

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.20703 of 2018**

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Sumeshwar Singh Son of Muneshwar Singh Resident of Ward No.2,Dihra  
Rohtas,Amai,Hasan Bazar,Bhojpur,Police Station Bikramganj,Distt.-Rohtas

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Director General of Police, Govt. of Bihar,Patna
3. The Inspector General of Police,Tirhut Zone Division, Muzaffarur
4. The Deputy Inspector General of Police ,Tirhut Zone,Muzaffarpur
5. The Senior Superintendent of Police,Muzaffarpur

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr.Prafull Chandra Jha  
For the Respondent/s : Mr.Manish Kumar – GP-4  
Mr. Ajay Kumar, AC to GP-4

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN  
SINGH**

**CAV ORDER & JUDGMENT**

- 3      01-10-2019                      The petitioner, a constable in the District Police,  
  
Muzaffarpur has been dismissed from service by an order issued  
  
*vide* Memo No. 1587 dated 08.06.2018, passed by the Senior  
  
Superintendent of Police, Muzaffarpur, on the ground of his  
  
proved misconduct in a departmental proceeding. His  
  
misconduct related to an occurrence of June, 2017 for which  
  
Ahiyapur P.S. Case No. 431 of 2017 was registered for the  
  
offences punishable under Sections 363, 387 read with Section  
  
34 of the Indian Penal Code in which, he along with others is an  
  
accused. His appeal against the order of dismissal has been  
  
dismissed by the Deputy Inspector General of Police, Tirhut



Range, Muzaffarpur by an order dated 21.08.2018, which is also under challenge in the present writ application.

2. I have heard Mr. Prafull Chandra Jha, learned counsel for the petitioner and Mr. Ajay Kumar, learned AC to GP-4 appearing on behalf of the State of Bihar at length.

3. The occurrence is of 07.06.2017, when the Officer Incharge of Ahiyapur Police Station received an information at 2.P.M. to the effect that one Shashi Ranjan Kumar was kidnapped by some people and was being taken towards some place within the jurisdiction of Kanti Police Station from Zero Mile. In a joint operation carried by Ahiyapur Police Station and Kanti Police Station, the said Shashi Ranjan Kumar was recovered from near Kanti Inter College, from the custody of one Akhtar Sah, another constable. Akhtar Sah is said to have disclosed the Officer Incharge of Ahiyapur Police Station that he had brought the victim to the place from where he was recovered, with the help of this petitioner, another constable Sanjeet Kumar and five other persons. He admitted that there was no order issued by any senior Officer to arrest the Shashi Ranjan Kumar. Shashi Ranjan Kumar, thereafter submitted his written statement to the effect that said constable Akhtar Sah with few of his colleagues/friend had caught him near zero



Mile, HDFC Bank when he was moving in a motorcycle. Akhtar Sah had asked the victim to come along with him and others which was objected to. Akhtar Sah, thereafter, called this petitioner and another constable Sanjeet Kumar on phone, who thereafter came in a police uniform. All of them thereafter took him to a place near Kanti Inter College and threatened him of his implication in a criminal case, labelling him as an '*ATM Chor*' (a person involved in committing theft of cash from ATM). They were demanding Rs. Five lacs from him as ransom for his release. He is said to have informed his relatives, who, in turn, informed the police about the occurrence, thereafter. Based on written report of said Shashi Ranjan Kumar, the Ahiyapur Police Station Case No. 431 of 2017 was registered. The petitioner and another two constables were taken into custody and were subsequently put under suspension.

4. A departmental proceeding was initiated with the framing of charge containing the allegation to the aforesaid effect. The petitioner was supplied list of documents and list of witnesses. It would be apt to note here itself that no plea of any procedural irregularity in holding the departmental proceeding has been raised in the writ petition nor any breach of principles of natural justice has been alleged.



5. An Inquiry Officer and a Presenting Officer were appointed. The witnesses were examined and the petitioner was given opportunity to cross-examine the witness and produce his own witness. Upon appraisal of the evidence adduced in the departmental enquiry, the enquiry Officer submitted his report recording his finding that the charge against the petitioner stood proved. The report of the enquiry Officer was supplied to the petitioner and he was asked to respond to the said findings and show cause as to why punishment of dismissal from service be not imposed on him on the ground of his proved misconduct. The petitioner submitted his detailed reply and after consideration of the reply the impugned order dated 08.06.2018 has been passed by the Senior Superintendent of Police, Muzaffarpur-cum-disciplinary authority. The Deputy Inspector General of Police, Tirhut Range, Muzaffarpur has rejected the petitioner's appeal after recording his brief reasons for doing so, by his order dated 21.08.2018.

