

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6994 of 2016

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Uday Pratap Singh, Son of Late Kalyan Kumar Singh, Resident of Village & P.O.
& P.S. Manihari, District - Katihar.

.... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Home Department, Government of Bihar, Patna.
3. The Director General of Police, Bihar, Patna.
4. The Inspector General of Police, Headquarter/Administration, Bihar, Patna.
5. The Inspector General of Police, Patna Zone, Patna.
6. The Deputy Inspector General of Police, Central Range, Patna.
7. The Senior Superintendent of Police, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bindhyachal Singh, Advocate
Mr. Prashant Sinha, Advocate

For the Respondent/s : Mr. Anjani Kumar, AAG-4
Mr. Deepak Sahay Jamuar, AC to AAG-4

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 13-07-2017

The petitioner prays for issuance of a writ in the nature of certiorari for quashing the charge bearing Memo No.9110 dated 6.7.2010 framed by the Senior Superintendent of Police, Patna impugned at Annexure 6, the order of dismissal bearing Memo No.199 dated 23.8.2013 passed by the Deputy Inspector General of Police, Central Range, Patna impugned at Annexure-31, the order bearing Memo No. 207 dated 31.1.2014 passed by the Inspector General of Police, Patna Zone, Patna, whereby the appeal of the petitioner has been dismissed which is impugned at Annexure 35 and the order bearing Memo No.3779 dated 6.8.2014, whereby the



memorial preferred by the petitioner has been dismissed by the Director General of Police, Bihar, Patna which is impugned at Annexure 38 to the writ petition as well as the second memorial preferred by the petitioner before the State Government which has also been rejected vide order impugned at Annexure-42.

The petitioner alongside prays for holding the entire proceeding void ab-initio, inter alia, on grounds that the initiation of the proceeding and framing of charge was done by an authority not competent to do so under rules 16 and 17 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Disciplinary Rules') which proceeding also stood invalidated by failure of the Disciplinary Authority to appoint a Presenting Officer.

The facts leading to the writ petition briefly stated is, that the petitioner was appointed as a Sub-Inspector of Police vide appointment order issued under the signature of the Inspector General of Police bearing Memo No.5572 dated 21.8.1994, a copy of which is enclosed at Annexure 32 to the writ petition. It is after 16 years of satisfactory service that the petitioner was allegedly trapped in a bribe case by the vigilance team of the Vigilance Investigation Bureau giving rise to Vigilance P.S. Case No.38 of 2010 registered for the offences punishable under the Prevention of



Corruption Act. It is following the institution of the vigilance case that a disciplinary proceeding was also initiated by service of charge memo, a copy of which is impugned at Annexure 6 to the writ petition which, according to the petitioner, was served upon him in jail custody. The charge memo simply charged the petitioner of being caught red-handed while accepting bribe by the vigilance team and relied upon certain orders as well as the FIR in support. The charge memo also named 5 witnesses including the complainant. The charge memo bearing Memo No.9110 dated 6.7.2010 was served on the petitioner with a direction to file his reply before the signatory to the charge memo i.e. the Senior Superintendent of Police, Patna. The proceedings were held and the charges were upheld against the petitioner leading to the orders impugned.

Mr. Bindhyachal Singh has appeared for the petitioner along with Mr. Prashant Sinha, learned Advocate on record while the State has appeared through Mr. Anjani Kumar, learned Additional Advocate General No.4 who appeared with Mr. Deepak Sahay Jamuar, learned Assisting Counsel to Additional Advocate General No.4.

Mr. Bindhyachal Singh, learned counsel appearing for the petitioner while reiterating the sequence of events submitted that



while the appointing authority of the petitioner is the Inspector General of Police as confirmed from the appointment order placed at Annexure 32, the charge memo has been served on the petitioner issued under the signature of the Senior Superintendent of Police, Patna who is neither the Disciplinary Authority of the petitioner nor the appointing authority and thus the charge memo itself having been issued not by an authority competent to do so, is fit to be quashed in view of the judgment passed by the Supreme Court in the case of **Union of India vs. B.V. Gopinath reported in (2014)1 SCC 351**. Proceeding ahead he submits that repeated request of the petitioner for supply of document has not been accepted by the Disciplinary Authority and which again would invalidate the proceedings.

