

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.22377 of 2013**

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Narangi Baitha, son of Late Deo Lal Baitha, Resident of Village- Mahmudur ,  
P.S. Punpun, District- Patna at present Mohalla- East Sipara, P.S.  
Phulwarisharif, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through The Director General of Police, Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Inspector General of Police, Patna Zone, Patna.
4. The Deputy Inspector General of Police, Magadh Range, Gaya.
5. The Superintendent of Police, Aurangabad.
6. The Enquiry Officer-Cum-Deputy Superintendent of Police, Sadar, Aurangabad.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Vinay Ranjan  
For the Respondent/s : Mr. Devendra Kr Sinha

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**CORAM: HONOURABLE MR. JUSTICE S. KUMAR**

**ORAL JUDGMENT**

**Date : 27-06-2018**

Heard the parties.

2. This writ petition under Article 226 of the Constitution of India has been filed to quash the order No. 535 dated 10.02.2012 passed in Aurangabad District Departmental Proceeding No. 42 of 2010 passed by the Deputy Inspector General of Police, Magadh Range, Gaya by which petitioner has been dismissed from Bihar Police Service and order dated 06.12.2012 passed by Zonal Inspector General of Police, Patna Zone, Patna, the appellate authority dismissing the appeal of petitioner and order



dated 30.04.2013 passed by the Director General of Police, Bihar, Patna by which memorial filed by petitioner was rejected.

3. Briefly stated, the facts of the case is that petitioner was posted as Officer-in-Charge at Kasma Police Station, Aurangabad, a case bearing Kasma P.S. Case No. 12/2010 was instituted and he was the investigating Officer of that case.

4. Devendra Giri filed a written complaint before the Vigilance Police Station, Patna stating therein that marriage of his sister was solemnized 10 years before and his brother in law became ill. Family members of his brother in law demanded Rs. 1 lac from his sister and due to non-fulfillment of which she was being tortured and he was subsequently informed that his brother in law was killed by his family members and with such allegation an FIR was lodged before Kasma Police Station, Aurangabad.

5. Three accused were arrested and informant contacted the Officer-in-charge who was the I.O. also of the Case and he demanded bribe to write favourable case diary and informant paid him Rs. 3000/- but was not willing to



pay any more.

6. Complaint was verified by a Constable of Vigilance Department and pre-trap memorandum was prepared and thereafter trap team arrested petitioner from police station and brought him to Vigilance Police Station, Patna and was produced before the Special Judge, Patna from where he was sent to judicial custody. After investigation the Vigilance police submitted charge sheet against the petitioner dated 10.06.2010. Superintendent of Police, Vigilance Investigation Bureau, Patna by letter dated 03.08.2010 sent the copy of FIR and charge sheet to the Superintendent of Police, Aurangabad for initiation of departmental proceeding.

7. Departmental proceeding was initiated against petitioner and memo of charge dated 29.11.2010 containing three charges was served and a show cause was asked from petitioner. He filed his defence statement on 15.12.2010 and stated that since charges in departmental proceeding and criminal proceeding are identical and are to be proved by same set of evidence as such departmental proceeding may be stayed till completion of criminal case.



8. It is now well settled that departmental proceeding and criminal proceeding can be continued simultaneously even though the charges in departmental proceeding and criminal proceeding are same and is to be proved by same set of evidence as charges in criminal proceeding is to be proved beyond reasonable doubt whereas in departmental proceeding charges are to be proved on basis of preponderance of probabilities.

9. The respondents have produced the original records of departmental proceeding before this Court and from perusal of which it appears that petitioner was arrested by Vigilance Bureau on 16.04.2010 at 7.30 A.M. and was produced before the Special Court (Vigilance), Patna from where he was remanded to judicial custody and he was put under suspension from 16.04.2010 by order dated 07.05.2010 of Superintendent of Police. The suspension was revoked on 14.10.2010 after release on bail.

