

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 15595 of 2022

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Sanjay Kumar Singh son of Late Shivajee Singh, resident of House No. 1/9,
Anandpuri, West Boring Canal Road, Near Himgiri Apartment, P.O.-G.P.O.,
P.S.-S.K. Puri, District-Patna, Pin Code - 800 001.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, General Administration Department, Bihar, Patna.
2. Chief Enquiry Commissioner, General Administration Depart., Bihar, Patna.
3. Additional Chief Secretary, Industries Department, Bihar, Patna.
4. Director, Directorate of Technical Development, Industries Department, Bihar, Patna.

... .. Respondent/s

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Appearance:

For the Petitioner/s	:	Mr. Abhinav Srivastava, Adv. Mr. Pushkar Bharadwaj, Adv.
For the State	:	Mr. Dhuvendra Kumar, AC to GA-5

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date: 28-03-2024

The present writ petition has been filed for quashing the order dated 6.6.2022, passed by the Special Secretary to the Government, Industries Department, Government of Bihar, Patna, whereby a decision has been taken to conduct a de novo enquiry into the charges, levelled against the petitioner. The petitioner has also challenged the consequential order dt. 11.7.2022, issued by the Chief Enquiry Commissioner, General Administration Department, Bihar, Patna, by which an Enquiry Officer has been appointed to conduct the said de novo enquiry.

2. Shorn of the unnecessary details, it would suffice to state



that while the petitioner was working as Joint Director in the Industries Department of the State Govt., the Vigilance Unit, Bihar, Patna, had conducted a raid at the house of the father-in-law of the petitioner, where the petitioner was living and an FIR bearing Special Vigilance P.S. Case No. 1/2019, dt. 14.1.2019, was lodged U/s. 13(1)(b) read with Sect. 13(2) of the Prevention of Corruption Act, 1988. Since illicit liquor was also recovered, one another FIR bearing S.K. Puri P.S. Case No. 21/2019 was also lodged against the petitioner U/s. 30(A) of the Bihar Prohibition and Excise Act, 2016 as well as for the offences under the Specified Bank Notes (Cessation of Liabilities) Act, 2017, in view of the fact that old currency notes of Rs. 500/- denomination as also 10 pieces of US dollar 10 were recovered. The petitioner was then taken into custody and was enlarged on bail on 18.1.2019. Thereafter, the petitioner was placed under suspension, vide notification dt. 1.2.2019 and a memo of charge dated 13.2.2019 was served upon the petitioner, wherein the allegations levelled qua the petitioner, were based on the charges levelled in the FIR, bearing Special Vigilance P.S. Case No. 1/2019. The petitioner had then demanded some documents, essential for submitting his reply, but his request was denied. The Enquiry Officer had then initiated the departmental enquiry,



however, the petitioner filed a writ petition in the meantime, bearing CWJC No. 21712 of 2019, inter alia praying therein, to revoke his suspension, however, a coordinate Bench of this Court, by an order dt. 10.6.2020, had disposed of the said writ petition, observing therein that the disciplinary proceeding should be concluded expeditiously, preferably within a period of 6 months from the date of production of a copy of the said order, nonetheless, the Respondents failed to conclude the disciplinary proceeding within the stipulated time period of 6 months.

3. In the meantime, the petitioner had requested for revocation of the order of his suspension, however, the Enquiry Officer i.e. the Chief Enquiry Commissioner, General Administration Department, Bihar, Patna, had submitted an enquiry report dt. 12.2.2021 to the Additional Chief Secretary, Industries Department, Bihar, Patna, finding the allegations levelled against the petitioner to have not been proved. Nonetheless, after a lapse of about 15 months of submission of the said enquiry report, all of a sudden, vide letter dated 6.6.2022, the Special Secretary to the Government, Industries Department, Govt. of Bihar, Patna, directed to conduct a de novo enquiry into the matter, while noting that the enquiry report, exonerating the petitioner, has not taken note of all



information / evidence / witnesses. In pursuance thereof, the Chief Enquiry Commissioner has passed an order dt. 11.7.2022, appointing new Enquiry Officer and Presenting Officer.