Learned counsel in reference to the material present at Annexures 7, 8 and 10 has submitted that despite demand by the petitioner for supply of certain documents to enable him to file a purposeful reply, except Exhibits 1 and 2, none of the documents was provided to the petitioner and the proceeding has continued despite such lapse. He next has referred to Annexure 9 to submit that vide order passed on 9.3.2011 the disciplinary proceeding was initiated under the orders of the Senior Superintendent of Police and one Naresh Mohan Jha, Deputy Superintendent of Police



(Transport) was appointed as the Conducting Officer but no appointment of Presenting Officer was made. According to Mr. Singh, the initiation of the departmental proceeding was by an authority not competent to do so.

Learned counsel has next referred to the order of the Conducting Officer passed on 22.10.2011 present at Annexure 13/A, whereby the disciplinary proceeding was fixed for 9.11.2011 and circulated through Memo No.620 dated 22.10.2011. He submits with reference to Annexure 13/C that accordingly the petitioner was advised to be present on 9.11.2011. He submits that the petitioner appeared on 9.11.2011 before the Enquiry Officer but came to know that three witnesses have already been examined on 8.11.2011 behind his back showing the petitioner present on 8.11.2011 though it was incorrect. In reference to Annexure 15 he submits that the Enquiry Officer himself examined one Ram Dayal Rai, the complainant despite the objection raised by the petitioner that the complaint had not yet been provided to him. An enquiry report was submitted and the petitioner gathering the knowledge represented before the Deputy Inspector General of Police, Central Range, Patna vide Annexure-19. The Deputy Inspector General of Police, Central Range, Patna vide order passed on 20.6.2012 present at Annexure-20 remitted the matter to the Enquiry Officer



for holding enquiry on the points noted in his order with due opportunity to the petitioner.

In between the mother of the petitioner is stated to have been detected with cancer and he had to go to Mumbai for her treatment and thus unable to appear before the Enquiry Officer and for which he filed an application vide Annexure-22 before the Enquiry Officer praying for adjournment of the proceeding but according to the petitioner, since he got delayed in the treatment of his mother that the Enquiry Officer again submitted a report. The petitioner on gathering knowledge again represented before the Deputy Inspector General of Police, Central Range, Patna on 14.9.2012 vide Annexure 23 and whereupon the Deputy Inspector General of Police again returned the file to the Conducting Officer with an advice to submit his report after providing opportunity to the petitioner. A copy of the letter of the Deputy Inspector General of Police dated 26.9.2012 is present at Annexure-24. The petitioner being aggrieved by the actions of the Enquiry Officer filed a representation before the Director General of Police for change of Enquiry Officer and which was forwarded to the Senior Superintendent of Police vide Annexure 25 series on 6.11.2012 but even when the matter on the issue of change of Enquiry Officer was pending disposal before the Director General of Police that the



Senior Superintendent of Police, Patna informed the Deputy Inspector General of Police that the file had been received after holding of enquiry vide Annexure-26. The Deputy Inspector General of Police directed the Senior Superintendent of Police, Patna to seek a second show cause on the proposed punishment vide Annexure-27 series. The petitioner raised objections on the non-supply of documents and although the Deputy Inspector General of Police provided letter No.4019 dated 26.3.2013 (Annexure-26) of the Senior Superintendent of Police, Patna but the enquiry report was not supplied to him. The petitioner again represented before the Deputy Inspector General of Police pointing out the lacuna vide Annexure-30 but has been met with the dismissal order passed by the Deputy Inspector General of Police bearing Memo No. 199 dated 23.8.2013 impugned at Annexure-31 and which order has been affirmed by the Appellate Authority vide order bearing Memo No.207 dated 31.1.2014 impugned at Annexure-35 and even the memorial preferred by the petitioner has been rejected by the Director General of Police, Bihar, Patna vide Annexure-38 as well as the second memorial preferred by the petitioner has been rejected vide Annexure-42. Feeling aggrieved that he is before this Court.

