

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8955 of 2015

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Arun Kumar Jha Son of Late Dhaneshwar Jha, At present Sub-Inspector of Police
(Under Suspension), New Police Line, Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Deputy Superintendent of Police - Cum- Departmental Proceeding
Conducting Officer, Patna.
3. The Senior Superintendent of Police, Patna.
4. The Superintendent of Police (A), Special Branch, Bihar, Patna.
5. The Superintendent of Police (B), Special Branch, Bihar, Patna.
6. The Deputy Inspector General of Police (Headquarter), Bihar, Patna.
7. Md. Ali Ansari, the Deputy Superintendent of Police, Patna Trap In-charge,
Vigilance Bureau, Patna Region, atna, Camp- Danapur.
8. The Police Inspector - cum- Station House Officer (SHO), Danapur, Patna.
9. Inspector General of Police Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Yogendra Mishra, Sr. Advocate
Mr. Uma Kant Tiwary, Advocate

For the Respondent/s : Mr. H.S. Roy, AC to AG

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 30-04-2018

At the very outset counsel for the petitioner prays that he
may be permitted to implead the Inspector General of Police as
respondent no. 9 to the instant writ petition.

2. Prayer of the petitioner is allowed.

3. He may do so during course of the day.

4. Heard learned counsel for the petitioner and learned
counsel for the respondent- State.

5. The writ petition has been filed seeking quashing of
the entire departmental proceedings based on the charges contained in



memo no. 13060 dated 18.12.2014 issued by the respondent no. 4. The order of punishment dated 10.08.2015 issued by the Deputy Inspector General of Police (hereinafter referred to as the 'DIG'). Communication under memo no 9697 dated 12.08.2015 has also been challenged by way of Interlocutory Application bearing I.A. No. 6819 of 2018.

6. Submission made on behalf of the petitioner's counsel is that the proceedings having been conducted by the DIG are vitiated since the DIG is not the appointing authority of the petitioner. The appointment order of the petitioner dated 26.08.2013 issued by the Inspector General of Police (for short 'IG) which is Annexure 11 to the instant proceedings has been relied upon to submit that though the appointing authority of the petitioner is IG of Police, the petitioner's services have been terminated by a Lower Authority under impugned order dated 10.08.2015 by the DIG, who is not competent to impose the punishment upon the petitioner and as such the entire proceedings conducted against the petitioner stand vitiated as being conducted by incompetent authority.

7. It is submitted that the entire procedure is contrary to the constitutional mandate under Article 311 of the Constitution of India. It is also submitted on behalf of the petitioner that the law in this regard has been laid down by a judgment passed in the case of



Union of India & Ors vs. B.V. Gopinath reported in **2014 (1) SCC 351**. Referring to the said judgment it is submitted that even the charge memo was required to be issued by the appointing authority being the IG and as such the entire proceedings right from initiation by issuing charge memo dated 18.12.2014 by the Senior Superintendent of Police up till the impugned order of punishment dated 10.08.2015, are unsustainable.

8. The counsel for the State, on the other hand, submits that the issue has now been decided by a judgment of the Division Bench of this Court passed in the case of ***State of Bihar & Ors. vs. Shashi Bhushan Prasad*** in LPA No. 1571 of 2014. Taking note of the provisions contained in Clause 825 of the Bihar Police Manual dealing with “Officers empowered to impose punishment” as also the provisions contained in Article 311 of the Constitution of India, the Division Bench, after setting aside the dismissal of the petitioner under similar circumstances, has directed that the competent authority being the I.G. of Police may continue with the proceedings from the stage at which the Enquiry Officer submitted his report, independently and being uninfluenced by any of the proceedings prior to that stage.

9. This Court would find that the petitioner who was proceeded against at that point of time was posted as Sub-Inspector of Police in Danapur and as such as per the provisions contained in Rule



825 of the Bihar Police Manual, the authority competent to impose the punishment against the petitioner was an Inspector General of Police. Therefore, in light of the submissions made by the counsel for the State, the issue may be disposed off in terms of the order passed by the Division Bench in LPA No. 1571 of 2014.

