

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7247 of 2018

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Ajit Kumar Sinha Son of Late Harihar Prasad, Resident B/13, Giriraj
Apartment, Vivekanand Marg, Boring Road, P.S.- Patliputra, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Bihar, Patna
2. The Principal Secretary, Home (Police) Department, Bihar, Patna.
3. The Director General of Police, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Abhinav Srivastava
For the Respondent/s	:	Mr.Md. N. H. Khan-Sc1
	:	Md. Harun Qureshi, AC to SC 1

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

CAV JUDGMENT

Date : 16-04-2021

1. The present writ petition has been filed for quashing the letter dated 20.03.2018, issued by the concerned authorities of the Home (Police) Department, Government of Bihar, Patna, whereby and whereunder the already concluded departmental inquiry, conducted against the petitioner, has been remanded back to the concerned Departmental Inquiry Commissioner and he has been directed to conduct a de novo inquiry into the charges leveled against the petitioner. The petitioner has also prayed for extending all the benefits to him which have been withheld on account of pendency of the connected departmental proceedings against him, specially the



retiral benefits, inasmuch as the petitioner has already stood superannuated from the services of the State Government on 30.06.2014. Lastly, it has been prayed to quash the resolution dated 12.01.2015, issued by the respondent- authorities, whereby and whereunder the purported departmental proceeding, initiated against the petitioner while he was in service, has been converted into a proceeding under Rule 43(a) and (b) of the Bihar Pension Rules, 1950, since the allegations for which the said proceeding was initiated against the petitioner, does not amount to a misconduct for the purposes of the provisions contained under the said Rules.

2. The brief facts of the case are that a departmental proceeding was initiated against the petitioner, way back on 16.06.2011 and two charges were leveled against him. The first charge leveled against the petitioner is regarding him having made certain statements before the Correspondent of the Aryan T.V., which was subsequently telecasted. The second charge is that the interview given by the petitioner to the Aryan TV Correspondent, amounts to indiscipline and is in contravention of the Bihar Government Employees Conduct Rules, 1976. It is the case of the petitioner that though he had asked for the C.D. of the said interview but the same was not provided to him



initially, nevertheless, the same was provided to him subsequently on 02.04.2013, nonetheless no departmental inquiry was ever held as against him, however subsequently, a second show cause notice dated 23.05.2014 was issued to the petitioner by the respondent-authorities informing him that the four charges leveled against him have been found to be proved, hence reply be submitted as to why appropriate punishment be not inflicted upon the petitioner. In this regard, it has been submitted by the learned counsel for the petitioner that without holding any department inquiry, the respondent- authorities had, in an ex-parte manner, held the charges leveled against the petitioner to have been proved and that too, not two charges but four charges were allegedly found to have been proved. The petitioner had then retired on 30.06.2014, whereafter the disciplinary authority vide letter dated 12.01.2015, had converted the on-going disciplinary proceedings into one under Rules 43(a) and 43(b) of the Bihar Pension Rules, 1950.

3. It appears that the departmental Inquiry Commissioner had then conducted a detailed departmental inquiry and had submitted his inquiry report dated 31.07.2017, as contained in his letter dated 01.08.2017, whereby and whereunder the charges leveled against the petitioner were



found to have not been proved. Thereafter, the Principal Secretary, Home Department (Police Branch) had, by the impugned letter dated 20.03.2018, remanded the matter back to the departmental Inquiry Commissioner, Bihar, Patna-cum-Conducting Officer for conducting the inquiry against the petitioner, de novo and then submitting a fresh inquiry report.

4. The learned counsel for the petitioner has submitted that the alleged incident is of the year 2011 i.e. about 10 years old when the petitioner was posted as Superintendent of Police (Traffic), Patna and the respondent- authorities are hounding the petitioner even after his retirement as also even after the Inquiry Officer/ Departmental Inquiry Commissioner, Bihar, Patna has found the charges leveled against the petitioner to have not been proved, on the basis of materials available on record as also brought before him during the course of departmental inquiry. It is also submitted that the impugned order dated 20.03.2018, directing the Departmental Inquiry Commissioner to conduct a de novo inquiry into the same set of charges leveled against the petitioner, is perverse and untenable in the eyes of law as also is in violation of the provisions contained under Rule 18 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter



referred to as the “Rules, 2005”), inasmuch as there is no provision with respect to conducting a de novo inquiry against the delinquent Government Servant for the same set of charges, in relation to which an inquiry has already been conducted and a detailed inquiry report has been submitted by the Inquiry Officer. It is further submitted that the impugned letter dated 20.03.2018 is also in violation of the Principles of Natural Justice, inasmuch the petitioner was not granted any opportunity to put forth his stand/ defense before issuance of the said letter dated 20.03.2018. The learned counsel for the petitioner has relied upon a judgment rendered by a co-ordinate Bench of this Court *dated 10.02.2012*, passed in *CWJC no. 842 of 2012 and other analogous cases (Ramprit Rai v. the State of Bihar and others)*, relevant portion whereof, is being reproduced herein below:-

“Departmental proceedings being a serious matter cannot be treated casually by the respondents. The delinquent had to face charges. His defence was accepted. He is to be put under scrutiny again without reasons being disclosed to him. The respondents could have differed with the report of exoneration and proceeded for a difference of opinion



under Rule 18. The letter dated 17.3.2011 of the Building Construction Department addressed to the Road Construction Department states that if there was a difference of opinion it may be specified and identified. The Building Construction Department however concurred with the enquiry report. Instead of following that procedure de novo enquiry has been ordered.”