The issues raised by Mr. Singh, learned counsel appearing



for the petitioner to question the proceeding is that:

- (a) The initiation of proceeding is in violation of rule 17(2) of 'the Disciplinary Rules' which mandates a satisfaction by the Disciplinary Authority for initiation of proceeding.
- (b) The proceeding was initiated under the order of the Senior Superintendent of Police, Patna while the Disciplinary Authority of the petitioner is the Inspector General of Police (Administration). The very initiation by an authority who is not competent to do so, is illegal.
- (c) The charge memo is in violation of rule 17(3) of 'the Disciplinary Rules' as it has not been framed by the competent authority and thus is fit to be struck down in view of the law laid down by the Supreme Court at paragraphs 40, 41 and 42 of the judgment rendered in the case of **B.V.. Gopinath** (supra).
- (d) There was no formal communication to the petitioner about the initiation of the proceedings.
- (e) The order of dismissal has been passed without holding any enquiry inasmuch as since after remand of the matter by the Deputy Inspector General of Police vide order dated 26.9.2012 present at Annexure-24 requiring



the Enquiry Officer to give opportunity to the petitioner to participate, the report, if any, has been submitted without discharging the obligation wholly arbitrarily in spite of the intimation being given regarding the petitioner being engaged in cancer treatment of his mother.

- (f) The documents have not been supplied.
- ((g) The order has been passed by the statutory authority without supply of enquiry report.
- (h) The second show cause was asked by the Senior Superintendent of Police and not by the Deputy Inspector General of Police who has passed the order of dismissal.
- (i) The enquiry report was never served on the petitioner.
- (j) No Presenting Officer was appointed for the proceedings.
- (k) Since the departmental proceeding is resting exclusively on the criminal case, the respondents should have awaited the judgment in the criminal case.

The argument of Mr. Bindhyachal Singh, learned counsel appearing for the petitioner has been contested by Mr. Anjani Kumar, learned Additional Advocate General No.4 whose argument



has primarily revolved around the gravity of charges facing the petitioner. It is submitted that the petitioner was caught red-handed while accepting bribe from the complainant who has been examined during the course of the disciplinary proceedings and thus there is nothing further to do in a departmental proceeding which is to be decided on the basis of preponderance of probability.

He submits with reference to pre-trap and post-trap memorandum enclosed with the writ petition that a complaint was made to the Vigilance Investigation Bureau regarding the alleged misconduct of the petitioner in demanding illegal gratification and whereupon a pre-trap memorandum was made. The petitioner brazenly demanded money which was handed over to him by the complainant under the trap laid down by the vigilance and no sooner did the petitioner accept the amount that he was trapped by the vigilance official leading to his arrest. According to Mr. Kumar, where the fact itself speaks of the situation, a mere lacuna here and there in the departmental proceeding would not be sufficient for grant of interference. It is submitted that the petitioner never raised objection either on the initiation, the framing of charge, the non-appointment of the Presenting Officer at any stage of the proceedings and thus it is only a ploy to prolong a decision.

In response to the complaint made by the petitioner



regarding non-supply of documents, learned counsel has referred to charge memo at Annexure-6 to submit that the margin note itself shows that all the papers were received by the petitioner. Learned counsel has referred to a letter of the Senior Superintendent of Police addressed to the Jail Superintendent enclosed at Annexure-7 to the writ petition to submit that the petitioner has accepted that the documents have been supplied to him but having admitted the position there is an insertion in different pen raising the issue of non-supply of letter dated 7.5.2010 of the Sub-Divisional Police Officer. Referring to the grounds present in the memo of appeal enclosed at Annexure-34 he submits that the grounds nowhere raised the issue of any statutory violation.

The learned Additional Advocate General has made reference to the records of the disciplinary proceedings produced by him following the order of this Court to submit that day to day proceedings stands noted and no complaint can be made by the petitioner of denial of opportunity. According to the learned State Counsel, it is the Deputy Inspector General of Police who is the appointing authority of the petitioner as confirmed from Appendix 84, Volume III of the Bihar Police Manual which confers power of dismissal on the Deputy Inspector General of Police. He submits that in such view of the matter a mere instance of signing the



appointment order by the Inspector General of Police would not shift this legal position.