10. Memo of charge dated 29.11.2010 was issued by Superintendent of Police, Aurangabad alleging petitioner indulging him in corrupt and immoral act,



dereliction of duty and unbecoming of a public servant. The article of charges were (i) On 16.04.2010 while posted as Officer-in-Charge, Kasma Police Station in Kasma P.S. Case No. 12/10 he was arrested accepting bribe of Rs. 9000/- by the Vigilance Trap Team giving rise to Vigilance P.S. Case No. 28/10 punishable under different Sections of Prevention of Corruption Act. (ii) In Kasma P.S. Case No. 12/10 he demanded Rs. 10,000/- as bribe to write favourable case diary which is immoral and against conduct rules of public servant. (iii) He was put under suspension on 16.04.2010 on allegation of accepting bribe (iv) After investigation made in Vigilance (Patna) P.S. Case No. 28/10 under different Sections of Prevention of Corruption Act, Charge sheet No. 46/10 dated 10.06.2010 was submitted against him in the court of Special Judge and he was asked to submit his explanation against the memo of charge within 15 days and he submitted his defence statement dated 15.12.2010 but same was not found to be satisfactory.

11. To prove the charges 11 witnesses were examined on behalf of department and 8 documentary



evidences (marked as exhibit 1 to 8) were also produced.

12. The Enquiry Officer SDPO, Sadar Aurangabad was appointed as Enquiry Officer and he issued notices to witnesses and charge sheeted employee (petitioner) to appear on the date fixed for enquiry on 07.10.2011. Petitioner appeared and submitted his preliminary defence statement.

13. PW-1 Babul Ji Verma, Crime Reader in the office of Superintendent of Police, Aurangabad in his deposition on 07.10.2011 has stated that in the departmental proceeding No. 42/10 against chargesheeted employee (petitioner) order of suspension was passed by then Superintendent of Police, Aurangabad and he has identified the signature of S.P. on suspension order and on memo No. 3085 with FIR which has been marked as Exhibit No. 1.

14. The venue of Departmental Proceeding was shifted at Patna in the office of Vigilance Investigation Bureau and was continued there and next date of proceeding was fixed on 08.11.2011 at 10.30 AM.

15. P.W.-2 - complainant Devendra Giri appeared on 08.11.2011 and stated in his deposition that his sister



was married 10 years before and on 21.03.2010 his brother-in-law was killed by his family member by administering poison to him for which his sister instituted a case being Kasma P.S. case No. 12/10 and three accused persons were arrested by the I.O. and he always used to demand money from him and threatened that if he does not give bribe to him he will spoil the case and demanded Rs. 10,000/- but he was not in a position to give said amount in bribe and filed a complaint on 13.04.2010 in the Vigilance Police Station, Patna. Complaint was verified by Constable Indrajeet Singh and he alongwith constable Indrajeet Singh went to Kasma Police Station on 15.04.2010 at about 8.00 AM and gave Rs. 1000/- to chargesheeted employee (petitioner) in presence of Constable Indrajeet Singh and agreed to give remaining Rs.9000/- on 16.04.2010 and thereafter a trap team was constituted and chargesheeted employee (petitioner) was arrested by the Vigilance Police trap team red handed with Rs. 9000/- as bribe money (on which Phenolphthalein powder was spread) from complainant in presence of Constable Indrajeet Singh and two independent witnesses and was thereafter arrested and



produced before Special Judge, Vigilance, Patna and sent to judicial custody. He has proved Exhibit Nos. 6 and 8. He was cross-examined by the chargesheeted employee (petitioner).

16. PW-3 Hari Mohan Shukla, Dy. SP, Vigilance Bureau and I.O. of the Vigilance Case in his deposition on 08.11.2011 stated that he was made I.O. of Vigilance Case No. 28/10 on 16.04.2010 and recorded statement of Maharaja Kanishk Kumar, head of the trap team, complainant Devendra Giri, verifier Inderajeet Singh, and other members of trap team. Seized articles by trap team were also made available to him which were kept in Malkhana. He also recorded the defence of petitioner and in course of investigation sent the seized articles to forensic lab, Patna for chemical examination after permission granted by Special Court and after completion of investigation found the case to be true and submitted charge sheet against petitioner on 10.06.2010, after receiving sanction for prosecution against petitioner by the competent authority. He was cross-examined by petitioner.

