

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14321 of 2014

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Jitendra Prasad Singh Son of Sri Shiv Bachan Singh resident of village & P.O.
Ramchandrapur, P.S. Thawe, District – Gopalganj Petitioner

Versus

1. The State of Bihar
 2. The Director General of Police, Bihar, Patna
 3. The Inspector General of Police, Patna Zone, Patna
 4. The Deputy Inspector General of Police, Central Range, Patna
 5. The Senior Superintendent of Police, Patna Respondents
- =====

Appearance :

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

For the Respondents : Mr. Sanjay Kr. Giri, GP 9 and
Deepika Sharma, Advocate

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 15-05-2018

Heard learned counsel for the petitioner and learned
counsel for the State.

2. The writ petition has been filed for quashing Memo no.
1573 dated 21.4.2014, issued by the Director General of Police,
Biahr, Patna and communicated to the petitioner vide Memo no.
4670 dated 5.5.2014 rejecting petitioner's memorial. The writ
petition has also been filed for quashing the appellate order
contained in Memo no. 1343 dated 17.7.2013, issued by the
Inspector General of Police, Patna Zone, Patna by which petitioner's
appeal against his dismissal from service, has been dismissed.
Petitioner has also challenged validity of the entire proceedings
arising out of charge memo dated 13.5.2010 upto conclusion of the



proceeding by submission of the enquiry report dated 18.2.2012 (Annexure 15).

3. It is submitted by learned counsel for the petitioner that the proceedings, right from its inception, i.e., issuance of the charge memo dated 13.5.2010 (Annexure 8), was incompetent and without jurisdiction inasmuch as the charge memo has been issued by the Senior Superintendent of Police (SSP), whereas from the provisions contained in the Bihar Police Manual, specifically Clause 656 and 660, it is obvious that the Appointing authority/Disciplinary authority of the petitioner was the Deputy Inspector General (DIG) of Police. The petitioner, at the relevant point of time, was working as the Sub Inspector of Police, as such, charge memo issued by the SSP, who is the authority below the rank of the DIG of police, having no authority to issue the charge memo, the entire proceedings arising out thereof, is without jurisdiction. In support of the said submission, learned counsel for the petitioner has relied upon the judgment rendered in case of **Union of India and others Vs. B.V.Gopinath**, reported in (2014) 1 SCC 351, para 55. It is submitted by learned counsel for the petitioner that the case of the petitioner is squarely covered by the law laid down in the case of the **B.V.Gopinath (supra)** and on that score itself considering the law laid down by the Hon'ble Apex court the relevant extract of which is



being re-produced herein below:-

“Although number of collateral issues had been raised by the learned counsel for the appellants as well the respondents, we deem it appropriate not to opine on the same in view of the conclusion that the charge-sheet/charge memo having not been approved by the disciplinary authority was non est in the eye of the law.”

4. Considering the aforesaid submissions and legal position, there is no difficulty to allow the writ petition on this score alone.

5. However, the respondent State, as a result of the manner in which the proceedings have been conducted, have given the petitioner another opportunity of assailing the validity of the proceeding as being contrary to the procedure prescribed inasmuch as there has been no Presenting officer in the entire proceeding conducted by the Enquiry officer. Reference is made to the enquiry report dated 18.2.2012 to show that there is no mention of the Presenting officer in the entire enquiry report submitted by the Enquiry officer. That being so, it is submitted that the instant proceedings is one where the Enquiry officer has arrogated upon himself the role of the Presenting officer. Such a situation, where the quasi judicial authority assumes the role of the prosecutor, is a glaring example of bias inasmuch as there is total infraction of principle of Natural Justice.



6. The petitioner's counsel in support of the said decision has relied upon a decision pronounced in the case of **State of Uttar Pradesh Vs. Saroj Kuamr Sinha**, reported in (2010)2 SCC 772. Relying upon the said judgment, it is submitted that the proceeding stand vitiated on this score also.

7. Submission made on basis of the decision in case of **Saroj Kumar Sinha (supra)** is also sustainable with reference to the provisions contained in Rule 17 of the CCA Rules, 2005. Rule 17 (14) of the Bihar CCA Rules mandates “ *On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charges are proposed to be proved shall be produced by or on behalf of the Disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the Government Servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to be witnesses, as it thinks fit.* ”

8. From perusal of the Enquiry report it is apparent that no evidence or witness has been produced by or on behalf of the Presenting officer.



9. Case of the petitioner is one where serious prejudice has been occasioned to the petitioner in the proceedings. This Court finds that the charge memo has been issued by the officer, who is not competent to do so, rendering the charge memo to be nonest and illegal. Absence of the Presenting officer, and Enquiry officer assuming the role of Presenting officer has occasioned total infraction of the rules of principle of Natural Justice as also the Rule 17 of the Bihar CCA Rules, 2005.

10. In view of the aforesaid findings, this Court would hold that the entire proceeding conducted against the petitioner on basis of the charge memo dated 13.5.2010 issued by the incompetent authority being the SSP as also the proceedings conducted before the Enquiry officer without there being any Presenting officer, in violation of the procedure prescribed under the Bihar CCA Rules, 2005, are illegal and fit to be set aside. As a result of quashing of the entire proceeding against the petitioner, the orders passed by the Appellate authority dated 17.7.2015 as also order passed on the memorial, which is dated 21.4.2015, are also quashed. As a result of quashing of the entire proceeding against the petitioner, the petitioner may be deemed to be under suspension and it will be open for the authorities to proceed afresh and issue a charge memo by the competent authority and proceed against the petitioner in accordance



with law.

11. The writ petition is disposed of. The petitioner would be entitled to the consequential benefits available to him by virtue of being under suspension.

12. It is submitted by the counsel for the respondents that the authorities would make an endeavor and conclude the proceedings within six months.

13. In view of such submissions this Court would only observe that the time limit of six months may be observed. No further order needs to be passed.

(Madhuresh Prasad, J)

Shashi.

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.05.2018
Transmission Date	NA