Learned counsel has referred to a judgment of the Supreme Court reported in **AIR 2012 SC 2250 (Secretary, Min. of Defence vs. Prabhash Chandra Mirdha)** and in reference to paragraphs 4, 6, 11 and 13 submits that a gravity of charge is also a relevant factor in such proceeding. In reference to the judgment in **B.V. Gopinath** (supra) he submits that although the Bench had noted the judgment in case of **Prabhash Chandra Mirdha** (supra) but no comment has been offered thereon. In reference to another judgment of the Supreme Court reported in **(2016) 9 SCC 20 (Brajendra Singh Yambem vs. the Union of India)** more particularly paragraph 53 he submits that a gravity of charge is a relevant factor in such trap case and technical flaw would not be sufficient to set aside an order passed on such misconduct. He submits in reference to the case of **Brajendra Singh Yambem** (supra) that the Supreme Court did not grant indulgence even after noticing the procedural lapse. Learned counsel has referred to another judgment of the Supreme Court since reported in **(2016)1 SCC 488 (Jagadish Lal Gambhir vs. Punjab National Bank)** and with reference to paragraphs, 10, 11, 14, 16 and 21 he submits that it is too late for the petitioner to challenge the charge-sheet, once



the disciplinary proceeding has concluded and the petitioner has participated without objections.

The sum and substance of the argument of Mr. Anjani Kumar, learned Additional Advocate General No.4 is that even if there is some kind of procedural lapse in holding the departmental proceedings but since the charge facing the petitioner is an open and shut case, the procedural lapse would not dilute the charge which itself is sufficient to uphold the punishment.

I have heard learned counsel for the parties and I have perused the records.

Not for a moment I would disagree with the concern shown by Mr. Anjani Kumar, learned Additional Advocate General No.4 on the State's endeavour to weed out corrupt Government servant including those in the uniformed services. The Courts would certainly not come in the way of the State's determined effort in weeding out corrupt public servants but then any action in this regard has to be in accordance with the lawful procedure. There again cannot be any compromise on this principle. A charge of corruption is a rather serious charge and if confirmed in a disciplinary proceeding or a judicial proceeding, the opinion expressed by the presiding authority cannot be interfered with on misplaced sympathy. However, an extreme charge of such nature



warrants an extreme action and there cannot be any dispute on the principles. Having expressed my opinion on contest founded on corrupt practices, it is equally important to record that any act initiated by the State in this direction should be lawful and by following the prescribed statutory procedure. It is not on mere whims and fancies that any opinion should be formed by the disciplinary authority merely on the seriousness of charge rather before any final opinion is expressed on the charge, the Disciplinary Authority is under a lawful obligation to follow the procedure prescribed under the service rules.

Adverting to the issue in hand, it is a matter of record that the petitioner was allegedly apprehended accepting illegal gratification from the complainant. The arrest of the petitioner by the vigilance officials led to institution of the vigilance case as already noted above which is pending consideration in judicial proceedings. Alongside a disciplinary proceeding has been initiated on the charge so framed by the Senior Superintendent of Police, Patna, a copy of which is enclosed at Annexure-6 to the writ petition. The sequence of events has already been discussed in extenso by me hereinabove and I would not be repeated the same. I would also not be entering into the merit of the contest even though extensively argued by the contesting parties. The reasons for not



doing so is plain and simple and which is that the disciplinary proceeding is marred by statutory violation right from the stage of drawing of a charge memo until its culmination in the order of dismissal as affirmed by the superior authorities.

A disciplinary proceeding is said to be initiated upon service of a charge memo as mandated under rule 17(3) of 'the Disciplinary Rules' which inter alia enables the Disciplinary Authority to draw a charge memo or cause it to be drawn by a competent authority and which charge memo should inter alia contain:

- (a) the substance of the imputations of misconduct or misbehaviour as a definite and distinct article of charge; and
- (b) a statement of imputations of misconduct or misbehaviour in support of each article of charge and which shall contain:
 - (i) a statement of all relevant facts including any admission or confession of the Government Servant;
 - (ii) a list of such document(s) on which, the article of charges are proposed to be sustained.

Rule 17(4) of 'the Disciplinary Rules' again casts and obligation on the Disciplinary Authority to deliver such charge



memo on the Government Servant concerned, and require him to submit a written statement of defence as well as to state whether he desires to be heard in person.