17. PW-4 Bhola Singh in his deposition on



08.11.2011 stated that he is witness of seizure list and pre-trap and post-trap memorandum which were prepared in his presence. He saw Rs. 9000/- bribe money recovered from right pocket of pant of chargesheeted employee (petitioner). He was cross-examined by petitioner.

18. P.W.-5- Dilip Kumar is Assistant Sub-Inspector of Police (Vigilance). PW.6 Md. Sarbar Khan is Sub-Inspector of Police (Vigilance). PW-7 – Rashid Imam is Constable (Vigilance). PW-8 Amarnath Singh is Police-Inspector (Vigilance) P.W.- 9 Maharaja Kanishk Kumar is Dy.S.P. (Vigilance) and In-charge of trap team and P.W. 5 to PW-8 were members of trap team who have deposed before the Enquiry Officer in support of charges. All witnesses of police (Vigilance) who were members of trap team have stated in their deposition that a trap team was constituted on 15.04.2010 under leadership of Maharaja Kanishk Kumar, Dy.S.P. and a Sanha No. 180 dated 15.04.2010 was lodged by the Dy.S.P. A meeting of trap team was conveyed on 15.04.2010 in which all members of trap team and complainant were present. Verifier constable Indrajeet Singh introduced complainant to everyone and



informed that chargesheeted employee (petitioner) had demanded remaining bribe money of Rs. 9000/- on 16.04.2010 and pre-trap memorandum was prepared and on 15/16 night trap team proceeded from Patna to Kasma Police Station on two government vehicles and stopped 1 KM away from Kasma P.S. on 16.04.2010 at about 7.00 AM and proceeded towards Kasma P.S. and on receiving indication from verifier entered P.S. and surrounded chargesheeted employee (petitioner) and was arrested with bribe money of Rs. 9000/- kept in right side pocket of pant and was recovered in presence of two independent witnesses by In-charge of trap team and Number of notes was same as recorded in pre-trap memorandum and on rinsing the fingers of chargesheeted employee (petitioner) and right side pocket of pant in solution of sodium carbonate same turned pink and solution were seized and marked as Exhibits- B,C and D. Post-trap Memorandum was prepared in police station on which independent witnesses, members of trap team and chargesheeted employee put their signature. All witnesses have been cross-examined by the chargesheeted employee



(petitioner).

19. PW-8 is Constable Indrajeet Singh who in his deposition on 10.11.2011 has stated that he received the complaint of Devendra Giri by the Officer-in-Charge of police station and he was asked to submit his verification report on said complaint and on 15.04.2010 at 8.00 AM reached Kasma Police Station alongwith complainant and petitioner demanded 10,000/- to write favourable diary and Rs. 1000/- was paid in his presence and remaining 9000/- was to be paid on the next date and he submitted his verification report in the Vigilance Head quarter, upon which trap team was constituted. The trap team left for Kasma and he alongwith complainant went to police station and on demand made by chargesheeted employee (petitioner) Rs. 9000/- was given to him by the complainant and trap team which was near the police station came and arrested him with bribe money and was produced before the Special Judge and was sent to Judicial Custody. The bribe money was recovered from the pocket of petitioner in presence of two independent witnesses and seizure list was prepared. He has been cross-examined by the



chargesheeted employee (petitioner).

20. The documentary evidences which has been marked as Exhibit to prove the charges are Exhibit-1, letter dated 03.08.2010 of Superintendent of Police, Vigilance Department addressed to Superintendent of Police, Aurangabad. Exhibit-2 charge sheet dated 10.06.2010 submitted against petitioner. Exhibit-3 Gist of the case prepared by Hari Mohan Shukla alongwith sanction for prosecution. Exhibit-4 Action taken report of trap team dated 16.04.2010. Exhibit-5 Verification report submitted by Indrajeet Singh dated 15.04.2010. Exhibit-6 Pre-trap memorandum dated 15.04.2010 prepared by Maharaja Kanishk Kumar Dy. SP-cum-in-charge of Trap Team. Exhibit-7 Post trap memorandum dated 16.04.2010 prepared by Maharaja Kanishk Kumar, Dy.SP-cum-in-charge of trap team. Exhibit-8 Complaint petition dated 13.04.2010 of Devendra Giri.