6. Mr. Prafull Chandra Jha, learned counsel appearing on behalf of the petitioner has submitted that finding of the enquiry Officer holding charge against the petitioner to have been proved is erroneous and factually incorrect. According to him, no prudent person could have reached the conclusion



which the enquiry Officer has reached, on the basis of appreciation of evidence available in the departmental enquiry. He has submitted, with reference to the evidence adduced during the departmental enquiry that there is no material to establish that the petitioner was involved in any way with the alleged occurrence of kidnapping of the complainant. He has submitted that the petitioner was assigned the duty of safeguarding the ATMs within the area of the police station and his movements cannot be said to be beyond the duties which he was discharging in his capacity as constable under the police station. He has referred to the evidence of Shashi Ranjan Kumar in the departmental enquiry to contend that even according to him, the petitioner had returned *midway* when said Shashi Ranjan Kumar was being taken to some other place by other persons. He has, accordingly, submitted that the action of the respondents requires interference by this Court in the present proceeding.

7. Mr. Ajay Kumar, learned AC to G.P.-4, on the other hand, has submitted that there was serious charge against the petitioner of being party to on a well hatched up conspiracy followed by the act of kidnapping of Shashi Ranjan Kumar for ransom. He contends that the petitioner's presence at the place



of occurrence and taking the victim from the said place to some other place are proven facts. In any view of the matter, he contends, that once the disciplinary authority has applied his mind while agreeing with the findings recorded by the enquiry Officer, which cannot be said to be without evidence or contrary to evidence, this Court may not disturb such findings by re-appreciating the evidence. He has also argued that the appellate authority has passed a reasoned order while dismissing the petitioner's appeal and for the said reason also no interference is required by this Court.

8. I have carefully perused the pleadings in the writ application and the documents annexed thereto and the counter affidavit filed on behalf of the respondents-State of Bihar with the documents, which have been annexed, as well.

9. It transpires from the records that the complainant Shashi Ranjan Kumar has stated in his evidence before the Inquiry Officer that he was apprehended by two persons, when he was crossing Zero Mile HDFC Bank, who had asked the complainant to accompany them. When he resisted, on their call, two other persons came in police uniform in a motorcycle. The persons who had apprehended the said Shashi Ranjan Kumar were calling him '*ATM Chor*'. They were describing



themselves to be the police personnel. When the two persons in police uniform came, Shashi Ranjan Kumar, was asked to accompany them ( the personnel in police uniform). The police personnel in uniform made the complainant sit in their motorcycle and took him to a place called *Sanichara Asthan Four Lane* where there were already 4-5 persons present in civil dress. They were demanding 4-5 lacs from the petitioner for his release. When the petitioner refused, they took him to Inter College near Kanti High School. About the persons in police uniform, he said they, had returned midway. It is further alleged that from the College the petitioner was being taken to some unknown place in a remote area. In the meanwhile with the intervention of the police, the complainant was rescued. One of the two police personnel who had made Shashi Ranjan Kumar sit in the motorcycle was the petitioner and the other constable Sanjeet Kumar. The Officer Incharge of Ahiyapur Police Station, Muzaffarpur was also examined as a witness in the departmental enquiry, who while supporting the charge against the petitioner, has stated that the criminal case against the petitioner and another has been found to be true after investigation, for the offences punishable under Sections 366, 364A,367 read with Section 34 of the Indian Penal Code.



10. The petitioner examined himself as a defence witness. It appears from the report of the Inquiry Officer that the petitioner could not dispute the fact that he had gone to the place where the complainant Shashi Ranjan Kumar was apprehended by two police personnel in civil dress. According to him, he had reached the said place on a request made by the then Vice-President of Police Men's Association, Muzaffarpur, Akhtar Sah, a constable. According to him, it was because of the status of constable Akhtar Sah as Vice- President of the Police Men's Association that he had gone there. Akhtar Sah is said to have told the petitioner that the victim was being taken to the town Deputy Superintendent of Police as he was an '*ATM Chor*'. It was his further case that the informant of Ahiyapur Shashi Ranjan Kumar himself disclosed that the petitioner had returned midway and, therefore, he cannot be said to be involved in alleged occurrence.

11. I do not find much substance in the submission made on behalf of the petitioner that he cannot be said to be in any way associated with the occurrence since the petitioner had returned; for the reason that there is specific statement of the informant of Ahiyapur Police Station Case No. 431 of 2017 that he was made to sit with the petitioner and another constable



Sanjeet Kumar in the motorcycle and he was taken from the place where he was apprehended near Zero Mile HDFC Bank to the place called '*Sanichara Asthan Four lane*'. This evidence has remained uncontroverted and there is no explanation coming forth for the informant being taken to the said place. At the *Sanichara Asthan Four Lane*, there were 4 to 5 persons present and a demand was being made for ransom. The return of the petitioner was thus, not before a demand was made by 4 to 5 persons in civil dress at '*Sanichara Asthan Four Lane*' where he was taken by the petitioner and constable Sanjeet Kumar.