4. The learned counsel for the petitioner has submitted, by referring to Rule 18 (2) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as the “Rules, 2005”), that without concluding the first departmental proceeding and taking the same to its logical conclusion, de novo inquiry could not have been resorted to. In this regard, the learned Counsel for the petitioner has referred to the following Judgments:-

“(i). Judgment, rendered by the Hon’ble Apex Court in the case of *Kanailal Bera vs. Union of India & Ors.*, reported in (2007) 11 SCC 517;

(ii). Judgment, rendered by a coordinate Bench of this Court in the case of *Awadhesh Upadhyay vs. State of Bihar and Ors.*, reported in 2012 (2) PLJR 678;

(iii). The judgment dated 19.01.2023, rendered by the Ld. Division Bench of this Court in the case of *State of Bihar & Ors. vs. Md. Shamim Akhtar* (L.P.A. No. 1653/2016).”

5. The learned counsel for the petitioner has also 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.”

6. It is next contended that 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 un-canalized & 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 a judgment rendered by the Hon’ble Apex Court in the case of ***Union of India v. K.D. Pandey***, reported in (2002) 10 SCC 471, paragraph No. 5 whereof is being reproduced herein below:-

“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.....”.

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 being 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. Thus, it is the submission of the learned counsel for the petitioner that the disciplinary authority has not specified and identified the reason for differing with the enquiry report, submitted by the Enquiry officer, dt. 12.2.2021, hence, de novo enquiry could not have been ordered, apart from the fact that



directing for conduct of a de novo enquiry is in utter disregard and violation of the provisions, contained in Rule 18 (2) of the Rules, 2005.

9. Per contra, the Ld. counsel for the Respondent-State has submitted that a de novo enquiry has been directed, vide order dated 6.6.2022, inasmuch as the enquiry report dated 12.2.2021 has not taken note of all informations / evidences / witnesses.

10. I have heard the Ld. counsel for the parties and perused the materials on record from which it is apparent that the Respondent authorities have been unnecessarily prolonging the disciplinary proceeding qua the petitioner. Though the disciplinary proceeding in question was initiated by issuance of memo of charge on 13.2.2019, whereafter a coordinate Bench of this Court, vide order dt. 10.6.2020, had directed the disciplinary authority to conclude the disciplinary proceeding within six months, nonetheless, the Respondent authorities did not comply with the said directions, however, the enquiry report was submitted on 12.02.2021, exonerating the petitioner from all the charges levelled against him, whereafter the Respondent authorities kept the matter lingering and after 15 months, the Special Secretary to the Government, Industries Department, Government of Bihar, Patna, by an order dated 6.6.2022, has



directed for initiation of a de novo enquiry, instead of taking action upon the enquiry report dated 12.2.2021 under Rule 18 of the Rules, 2005 and that too on non-est grounds as also without mentioning the reasons for differing with the findings arrived at by the Enquiry Officer in his report dated 12.2.2021. Therefore, it is clear that a decision has been taken to conduct a de novo enquiry into the same set of charges levelled against the petitioner earlier, merely because the earlier enquiry report dated 12.2.2021 was not palatable to the Respondent disciplinary authority, inasmuch as the order dated 06.06.2022, directing initiation of de novo enquiry, does not spell out much less specify any sort of grave irregularity having taken place in conduct of the enquiry or any serious defects having cropped up in conduct of the inquiry or for that matter, some important witnesses being not available at the time of enquiry or some important witnesses having been examined in violation of the principles of natural justice, hence, the only course available to the disciplinary authority was to act on the aforesaid inquiry report dated 12.2.2021, exonerating the petitioner from all the charges levelled against him.

11. Having regard to the facts and circumstances of the case and for the foregoing reasons, 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 **K. D. Pandey**, (supra) hence, the order dated 06.06.2022, issued by the Special Secretary to the Government, Industries Department, Government of Bihar, Patna, is not only bad in law, but also unsustainable in the eyes of law, hence, is quashed. Resultantly, the consequential order dated 11.7.2022, issued by the Chief Enquiry Commissioner, General Administrative Department, Government of Bihar, Patna, has also got no legs to stand, hence, is also set aside.

12. The writ petition stands allowed.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	14.05.2024
Transmission Date	NA

