
(2015) 12 PAT CK 0064

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 11700 of 2013

Fateh Faiyaz

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 15-12-2015

Acts Referred:

Citation : (2016) 1 PLJR 370

Hon'ble Judges : S.P. Singh, J.

Bench : Single Bench

Advocate : Abhay Kumar Singh, Sr. Advocate, D.N. Tiwary and Sanjeet Kumar, Advocates, for the Appellant; Nawal Kishore Singh, SC 2 and Kamlesh Prasad, AC to SC 2, for the Respondent

Final Decision : Disposed Off

Judgement

S.P. Singh, J.—A counter-affidavit filed on behalf of respondent Nos. 1 and 3, without welfare stamp, is accepted on the undertaking that the same will be filed as and when it is available.

2. The petitioner is a member of Bihar Administrative Service having joined in the year 1996. In the very beginning of probation period, he was posted as Circle Officer, Pothia at Kishanganj from 01.06.1999 to 01.11.1999. In the year 2006, he was departmentally proceeded for the following three charges.

"(i) The petitioner recommended the application of four persons for lease of government land near tea garden while he was in-charge of Circle Officer, Pothia which was contrary to the revenue department circle bearing letter No. 1697 dated 22.11.1995.

(ii) The petitioner recommended for grant of five acres of land to the aforesaid four persons for extraneous consideration.

(iii) The recommendation by the petitioner for grant of land to the persons who belong to the one family which is contrary to the direction and rules of

government."

3. The petitioner filed his show-cause reply to the charge-sheet. The Inquiry Officer on conclusion of the inquiry, exonerated him of the charges vide his inquiry report, dated 17.02.2010 (Annexure-16) and forwarded the same to the disciplinary authority. The disciplinary authority vide memo dated 23.11.2010 differed with the inquiry report and directed for Punar Jaanch in terms of Section 18(1) of the Bihar (CCA) Rules, 2005 (hereinafter referred to as "the CCA Rules"). The Divisional Commissioner, Purnia, was appointed as the second Inquiry Officer. He too exonerated the petitioner of the charges vide his report dated 22.06.2012 contained in Annexure-18.

4. The disciplinary authority while forwarding the inquiry report to the petitioner asked him to file his response, as the Senior Officers have alleged that the petitioner for his selfish ends made recommendations for lease of Government land near Tea Garden. The petitioner vide his letter dated 08.10.2012 contained in Annexure-19 submitted his detailed show-cause reply on 08.10.2012 (Annexure-20). The Inquiry Officer, not being satisfied with the explanations of the petitioner, proposed to accord major punishment and provided him opportunity to put in his defence. The petitioner replied to the show-cause vide letter dated 25.01.2013 (Annexure-25). The disciplinary authority not being satisfied with the explanation offered by the petitioner, inflicted punishment of reduction of pay at the initial of the basic pay scale.

5. Mr. Abhay Kumar Singh, learned senior counsel appearing for the petitioner, has submitted two points. He submits that the Disciplinary Authority erred in law directing fresh inquiry, as Bihar CCA Rules does not permit fresh inquiry but only further inquiry. The second submission of the petitioner that the letter dated 8.10.2012 of the General Administration Department, Government of Bihar, asking the petitioner to make his comment with respect to the charges, does not remotely indicate even tentative disagreement with the findings recorded in the inquiry report, which was necessary requirement of law in view of decision of Hon"ble Apex Court in case of Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, and again a decision reported in Punjab National Bank and Others Vs. K.K. Verma, .

6. Learned counsel for the State has justified the impugned actions. He submits that the petitioner has committed various acts of omission and commission while serving as Circle Officer in Pothia Block of Kishanganj District. He had made recommendations for grant of five acres of land on lease to undeserving persons imbued with extraneous considerations. He next submits that the Disciplinary Authority had ordered for further inquiry in terms of Section 18(1) of the Bihar (CCA) Rules. As such, submission of the petitioner that the Disciplinary Authority has directed fresh inquiry is not correct.