12. The inquiry Officer and the disciplinary authority have opined that there was absolutely no explanation coming forth as to why the said informant was taken by the petitioner from Zero Mile HDFC Bank to '*Sanichara Asthan Four Lane*' and subsequently to a place near Inter College.

13. I have kept in my mind that the principles of judicial review enunciated oftentimes by the Supreme Court in the matters of departmental inquiries. It is well settled principle of exercise of power of judicial review by superior Courts under Articles 32 and 226 of the Constitution of India, that the duty of the Court is to confine itself to the question of legality. Way back in 1963, the Supreme Court laid down the law on the scope



of judicial review under Article 226 of the Constitution of India while dealing with departmental inquiry in case of **State of A.P. Vs. Shree Rama Rao (AIR 1963 SC 1723)**. The Supreme Court held that the High Court is not a Court of appeal under Article 226 of the Constitution of India over the decision of the authorities holding departmental inquiries against a public servant. The High Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the Rules of natural justice are not violated. The Supreme Court has specifically held that where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent Officer is the guilty of the charge, it is not the function of the High Court to review evidence to arrive at an independent finding on the evidence. The said decision has been quoted with approval in case of **State of A.P. Vs. P.V.Chitra Venkata Rao** reported in (1975) 2 SCC 557. The principles of judicial review in the matters of departmental inquiries as laid down in case of **State of A.P. Vs. S. Shree Rama Rao** (supra) have been followed in two recent decisions of the Supreme Court in case of **S. Sreesanth Vs.**



**BCCI** reported in **(2019) 4 SCC 660** and in case of **Municipal Council, Nimach Vs. B. Mahadeo and others ( 2019) SCC online SC 1215**.

14. I have already noticed that the petitioner has not made out a case of any procedural irregularity nor violation of any principles of natural justice. No violation of statutory Rules prescribing the mode of inquiry has been asserted in the writ application nor any such submission has been advanced. It is also well settled that charge of misconduct in a disciplinary proceeding has to be established on preponderance of probabilities and the High Court while exercising its power under judicial review under Article 226 of the Constitution of India has to determine as to whether the charge of misconduct stands established with reference to some legally acceptable evidence.

15. It has been reported in case of **R.R. Parekh Vs. High Court of Gujrat (2016) 14 SCC 1**) by the Supreme Court that if there is some legal evidence to hold that a charge of misconduct is proved, the sufficiency of evidence would not fall for re-appreciation or re-evaluation before the Supreme Court in a proceeding under Article 226 of the Constitution of India. I have reminded myself of the basic principles laid down in oft



quoted decision of Supreme Court in case of **Tata Cellular Vs. Union of India** reported in (1994) 6 SCC 651, paragraph 77 of which reads thus:-

*“77. The duty of the Court is to confine itself to the question of legality. Its concerns should be:*

*1. Whether a decision-making authority exceeded its powers?*

*2. Committed an error of law.*

*3. committed a breach of the rules of natural justice,*

*4. reached a decision which no reasonable tribunal would have reached or,*

*5. abused its powers.*

*Therefore, it is not for the Court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:*

*(i) Illegality: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.*



(ii) *Irrationality, namely, wednesbury unreasonableness.*

(iii) *Procedural impropriety.*

*The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in R. V. Secretary of State for the Home Department, ex Brind 28, Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the Court should, “consider whether something has gone wrong or a nature and degree which requires its intervention”.*

16. The said principles still hold the field and have been continually and consistently followed in subsequent decisions of the Supreme Court.

17. The orders passed by the appellate authority is speaking and reasoned and has taken into consideration the relevant aspects of the matter including the defence of the petitioner.

18. In view of the discussion as above, I do not find this to be a fit case for interference with the decision of the



authority in the departmental proceeding as I do not find any perversity in the findings recorded by the Inquiry Officer nor with the decision of the disciplinary authority. The finding cannot be said to be suffering from any patent error on the face of the record or based on no evidence at all. The conclusion arrived at in the departmental proceeding cannot be said to be such as no reasonable person would have ever reached such conclusion.

19. In the background of the reasons noted above, I do not find any merit in this application.

20. This application is, accordingly, dismissed.

21. There shall be no order as to costs.

**(Chakradhari Sharan Singh, J)**

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