5. The resolution dated 13.7.2011 states that the petitioner had committed irregularities in land acquisition for construction of N.H.-57 as mentioned in the charge sheet. A decision had therefore been taken to hold a de novo enquiry under Rule 17. No reasons have been spelt out for the grounds upon which the respondents were satisfied to do so. A statutory order has to be tested on basis of the recitals contained in the order and cannot be added or supplemented by a counter affidavit. No useful purpose shall be served by adjourning the matter for filing of counter affidavit. This has been explained in **(1978) 1 SCC 405 (Mohinder Singh Gill v. Chief Election Comm.,)** at Paragraph-8 as follows:-

“8. The second equally relevant matter



is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji:

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. Orders are not like old wine becoming better as they grow older.”

6. If the respondents are permitted to hold a de novo



enquiry merely because the earlier report was not palatable to them it may be vesting uncanalised and arbitrary powers in a disciplinary authority to continue with the departmental proceeding till such time a report to his satisfaction is not received. This proposition was noticed in **(2002) 10 SCC 471 (Union of India v. K.D. Pandey)** holding as follows:-

“5..... 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.....”.

The resolution dated 13.7.2011 initiating de novo enquiry is set aside. The petitioner stands released from suspension and is also held entitled to full salary for the period of suspension. The present order has no bearing on the criminal prosecution which has to proceed on its own merits in accordance with law. The writ applications are allowed.

7. The learned counsel for the petitioner has also referred to a judgment, reported in **AIR 1971 SC 1447 (K.R. Deb v. The Collector of Central Excise, Shillong)**, paragraphs no. 12 to 15 whereof, are reproduced herein below:-

“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.

13. In our view the rules do not contemplate an action such as was taken by the Collector on February 13, 1962. It seems to us that the Collector, instead of taking responsibility himself, was determined to get some officer to report against the appellant. The procedure adopted was not only not warranted by the rules but was harassing to the appellant.

14. Before the Judicial Commissioner the point was put slightly differently and it



was urged that the proceedings showed that the Disciplinary Authority had made up its mind to dismiss the appellant. The Judicial Commissioner held that on the facts it could not be said that the Disciplinary Authority was prejudiced against the appellant. But it seems to us that on the material on record a suspicion does arise that the Collector was determined to get some Inquiry Officer to report against the appellant.

15. In the result we hold that no proper inquiry has been conducted in the case and, therefore, there has been a breach of Article 311(2) of the Constitution. The appeal is accordingly allowed and the order, dated June 4, 1962, quashed, and it is declared that the appellant should be treated as still continuing in service. He should be paid his pay and allowances for the period he has been out of office. The appellant will have his costs here and in the Court of the Judicial Commissioner. Fees shall be payable by the appellant to his advocate and be allowed on taxation.”

8. *Per contra*, the learned counsel for the respondent-State has simply referred to the facts of the present case and has



finally referred to the impugned order dated 20.03.2018 to submit that the same is self- speaking and requires no elaboration. Nonetheless, it has been submitted that de novo inquiry is permissible under the law.

9. I have heard the learned counsel for the parties and gone through the materials on record, from which I find that the respondent- authorities have been unnecessarily prolonging the disciplinary proceeding as against the petitioner herein. It is apparent that initially, though the departmental proceeding was initiated in the year 2011, however the respondent- authorities failed to conduct any departmental inquiry till the retirement of the petitioner on 30.06.2014, whereafter the respondent authorities by an order dated 12.01.2015, converted the on-going departmental proceeding into one under Rule 43(a) and (b) of the Bihar Pension Rules, 1950 and now, when the Inquiry Officer/ Departmental Inquiry Commissioner, Bihar, Patna has exonerated the petitioner in his inquiry report, as is apparent from the enquiry report contained in his letter dated 01.08.2017, the respondent- disciplinary authority, instead of taking action upon the inquiry report under Rule 18 of the Rules, 2005, has reviewed the entire matter by the impugned order dated 20.03.2018 and on flimsy grounds, has remanded the matter



back to the Inquiry Officer/ Departmental Inquiry Commissioner to conduct a de novo inquiry into the same set of charges leveled against the petitioner earlier, from which it is apparent that a decision has been taken to conduct a de novo inquiry merely because the earlier inquiry report was not palatable to the respondent-disciplinary authority, inasmuch as the order dated 20.03.2018 does not spell out any sort of grave irregularity having taken place in conduct of the inquiry or any serious defects having cropped up in conduct of the inquiry or some important witnesses being not available at the time of inquiry or some important witnesses having been examined in violation of Principles of Natural Justice and moreover, no such reasons have been mentioned in the impugned order dated 20.03.2018, hence the only course available to the Disciplinary Authority was to act on the inquiry report dated 31.07.2017, as contained in letter of the departmental Inquiry Commissioner dated 01.08.2017, whereby and whereunder the charges leveled against the petitioner were not found to be proved. Thus this Court finds that allowing the disciplinary authority to hold a de novo inquiry and continue with the departmental proceeding till a report to its satisfaction is received would amount to vesting the disciplinary authority with uncanalised and arbitrary powers,



as has been held by the Hon’ble Apex Court in the case of *Union of India v. K.D. Pandey, reported in (2002) 10 SCC 471*, hence the aforesaid order dated 20.03.2018, issued by the Principal Secretary, Home Department (Police Branch), Government of Bihar, Patna is not only bad in law but also unsustainable in the eyes of law. Accordingly the order dated 20.03.2018, issued by the Principal Secretary, Home Department (Police Branch), Government of Bihar, Patna is set aside.

10. The writ petition stands allowed.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	10.03.2021
Uploading Date	17.04.2021
Transmission Date	NA

