

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.7068 of 2020**

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Ashok Kumar, S/o Late Luxman Ram, Resident of Village- Ramdhanpur,  
Pipal Gali New Godown, P.S.- Kotwali, District- Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Commissioner, Magadh Division, Gaya.
3. The Collector cum District Magistrate, Gaya.
4. The Sub Divisional Officer, Nimachakbathani, Gaya.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr.Ritika Rani, Advocate  
For the Respondent/s : Mr.Raghwanand, GA-11

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH**

**ORAL JUDGMENT**

**Date : 21-01-2021**

The petitioner has put to challenge an order dated 09.05.2020, issued vide Memo No. 554 under the signature of the District Magistrate, Gaya (Annexure-9 to the writ application), whereby he has directed for a *de novo* disciplinary proceeding in respect of the charges framed against him by appointing a new Enquiring Authority.

2. Shorn of unnecessary details, short facts of the case, necessary for determination of the core issue involved in the present writ application, are that a disciplinary proceeding was decided to be initiated against the petitioner under the provisions of Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Rules') on the



charge of misconduct of having demanded gratification in discharge of his official duties when he was working as a Lower Division Clerk in Prakhand Office at Khizarsarai in the district of Gaya. The charge memo has been brought on record by way of Annexure-7 to the writ application. The Sub-Divisional Grievance Redressal Officer, Nimchakbathani, Gaya was appointed as the Enquiring Authority, who submitted his report on 20.03.2020, recording his finding to the effect that the charge against the petitioner could not be established during the departmental inquiry. On receipt of the report of the Enquiring Authority, the District Magistrate, Gaya, who is the Disciplinary Authority, has passed the impugned order dated 09.05.2020 whereby he has appointed the Additional Collector cum District Public Grievance Redressal Officer, Gaya as the new Enquiring Authority for enquiring into the charge of misconduct afresh.

3. Learned counsel appearing on behalf of the petitioner has argued that Rule 18(1) of the Rules lays down the procedure for action to be taken by the Disciplinary Authority on an inquiry report, if the Disciplinary Authority itself is not the Enquiring Authority. She has contended that the impugned order has the effect of causing a second departmental inquiry in respect of the same charge by a different Conducting Officer. She has submitted



that even if the Disciplinary Authority was of the view that there has been no proper inquiry because some serious defect had crept into the inquiry, he could have remitted the case back to the Enquiring Authority for further inquiry and report. She has argued that it is impermissible under the Rules for the Disciplinary Authority to direct for an inquiry afresh by appointing another Enquiring Authority merely because the finding recorded by the Enquiring Authority was not to his desire/ satisfaction. She has further argued that the impugned order does not at all disclose any defect in the inquiry report or discrepancy in the procedure adopted by the Enquiring Authority.

4. Learned AC to GA-11, on the other hand, has submitted that the Disciplinary Authority, after having found the report of the Enquiring Authority to be perfunctory, keeping in mind the seriousness of allegation of petitioner's misconduct of demanding gratification as a public servant, has rightly passed the impugned order, which is just and proper.

5. A counter affidavit has been filed on behalf of District Magistrate, Gaya.

6. I have carefully perused the impugned order, from which it clearly emerges that there is absolutely no discussion as to what made the Disciplinary Authority to order for an inquiry



afresh by appointing a new Enquiring Authority. There is no discussion on the merits/ correctness of the findings recorded by the Enquiring Authority on the basis of evidence adduced at the trial, in the impugned order.

7. Rule 18 of the Rules lays down the procedure for action which can be taken on the inquiry report. Sub-rules (1), (2) and (3) of Rule 18 of the Rules are relevant for the present purpose which are being reproduced hereinbelow :-

***18. Action on the inquiry report. -***

*(1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded 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."*



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8. It is evident on plain reading of the aforesaid provisions under the Rules that the Disciplinary Authority has, *inter alia*, following options on receipt of the enquiry report :-

(i) He may remit the case to 'the Enquiring Authority' for further inquiry.

(ii) He can record his own findings, if he disagrees with the findings of the Enquiring Authority on any article of charge after recording his reasons for such disagreement, if the evidence on record is sufficient for the purpose.

(iii) He may accept the findings recorded by the Enquiring Authority and proceed to impose punishment in accordance with the provisions under the Rules.

9. No provision under the Rules contemplates a second departmental inquiry. In case, a Disciplinary Authority notices any serious defect having crept into the inquiry or some important witnesses could not be examined because of their non-availability, he could have remitted the matter back to the Enquiring Authority for further inquiry as contemplated under sub-rule (1) of Rule 18 of the Rules.

10. In case of ***K.R. Deb vs. The Collector of Central Excise, Shillong*** reported in ***(1971) 2 SCC 102*** a five Judge Constitution Bench of Supreme Court had the occasion to examine Rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 [CCS (CCA) Rules]. Rule 15(1)



of CCS (CCA) Rules and Rule 18(1) of the Rules are in *pari materia*. Examining various provisions of the CCS Rules, the Special Bench of Supreme Court has held in case of **K.R. Deb** (supra) in paragraph 12 as under :-

*“12. It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in Rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under Rule 9.”*

11. In a subsequent decision in case of **Union of India vs. K.D. Pandey and another** reported in (2002) 10 SCC 471, The Supreme Court dealing with the provisions under Railway Servants (Discipline and Appeal) Rules, 1968 had disapproved a departmental inquiry being sent back in the name of further inquiry in following terms :-

*“5. ....Indeed this resulted in*



*second inquiry and not in a further inquiry on the same set of charges and the material on record. If this process is allowed the inquiries can go on perpetually until the view of the inquiry authority is in accord with that of the disciplinary authority and it would be abuse of the process of law. In that view of the matter we think that the order made by the High Court affirming the order of the Tribunal is just and proper and, therefore, we decline to interfere with the same. The appeal is dismissed accordingly.*”(Underlined for emphasis)

12. On examining various provisions under the Rules, I have no hesitation in reaching a definite conclusion that these provisions do not contemplate a second departmental inquiry for the same set of charges by appointing a new Enquiring Authority though further inquiry is permitted in accordance with sub-rule (1) of Rule 15 of the Rules.

13. I have noted the fact that the Disciplinary Authority has not mentioned any inherent defect in the findings recorded by the Enquiring Authority. It is true that there may be circumstance warranting fresh inquiry if the inquiry already held is found to be inherently defective.

14. In such view of the matter, the impugned order is not legally sustainable and is accordingly set aside. The matter is remanded back to the Disciplinary Authority to pass an order afresh on the report of the Enquiring Authority strictly in



accordance with the statutory provisions under Rule 18(1) of the Rules.

15. It has been pointed out by learned counsel appearing on behalf of the petitioner that he is not being paid his salary from January 2020 till date. Salary for the month of February 2019 has also not been paid to him without any justifiable reason.

16. Let the District Magistrate, Gaya look into the petitioner's grievance in relation to payment of his salary and ensure that he is paid his salary, which he is legally entitled to receive, within a period of two months from the date of receipt/production of a copy of this order.

17. This application is allowed with the aforesaid observations and directions.

18. There shall be no order as to costs.

**(Chakradhari Sharan Singh, J)**

Rajesh/-

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