21. After all evidences were led, Enquiry Officer directed petitioner to submit his final statement of defence and same was submitted by chargesheeted employee (petitioner) on 22.11.2011. Petitioner was granted full



opportunity to cross-examine witness and lead his defense.

22. The Enquiry Officer considered the case of department and defence of petitioner and prepared a enquiry report after considering and appreciating the oral evidences as well as documentary evidences adduced by the parties before him and after a detailed consideration by a well reasoned and speaking order found the charges to be proved against petitioner and thereafter submitted his report to the Superintendent of Police, Aurangabad.

23. This Court finds that enquiry was conducted by the Enquiry Officer in a proper manner of a departmental proceeding arising out of trap case. The memo of charge contained names of material witnesses and relevant documentary evidence. Department has led oral evidence as well documentary evidence which are relevant to prove the charges. The department has produced material witnesses and eye witnesses to prove the charges and has also produced documentary evidences which has been proved before the Enquiry Officer by competent persons which makes the contents of document admissible in evidence. All members of trap team were rightly made



witnesses as they were the best witness to prove the charges of bribery. The Enquiry Officer has considered the defense of petitioner and the materials adduced before him in a fair and objective manner and has come to conclusion that charges against petitioner stands proved and this Court does not find any infirmity in conduct of enquiry proceeding or findings of Enquiry Officer.

24. The Superintendent of Police by his order dated 16.01.2012 has found petitioner guilty of the charge and recommended to the D.I.G. to dismiss petitioner from the service. From the record as produced and statement made in counter affidavit it appears that the copy of Enquiry report was not served upon the petitioner and no 2<sup>nd</sup> show cause notice was issued to the petitioner with respect to adverse finding recorded by the Enquiry Officer.

25. The Superintendent of Police thereafter sent the record of departmental proceeding to the D.I.G., Magadh Range, Gaya alongwith enquiry report with recommendation to dismiss petitioner from service and D.I.G. Police, Magadh Range, Gaya issued show cause to petitioner dated 19.01.2012 with respect to punishment of



dismissal from service and petitioner submitted his reply to the show cause and thereafter D.I.G., Magadh Range, Gaya by his order dated 09.02.2012 dismissed petitioner from service. The appeal preferred by petitioner was dismissed by Zonal I.G., Patna by order dated 06.12.2012 and memorial was dismissed by Director General of Police by his order dated 30.04.2013.

26. The validity and legality of the departmental proceeding as well order passed by Departmental Authority has been assailed by counsel for the petitioner on the ground that proceeding against petitioner has been initiated by the Superintendent of Police and charges has also been framed by him although he is not the appointing/disciplinary authority of petitioner and D.I.G. of Police is the appointing/disciplinary authority of the petitioner and decision to initiate departmental proceeding can be taken by him and charges are also to be approved/framed by him and since neither the decision to initiate departmental proceeding against petitioner nor charges has been framed/approved by him, whole departmental proceeding stands vitiated.



27. Rule 824 of Bihar Police Manual contains punishments which can be imposed on a subordinate police officer of and below the rank of Inspector. Rule 824 A prescribed procedure to be followed against non-gazetted police officers (S.I./A.S.I.) under Bihar Subordinate Services (Discipline and Appeal) Rules 1935 but same has been repealed by Bihar Government Servants (CCA) Rules, 2005 which is in vogue and is to be followed. The Police Department should be made aware/acquainted with CCA Rule 2005 as they are still following procedure under Repeal Rules of 1935 and Court of law is left with no option but to set aside the departmental proceeding for non-compliance of mandatory provisions of 2005 Rules, even though, charges are grave.

28. Rule 825 empowers officer who can impose punishment on Subordinate Police Officers. According to clause (C) Deputy Inspector General can impose any punishment in the rank of Sub-Inspector/Assistant Sub-Inspector, including dismissal/removal. Clause (D) provides that S.P. can also impose punishment in the rank of Sub-Inspector/A.S.I. except dismissal/removal and



compulsory retirement.

