

## Kameshwar Prasad Vs The State of Bihar and Others

**Court:** Patna High Court

**Date of Decision:** Feb. 13, 2008

**Citation:** (2008) 2 PLJR 456

**Hon'ble Judges:** Navin Sinha, J

**Bench:** Single Bench

**Advocate:** Abhay Kumar Singh and Rupak Kumar, for the Appellant; Ray Shivaji Nath and Satish Kr. Sinha for the State, for the Respondent

**Final Decision:** Allowed

### Judgement

@JUDGMENTTAG-ORDER

Navin Sinha, J.

Heard learned counsel for the petitioner and the State. The petitioner is aggrieved by the order dated 3.8.2006 by which

he has been inflicted the punishment of censure and that for the period of punishment nothing more than subsistence allowance shall be payable.

2. Departmental proceedings were initiated against the petitioner on three charges. The enquiry report dated 6.7.2001 came to be submitted on

13.7.2001 exonerating him of all the three charges. A fresh departmental proceeding was then drawn up against him on 19.1.2002 on the ground

that the procedures were not followed in the earlier departmental enquiry and the evidence in support of the charges had not been discussed

properly. The fresh enquiry report came to be submitted on 30.5.2006. Charges 1 & 2 were stated not to be proved while charge 3 was stated to

be partially proved. Then follow the impugned order of punishment without furthermore.

3. Learned counsel for the petitioner submitted that after the submission of the first enquiry report dated 6.7.2001, the disciplinary authority was at

liberty in law to differ with the same, record his reasons for disagreement, issue notice to the petitioner and proceed in accordance with law. The

holding of a fresh departmental enquiry was not justified in law. He relied upon a judgment of the Supreme Court reported in K.R. Deb Vs. The

Collector of Central Excise, Shillong, to submit that there was no justification to subject the petitioner to a fresh enquiry on the same materials

merely because the finding of the enquiry was not palatable to the disciplinary authority. At best the matter could have been referred back for

further enquiry to the Inquiry Officer and that there was no justification for fresh departmental enquiry by a fresh Inquiry Officer. The fresh enquiry

report was not given to the petitioner and neither was he given a second show cause notice of the proposed punishment in the proceedings under

Rule 55 of the Bihar Civil Services (Classification, Control and Appeal) Rules.

4. Learned counsel appearing on behalf of the Respondents submitted that the order for fresh enquiry itself states that proper procedures were not

followed in the earlier enquiry and that there have been no proper discussion of the evidence placed before the Inquiry Officer. In any event, the

petitioner had participated in the second enquiry and he could not be permitted to challenge the same now after the enquiry report had been

submitted; that the enquiry report had subsequently been made available to the petitioner also; in any event, the Respondents would always be at

liberty to proceed afresh from the stage of submission of the first enquiry report.

5. The first enquiry report is appended as Annexure-5. It does not contain any materials noticed by the Inquiry Officer of any lacuna of procedure

in the departmental proceedings. The enquiry report considers- the stand of the prosecution, the defence of the petitioner and the materials placed

before him to arrive at a finding of exoneration of the petitioner under each charge. In the fresh enquiry report also there is no discussion of what

procedural non-compliance had taken place earlier to justify any such fresh enquiry. The counter affidavit filed by the Respondents in support of

the fresh enquiry and the report in consequence thereto also does not plead any details of such procedural non-compliance in the earlier enquiry

and the materials that had been allegedly overlooked. It only seeks to justify the non-submission of the enquiry report to the petitioner and the

opportunity of a second show cause for the proposed punishment on the submission that since minor punishment was ultimately decided to be

imposed it was not considered necessary.

6. In the case of K.R. Deb vs. The Collector of Central Excise, Shillong (supra) relied upon by the petitioner, a departmental enquiry was held.

The delinquent was exonerated. Orders were then passed for a fresh enquiry. This also exonerated the delinquent. A third enquiry was then started

in which orders detrimental to the delinquent were passed. It was held at paragraph 12 of the judgment as follows:

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 here 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.

7. In (2002)10 SCC 473 (Union of India vs. K.D. Pandey & Anr.) also relied upon by the petitioner, considering the validity of an order for

further enquiry after a proper enquiry report of exoneration the Court at para 5 observed:

5. ...it is clear that specific findings have been given in respect of each of the charges after discussing the matter and, if that is so, we fail to

understand as to how there could have been a remit to the enquiry authority for further enquiry on the same set of charges and the material on

record. Indeed this resulted in a second enquiry and not in a further enquiry 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....

8. In the present case, this Court holds that in the event that if the first enquiry report was not acceptable to the disciplinary authority, it could have

differed with the same and proceed from that stage for any further enquiry on justifiable ground, that there was no justification for him to initiate a

fresh enquiry by a new Inquiry Officer. The Court on facts has no hesitation in holding that this was an attempt for harassment of the petitioner to

continue with the proceedings till ultimately the enquiry report to the satisfaction of the disciplinary authority was submitted.

9. In the result, the order for fresh enquiry dated 19.1.2002, the second enquiry report dated 30.5.2006 and the order of punishment dated

3.8.2006 stand quashed. The writ application stands allowed.