10. However, in light of the submissions advanced on behalf of the petitioner's counsel regarding the charge memo not being issued by the competent authority, this Court is required to consider the said submissions as the same has been advanced with reference to the judgment in the case of **B.V. Gopinath** (supra). Perusal of the said judgment would show that the same has been passed keeping in view of the provisions of Rule 14(3) of the Central CCA Rules which is a provision specifically providing for the manner in which the charge memo is to be drawn up. The Central CCA Rules have no application in the instant case.

11. However, the counsel for the petitioner relying upon Bihar CCA Rules, 2005 submits that since in respect of framing of charge, similar provision is contained in Rule 17 of the Bihar CCA Rules, therefore, the charge memo issued by the Senior Superintendent of Police against the instant petitioner dated 18.12.2014 is also unsustainable and cannot be made the basis of proceedings against the petitioner since the Senior Superintendent of



Police was not competent to issue the charge memo and only IG of Police, being the appointing authority was competent to issue the charge memo.

12. On specific query being made by this Court whether provision *pari materia* the provisions of Rule 14(3) of the Bihar CCA Rules exists in Bihar Police Manual or not, counsel for the petitioner submits that he would rely on the procedure prescribed in the Bihar CCA Rules and in light of the provisions contained in Rule 17 of the Bihar CCA Rules the petitioner's case is covered by the judgment of the Apex Court in the case of ***B.V. Gopinath*** (supra).

13. On bare perusal of the provisions contained in Clause 824(A) of the Bihar Police Manual, it would be apparent that the Civil Services (Classification, Control and Appeal) Rules, applies in respect of action against Deputy Superintendent of Police. The Bihar Police Manual does not mandate the application of Bihar CCA Rules, to officers below the rank of Deputy Superintendent of Police.

14. Other than Rule 825 the petitioner cannot be permitted to place reliance on the provisions of the Bihar CCA Rules. In this connection it would be also relevant to notice Rule 3 of the Bihar CCA Rules which deals with application of the said Rules. The same is being reproduced herein below

“3. Application of these Rules. - (1) These Rules shall apply to every Government Servant but shall not apply to-



- (a) any member of the All India Services,
 - (b) any person in casual employment,
 - (c) any person subject to discharge from service on less than one month's notice,
 - (d) any person for whom special provision is made, in respect of matter covered by these Rules, by or under any law for the time being in force or by or under any agreement entered into with the previous approval of the Government before or after the commencement of these Rules, in regard to matter covered by such special provisions.
- (2) Notwithstanding anything contained in sub-rule (1), the Government of Bihar may, by order, exclude any class of Government Servants from the operation of all or any of these Rules against him.
- (3) Notwithstanding anything contained in sub-rule (1), these Rules shall apply to every government servant temporarily transferred to a Service or post coming within (d) in sub-rule (1).
- (4) If any doubt arises with respect to the provisions of these Rules the matter shall be referred to the Government in the Department of Personnel & Administrative Reforms, whose decision shall be final."

15. Bare perusal of Rule 3 more specifically sub rule (d) would show that the same read with the provisions contained in Rule 825 of the Bihar Police Manual which has been considered by the Division Bench makes it abundantly clear that the proceedings are to be guided by the provisions made in the Bihar Police Manual.

16. In view of the aforesaid, consideration, the irresistible conclusion is that the petitioner's case is squarely covered under the order passed by the Division Bench of this Court in LPA No. 1571 of 2014 in the case of *Shashi Bhushan Prasad* (supra).

17. The Central CCA Rules have been considered and relied upon in the order of the Apex Court in the case of *B.V.*



Gopinath (supra) which are not applicable in the instant case. The judgment in the case of **B.V. Gopinath** (supra) thus has no application in the instant case.

18. The petitioner’s case is squarely covered by the decision of the Division Bench of this Court in the case of **Shashi Bhushan Prasad** (supra).

19. In view of the aforesaid consideration, this Court would dispose off the instant case by setting aside the order of dismissal dated 10.08.2015 and direct the respondent no. 9 to expeditiously continue with the proceedings from the stage at which the Enquiry Officer submitted his report. He shall proceed with the enquiry thereafter, independently and being uninfluenced by the proceedings which have been taken place so far. The final and consequential order which is to be passed by the I.G of Police shall determine the entitlement of the petitioner.

20. The writ petition is allowed to the extent indicated herein above.

(Madhuresh Prasad, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