It is only when the Disciplinary Authority is not satisfied by the explanation given by the delinquent in the manner provided under rule 17(4) that a discretion is vested in him under rule 17(5) to hold a formal proceedings and either enquire into the allegation himself or to appoint an enquiry authority. It further provides that if the charges are admitted by the Government Servant, the disciplinary authority shall record his finding on each charge after taking evidence as it thinks fit.

Rule 17(6) obliges the Disciplinary Authority, where it chooses to delegate the power of enquiry to an inquiring authority, to forward a copy of the enquiry report, the written statement of defence, if any; the copy of the statement of witnesses, if any; the evidence proving the delivery of documents and copy of the order appointing the Presenting Officer, to the inquiring authority.

It is once this exercise is complete that the onus shifts on the inquiring authority to proceed in the manner prescribed.

Rule 17 of the 'Disciplinary Rules' provides a complete scheme for holding a disciplinary proceeding by the Disciplinary Authority either by himself or by the inquiring authority as the case



may be and sub-rule (14) thereof mandates that on the date fixed for inquiry, the oral and documentary evidence by which the article of charges is proposed to be proved, shall be produced by or on behalf of the disciplinary authority and the witnesses shall be examined by or on behalf of the Presenting Officer. The Presenting Officer has also been vested with the right to re-examine the witnesses on any points. The discretion is also given to the inquiring authority to put such question as deem fit. It is after holding the enquiry in the manner so prescribed that a report is to be submitted under rule 17(23) by the inquiring authority to the Disciplinary Authority.

In my opinion despite the legal position being so clear under the procedure provided under rule 17 for holding a disciplinary proceeding, it has been given a complete go-bye by the respondents in the present proceedings. Perhaps they need to address themselves afresh on the procedure.

I would now deal with issues raised and contested.

Re: Invalidity in the framing of charge:

Rule 2(f) of 'the Disciplinary Rules' defines an appointing authority and inter alia under sub-rule (iii) includes the authority who has appointed the Government servant to such service. The appointment order thus having been issued under the signature of the Inspector General of Police, he would be the appointing



authority of the petitioner in terms of rule 2(f) (iii) of 'the Disciplinary Rules'.

Rule 2(j) of 'the Disciplinary Rules' defines a Disciplinary Authority to mean the appointing authority or any other authority authorized by it who shall be competent under these Rules to impose on a Government servant any of the penalties provided under rule 14 of the Rules.

Rule 16 of 'the Disciplinary Rules' is the other relevant rule in the present context inasmuch as it provides for the authority to institute a proceeding and inter alia empowers the Government or the appointing authority or any authority to which the appointing authority is subordinate or any other authority empowered by general or special order of the Government, to institute disciplinary proceeding against a Government servant or direct a disciplinary authority to institute disciplinary proceeding.

A careful reading of the three provisions leaves no room for confusion that it is either the appointing authority or any authority authorized by it or an authority authorized by special or general order, who would be competent to initiate a disciplinary proceeding against a Government servant.

In so far as the case in hand is concerned it is the Senior Superintendent of Police, Patna who has initiated the proceeding



against the petitioner by service of charge memo placed at Annexure-6 and which also directs the petitioner to file his reply before the Senior Superintendent of Police but then in absence of any authorization given to the Senior Superintendent of Police either under the Bihar Police Manual or by the Inspector General of Police being the appointing authority or the Deputy Inspector General of Police being the Disciplinary Authority to initiate the process, the very initiation is without jurisdiction.

The judgment of the Supreme Court rendered in the case of **B.V. Gopinath** (supra) lays down the law on the issue of initiation of a disciplinary proceeding by a competent authority. Mr. Anjani Kumar though made reference to an unreported judgment rendered by a coordinate Bench of this Court in CWJC No.15687 of 2015 (**Shailendra Kumar Vs. The State of Bihar**) to submit that a clear distinction has been made by the Bench in between the provisions of rules 14 and 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 which fell for consideration before the Supreme Court qua the provisions of 'the Disciplinary Rules' which are in consideration before this Court as well as on the judgment of the Supreme Court rendered in the case of **Prabhash Chandra Mirdha** (supra), to canvass that a proceeding can be initiated by an authority other than the



Disciplinary Authority but in my opinion the reliance would be of no help to the respondents.