7. I have heard learned counsel for the parties.

8. The first submission of the petitioner is that the Disciplinary Authority cannot

direct fresh inquiry, as Section 18(1) of the Bihar (CCA) Rules permit only for further inquiry. Section 18(1) is quoted herein below for easy reference.

"18. Action on the inquiry report. - (1) The disciplinary authority, if it is not itself the inquiry 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."

9. The issue stands settled by a decision of the Division Bench of this Court rendered in case of Santlal Chowdhary Vrs. State of Bihar, reported in 2014(4) PLJR page 662 para 10. The Division Bench categorically held that Section 18(1) of the Bihar (CCA) Rules provides only for further inquiry and not denovo inquiry. Para 10 of the order of the Division Bench of this Court is quoted hereinbelow:--

"Situating thus, it becomes clear that Rule 18 of 2005 Rules does not permit initiation of fresh inquiry by Disciplinary Authority on the same set of charges, and in the case of the disagreement with the findings of an Inquiry Authority, what can be ordered is a further inquiry."

10. But the vital issue is whether the general Administration Department, Government of Bihar, had directed for further inquiry or for a fresh inquiry. It would appear from memo dated 23.11.2011 (Annexure-17) that the Government has directed for inquiry in terms of Section 18(1) of the Bihar (CCA) Rules which speaks for only further inquiry. The impugned notice cannot be quashed on the ground that the authority in the said order has directed for "Punar Janch", which means fresh inquiry. The memo is not happily worded. The Disciplinary Authority ought to have used the word mentioned in Hindi version of the CCA Rules, 2005 in place of

11. However, from the direction contained in memo dated 23.11.2011. It is clear that the inquiry has been directed in terms of Section 18(1) of the CCA Rules which provides for only further inquiry. On this ground, the first submission of the petitioner that the Disciplinary Authority has directed for fresh inquiry is not acceptable and the plea is accordingly rejected.

12. Now, I will take up the second submission of the petitioner. The petitioner has contended that show-cause dated 21.09.2012 is bad in law as the Inquiry Officer without even tentatively differing with the findings recorded in the inquiry report, has asked the petitioner to submit his response to the inquiry report as Senior Officers has charged that the petitioner has recommended settlement of lease land near Tea Garden for his own selfish gain. It would be relevant to reiterate that the first Inquiry Officer had exonerated the petitioner of the charges. The Disciplinary Authority not being satisfied with the inquiry report, directed for second inquiry in terms of Section 18(1) of the CCA Rules. Even the second Inquiry Officer, who held the rank of Divisional Commissioner, too did not find charge proved against the petitioner. It was well within the ambit of the Disciplinary Authority to reconsider the findings and come to a conclusion.

Nonetheless, differing with findings recorded in enquiry report while issuing the second show-cause notice in case of disagreement, the Disciplinary Authority has to express its tentative disagreement with the findings recorded by the Inquiry Officer.

13. There is nothing in the impugned letter dated 21.09.2012, which may indicate that the authority even tentatively differed with the findings of the inquiry report. The disciplinary authority disagreeing with inquiry report must express its tentative reasons for such disagreement and give an opportunity to the petitioner to make his representation. Having not done so, the notice contained in letter dated 21.09.2012 is violative of principles laid down in case of *Lav Nigan v. Chairman and MD, ITI Limited and others*, reported in 2006(9) SCC 440 and *Punjab National Bank and Others Vs. Sh. Kunj Behari Misra*, .

14. As the impugned notice dated 21.09.2012 itself was violative of principles of natural justice, the impugned punishment, dated 25.08.2014 (Annexure 28) awarded by General Administration Department, Govt. of Bihar would equally be not sustainable in law and as such, both the orders dated 23.11.2011 and 25.8.2014 are hereby set aside.

15. Since the petitioner has succeeded on technical issue, the matter is remitted to the disciplinary authority to proceed afresh from the stage of issuing fresh show-cause notice in accordance with law.

16. It is expected that the proceeding would be completed preferably within a period of four months and not beyond six months, from the date of receipt a copy of this order.

17. With the aforesaid observations, the petition is disposed of without prejudice to either sides.