29. On careful reading of Rule 825 and 825A it can be safely inferred that D.I.G. is competent to take decision regarding initiation of departmental proceeding against Sub-Inspector. He can either frame charge himself and appoint Enquiry Officer and Presenting Officer and in such cases enquiry report will be submitted to him and he will issue 2<sup>nd</sup> show cause notice and after considering reply of delinquent will pass final order OR he can direct the S.P., if charges are not grave, to frame charge and after its approval by him memo of charge will be issued by S.P. and he will appoint enquiry Officer and Presenting Officer and enquiry report will be submitted to S.P. who will issue 2<sup>nd</sup> show cause notice and after considering reply of delinquent will pass final order and if he finds that proved charges entail punishment of dismissal/removal/compulsory retirement then he will sent the file to the D.I.G. who will pass the final order.

30. The order passed by the departmental authorities is further assailed by the counsel for the petitioner on the ground that no presenting officer was appointed by the



Disciplinary Authority and the Enquiry Officer functioned as Enquiry Officer as well as Presenting Officer and in view of judgment passed by this Court non-appointment of Presenting Officer by Disciplinary Authority whole proceeding stands vitiated, for non-compliance of mandatory provision of rule 17 as held in Uday Pratap Singh vs. State of Bihar reported in 2017 (4) PLJR 195.

31. It has been further argued that no 2<sup>nd</sup> show cause notice was issued to petitioner alongwith copy of Enquiry Report so that he could file reply against the adverse findings of Enquiry Officer before the Disciplinary Authority and Disciplinary Authority would have considered his reply before he could arrive at the final conclusion with respect to guilt of petitioner and on this score also departmental proceeding is fit to be set aside.

32. After hearing the parties and considering the materials available on record this Court finds that D.I.G. is the Disciplinary Authority/Appointing Authority of petitioner as such the decision to initiate proceeding against petitioner was to be taken by him and memo of charge should be framed/approved by him which has not been



done in this case.

33. From the records of the case it appears that no Presenting Officer was appointed by the Disciplinary Authority and Enquiry Officer functioned as Enquiry Officer as well as Presenting Officer.

34. From the records it appears that no copy of enquiry report was given to petitioner so that he could give his reply against the adverse findings of Enquiry Officer and persuade the Disciplinary Authority that finding recorded by Enquiry Officer is not correct. Non service of enquiry report to petitioner is a procedure infirmity and non compliance of mandatory provisions of 2005 Rules and vitiates the enquiry proceedings. The counsel for the petitioner has relied upon the judgment in the case of Uday Pratap Singh Vs. The State of Bihar through Chief Secretary & Ors. Reported in 2017 (4) PLJR 195, State of Uttar Pradesh & Ors. Vs. Saroj Kumar Sinha reported in (2010) 2 SCC 772 and Ravindra Nath Singh Vs. Bihar State Road Transport Corporation & Ors. reported in 1996 (2) PLJR 95.

35. The facts of present case is similar to case



decided in Uday Pratap Singh Vs. The State of Bihar through Chief Secretary & Ors. since reported in 2017(4) PLJR in which also Sub-Inspector of Police was dismissed by S.P. in bribe case and this Court set aside whole Enquiry proceeding and present case is fully covered by this case and suffers from same infirmity and irregularity.

36. As a result this court is left with no option but to set aside the order No. 535 dated 10.02.2012 passed in Aurangabad District Departmental Proceeding No. 42 of 2010 passed by the Deputy Inspector General of Police, Magadh Range, Gaya and order dated 06.12.2012 passed by Zonal Inspector General of Police, Patna Zone, Patna and order dated 30.04.2013 passed by the Director General of Police, Bihar, Patna as well as whole enquiry proceeding. However, since the proceeding is being set aside on account of technical flaw and procedure infirmity and not on merit as such no order for back wages is made. Since petitioner has already retired from service there cannot be any order of reinstatement. Petitioner is entitled for all retirement benefits including pension, gratuity, leave encashment and other retiral benefits due to him.



37. This order will not preclude the Disciplinary Authority to initiate fresh proceeding against the petitioner in accordance with law.

38. This writ petition stands allowed.

39. The original records of departmental proceeding produced by the counsel for the State shall be returned to him forthwith.

**(S. Kumar, J)**

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