There cannot be a contest on the legal proposition that a disciplinary proceeding can only be initiated by an authority competent to do so and even the judgment relied upon by Mr. Anjani Kumar in the case of **Prabhash Chandra Mirdha** (supra) at paragraph 13 would confirm this position which holds thus:

“Thus, the law on the issue can be summarized to the effect that charge-sheet cannot generally be a subject-matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the charge-sheet be quashed at an initial stage as it would be a premature stage to deal with the issues. Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings.”

(Emphasis is mine)

Re: Presenting Officer:

The illegality does not stop here rather a plain reading of such initiation vide Annexure-6 would show that there is no appointment of a Presenting Officer rather the Enquiry Officer himself has acted as the Presenting Officer to examine the



documents which is a usurpation of jurisdiction vested under rule 17(14) of 'the Disciplinary Rules' on the Presenting Officer. Rule 17(14) casts a mandatory duty on the Presenting Officer to lead evidence and examine the witnesses which has not been discharged instead the Enquiry Officer has taken this duty upon himself. This usurpation of responsibility vested in a Presenting Officer, by the Enquiry Officer has been deprecated and reference in this regard is made to a judgment of the Supreme Court reported in **(2010) 2 SCC 772 (State of Uttar Pradesh vs. Saroj Kumar Sinha)**. At paragraph 28 of the judgment the Supreme Court has the following words of advise for the enquiry officer:

“28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the un rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.”

In continuation I would also refer to a judgment reported in **1996 (1) PLJR 401 (Panchanan Kumar vs. The Bihar State Electricity Board)** in which case though a Presenting Officer was appointed but he failed to discharge his obligation and in his



absence his role was assumed by the Enquiry Officer. The opinion of the Bench at paragraph 11 of the judgment would be relevant for the issue at hand:

“11. Considering the rival contentions of the parties, this Court is of the opinion that in the instant case the inquiry has been vitiated inasmuch as the enquiry officer himself has acted as the presenting officer even though the presenting officer was appointed by the Electricity Board. There is no explanation why the said presenting officer did not appear before the enquiry officer to present the case of the department. In the peculiar facts of this case, the action of the enquiry officer to present the case himself on behalf of the department and also to take upon himself the duty of enquiring the correctness or otherwise of the said case clearly shows that the enquiry officer, in the instant case, has failed to discharge his duty as a fair and impartial enquiry authority. He has rolled up within himself the role of both the presenting officer and the enquiry officer and as such has acted in a manner which is not consistent with the principles of natural justice.” .

It is undisputed that there was no Presenting Officer present either to lead or to prove the evidence whatsoever, collected against the petitioner. The Enquiry Officer in such circumstances could not have assumed this duty upon himself to examine the evidence to hold it sufficient enough for upholding the charges.

In this connection I would again refer to paragraph 14 of the judgment of the Supreme Court reported in **(2009)2 SCC 570 (Roop Singh Negi v. Punjab National Bank)** which would again apply on all fours in the present case:



"14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence."

The discussions above would confirm that the orders impugned are resting on a proceeding which suffers from multiple statutory violations. The law is very clear on the issue and where orders put to challenge, are founded on a proceeding which defaults on the mandatory prescribed procedure, the entire proceedings stands vitiated for once the foundation on which the orders are resting is removed, the edifice built thereon has to collapse.

For the reasons and discussions above, the entire proceedings drawn against the petitioner beginning with framing of the charge memo at Annexure-6 together with the enquiry report, the order of dismissal impugned at Annexure-31, the appellate order impugned at Annexure- 35, the orders on the memorial passed by the Director General of Police at Annexure-38 and the dismissal



of the memorial by the State Government vide Annexure 42 cannot be upheld and are accordingly quashed and set aside.

The petitioner stands reinstated to his post with 50% back wages.

This order, however, would not preclude the respondent authorities of the State in its Home (Police) Department to proceed afresh against the petitioner but in accordance with law and in conformity with the lawful procedure provided under ‘the Disciplinary Rules’.

The writ petition is allowed.

Let the records of the departmental proceedings produced by Mr. Anjani Kumar, learned Additional Advocate General No.4 be returned to him.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	22-08-2017
Transmission Date	NA

