

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.12495 of 2014**

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Shakuntala Devi Wife of late Maheshwar Prasad Singh resident of Village -  
Rasulpur, P.S. - Kanti, District - Muzaffarpur, presently residing at Anandpuri,  
Bibiganj, P.S. - Sadar, District - Muzaffarpur.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Department of Home, Govt. of Bihar, Patna.
3. The Director General of Police, Bihar, Patna.
4. The Inspector General of Police, Muzaffarpur.
5. The Deputy Inspector General of Police, Darbhanga Range, Darbhanga.
6. The Senior Superintendent of Police, Muzaffarpur.
7. The Superintendent of Police, Samastipur.
8. The Sergeant Major, Police Line, Samastipur.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr.Prashant Sinha  
For the Respondent/s : Mr.Mukul Prasad, AC to GP 18

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**CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD**  
**ORAL JUDGMENT**

**Date : 21-06-2019**

Heard Mr. Sinha counsel for the petitioner as well as  
counsel for the State.

Writ petition has been filed assailing order of  
punishment dated 23.06.2012 issued by Superintendent of Police,  
Samastipur dismissing the petitioner from service as a lady  
constable with immediate effect. The appellate order dated  
07.01.2013 of the Deputy Director General of Police, Darbhanga  
Range rejecting petitioner's appeal is also challenged in the instant  
proceeding. Petitioner has also sought quashing of order of



Director General of Police, Patna rejecting his memorial on 04.11.2013.

Brief fact giving rise to instant proceeding is that Muzaffarpur Town P.S. case no. 401/2010 was lodged on 01.10.2010 against one Sushil Kumar Choudhary. FIR was lodged as certain suspicious transactions were detected by the Branch Manager of the concerned bank. Authorities were of the opinion that Sushil Kumar Choudhary, who was accountant of District Police office, Muzaffarpur was indulged in embezzlement of fund of SP office. Investigation reveals that certain transactions were also made in favour of the petitioner and as such house of the petitioner was raided on the next day i.e. 02.10.2010. It is alleged that Rs 5388550/- in cash and jewelery of 14 lakhs were recovered from the house of petitioner. On 04.10.2010 she was taken into custody and charge memo dated 03.12.2010 was issued on the basis of said recovery. Punishment is consequence of the proceeding instituted by charge memo dated 03.12.2010.

Mr. Sinha counsel for the petitioner submits that the manner in which dates were fixed deprived the petitioner of any opportunity to present her case. Certain date was preponed and communications of other dates were not sent to the petitioner. Therefore, she was deprived of opportunity to appear before the



Enquiry officer. Details of said submission however, are irrelevant since petitioner was given due intimation regarding 25.05.2012 being a date fixed before the Enquiry officer for conducting the proceeding. It is case of the petitioner that prior to the said date evidence was recorded in her absence, but since 25.05.2012 was fixed as a date in the proceeding, petitioner had the opportunity to appear before the Enquiry officer.

On 25.05.2012 petitioner submitted an application before the Enquiry officer. In view of bereavement in the family, petitioner expressed her inability to appear on 25.05.2012 and requested that another date may be fixed in the matter. Said fact is admitted as it had been taken note of in the enquiry report submitted by Enquiry officer. Taking note of the fact that petitioner had given an application for adjournment on 25.05.2012, Enquiry officer had not considered the said application. Enquiry officer did not grant a date to facilitate appearance of the petitioner. He also did not reject the application submitted by the petitioner for adjournment on 25.05.2012.

Once application had been filed, Enquiry officer was duty bound to consider the same. Whether he would accept or reject was decision of Enquiry officer which was required to be taken by assigning reason in support thereof. Such non-



consideration of the petitioner's application for adjournment on 25.05.2012 had deprived her of the opportunity to appear before Enquiry officer since on the very next day i.e. on 26.05.2012, enquiry report was submitted by Enquiry officer.

Counsel for the State has submitted that prior to 25.05.2012 opportunity was granted to the petitioner, which for some reason or the other, petitioner had not availed. Recovery of cash and jewelery from the house of the petitioner is proof of misconduct alleged against the petitioner. Petitioner could not show any justification for having such recovery of cash and jewelery and the authorities have rightly awarded the order of punishment.

Proceeding before the Enquiry officer was required to be conducted in accordance with law. Procedural fairness cannot be sacrificed on the gravity of allegation. Whatever has happened prior to 25.05.2012 before the Enquiry officer becomes immaterial in view of the fact that on 25.05.2012 petitioner had given an application for adjournment on account of bereavement in the family. Non-consideration of the same is glaring proof of the fact that Enquiry officer was proceeding with a prejudiced mind.

Inquiry report, order of the disciplinary authority and order of appellate authority all clearly reflect that Enquiry officer



had proceeded to record the evidence of the departmental witnesses against the petitioner and examine the materials on its own for arriving at conclusion of petitioner's guilt. No Presenting officer has been appointed in the proceeding. Inquiry report reveals that no statement was made by the Presenting officer. He did not lead any evidence or examine any witness. Entire function of the Presenting officer was discharged by the Enquiry officer himself.

Conclusion of the Enquiry Officer, by himself examining the documents and witnesses in support of the department cannot be countenanced. Procedure adopted by the Enquiry officer is in violation of Rule 17(14) of the Bihar CCA Rules. The Apex Court in the case of State of Uttar Pradesh vs. Saroj Kumar Sinha reported in (2010) 2 Supreme Court cases 772 has held that enquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. Conduct of the Enquiry Officer in the instant case as born from records of the enquiry by acting as agent of the department and himself examining the evidence as a prosecutor and thereafter to decide the issue, leaves a lot to be desired in terms of procedural fairness. This court would consider it useful to quote para 28 of judgment in the case of Saroj Kumar Sinha (Supra).



“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 the instant case, having noticed the infirmity in the procedure adopted by the Enquiry Officer, this court would also conclude that the order of punishment dated 23.06.2012 issued by the Superintendent of Police, Samastipur (Disciplinary Authority) in the Departmental Proceeding No. 69/2010 is clearly unsustainable in the eye of law as being product of a procedure in violation of principle of natural justice and Bihar CCA Rules 2005. The order of the Disciplinary Authority dated 23.06.2012 is, therefore, quashed.

Order of the appellate authority dated 07.01.2013 also suffers from the same vice as appeal has been rejected by the appellate authority even though he has taken note of the fact that



Enquiry Officer had discharged function of the Presenting Officer during the course of enquiry. Appellate authority is therefore, mere affirmation of the illegal order issued by the disciplinary authority. Order of the appellate authority has also been affirmed by the Director General of Police while deciding memorial of the petitioner under order dated 04.11.2013.

The order of the Deputy Director General of Police, Darbhanga Range passed on petitioner's appeal dated 07.01.2013 as well as order dated 04.11.2013 issued by Director General of Police, Patna in memorial are also unsustainable for the same reason and are hereby quashed. As a result of quashing of the orders, petitioner would be entitled to get her consequential relief.

This order however, shall not stand in the way of the authorities in proceeding afresh on the basis of charge memo dated 03.12.2010.

Writ petition is allowed.

**(Madhuresh Prasad, J)**

s.hassan/-

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