, leave no room



for doubt that reasons had to be recorded by the disciplinary authority for disagreeing with the report of the enquiry officer or otherwise and it is only then that the matter can be remitted back to the enquiry officer. The order dated 14th February, 2014, whereby the enquiry was directed to be recommenced, does not contain any reason nor does the counter affidavit that was filed by the State in response to the writ petition spelt out any reason or material on record that may have impelled the authority to have remitted the matter back to the enquiry officer for fresh consideration. In the absence of recording any such reasons, we find that Rule-18 does not appear to have been adhered to by the disciplinary authority while passing the order dated 14th February, 2014. The conclusion, therefore, drawn by the learned Single Judge to that extent does not suffer from any infirmity and, accordingly, the order dated 14th February, 2014 was rightly quashed.

The learned Single Judge has made an observation that it will be open to the respondents to proceed further in the matter. We may clarify that the disciplinary authority, if it proposes to disagree with the first enquiry report dated 16th January, 2014, will have to record reasons before it issues any directions for holding of the fresh enquiry or itself proceed to pass any order in accordance with the enquiry already conducted. This choice is open to the disciplinary authority in terms of Rule-18 of the 2005 Rules and, consequently, we see no reason to interfere with the impugned judgement leaving it open



to the disciplinary authority to proceed in accordance with the observations made herein above.

The appeal stands disposed of accordingly.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Nasimul/K.C.Jha

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

