

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7906 of 2020

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Ananjay Singh @ Ananjay Kumar Singh S/o- Subhas Singh Resident of village and P.O.- Harpur, P.S.- Ekma, District- Saran at Chapra.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Home (Police) Department, Government of Bihar, Patna.
2. The Additional Chief Secretary, Home (Police) Department, Government of Bihar, Patna.
3. The Director General of Police, Bihar, Patna.
4. The Inspector General of Police, Muzaffarpur Zone, District- Muzaffarpur.
5. The Deputy Inspector General of Police, Saran Range, District- Chapra.
6. The Deputy Inspector General of Police (Personnel), Bihar, Patna.
7. The Superintendent of Police, District- Gopalganj.
8. The Superintendent of Police, District- Buxar.
9. The Police Inspector-cum- Conducting Officer, OSD, Office of Superintendent of Police, District- Gopalganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Y.V. Giri (Sr. Advocate) with
	:	Mr.Sanjay Kumar Giri
For the Respondent/s	:	Mr.P.K. Verma (AAG 3) with
	:	Mr.Saroj Kumar Sharma
	:	Mr.Manish Kumar (GP 4) with Mr. Ravi Verma

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 06-01-2021

Sixteen persons were reported dead because of consumption of illicit liquor on 16.08.2016 in village Khajuria, falling under Gopalganj (Town) Police Station in the District of Gopalganj. The petitioner, on the said date, was posted as an Armed Guard in the said Police Station. After receiving the said



information, a raid was conducted, leading to recovery of huge quantity of semi fermented country made liquor and other intermediate/final products intended to be used in the preparation of country-made liquor. An F.I.R. was registered as Gopalganj P.S. Case No. 347 of 2016.

2. Soon thereafter, the petitioner along with 29 police personnel posted in the Police Station was placed under suspension as a fallout of the occurrence. The petitioner was placed under suspension vide order no. 738/16 dated 18.08.2016. The order of suspension was subsequently revoked by an order dated 05.01.2017 and a decision was taken to initiate departmental proceeding against him. Charges were framed against the petitioner by the Superintendent of Police, Gopalganj, which were issued vide memo no. 217 dated 07.02.2017 (Annexure 1). The charge sheet has been brought on record by way of Annexure 1 to the writ application, in which, apart from recital of the occurrence, which had taken place on 16.08.2016, it was mentioned that in relation to New Excise Policy of the State Government, the concerned police personnel were instructed to strictly follow the orders/instructions issued by the State Government, Police Headquarters and other Senior Officers and crime meetings were also held by the Disciplinary Authority (Superintendent of Police)



from time to time for recovery of illicit liquor. The activities of preparation and sale of illicit liquor in a village hardly at a distance of 2 kms from the Police Station were within the knowledge of the police officers and other personnel of the Police Station, which was not taken seriously. This was considered to be indicative of negligence, dereliction of duty and suspicious conduct of the police officers/personnel. For quick reference, the misconduct alleged against the petitioner in the charge sheet is being reproduced hereinbelow verbatim:-

“बिहार सरकार की नयी उत्पाद निति के सन्दर्भ में बिहार सरकार पुलिस मुख्यालय एवं अन्य वरीय पदाधिकारियों से प्राप्त आदेश/ निर्देश सभी थाना/पुलिस निरीक्षक एवं अनुमंडल पुलिस पदाधिकारी को उपलब्ध कराते हुए इसे पूरी दृढ़ता से अनुपालन करने हेतु निर्देशित किया जा रहा है। अधोहस्ताक्षरी द्वारा अपराध गोष्ठी एवं समय-समय पर शराब के बरामदगी हेतु समकालीन अभियोजन का आयोजन किया जाता रहा है।

नगर थाना गोपालगंज के मात्र २ किलोमीटर की दुरी पर खजुरिया गाँव में इस दारु शराब का निर्माण एवं बिक्री होना थाना के सभी पुलिस पदाधिकारियों एवं कर्मियों के जानकारी में थी और इसे गंभीरता से नहीं लिया गया जबकि उक्त गाँव में वृहद् रूप से महुआ देसी शराब का निर्माण का मिनी उद्योग चलाया जा रहा था। यह स्पष्ट ही लापरवाही एवं कर्तव्यहीनता एवं संदिग्ध आचरण का द्योतक है।”

3. It is evident from the charge memo that the Disciplinary Authority intended to rely on following documentary evidences to establish the charge framed against the petitioner:-

i) Gopalganj Jiladesh Number- 738/2016



ii) Gopalganj Jiladesh Number- 19/2017

iii) Copy of the F.I.R.

4. Further, the department intended to examine the following witnesses to establish the aforesaid charge:-

I) Confidential Reader, Superintendent of Police, Gopalganj

II) Reserved Sub-Inspector, Police Line Gopalganj

III) Station House Officer, Town Police Station, Gopalganj.

5. Be it noted that the document at item no. 1 hereinabove was the order whereby the petitioner was put under suspension and the document at item no. 2 of the charge sheet was the order whereby the said order of suspension was revoked. The third document was apparently the First Information Report registered in respect of the occurrence in question. In the departmental enquiry, the Confidential Reader proved the documents at item no. 1 and 2, which were issued by the Superintendent of Police, Gopalganj, after the occurrence was reported. The Reserved Sub-Inspector of Police also proved the said two documents. The Officer In-Charge of the Police Station proved registration of Gopalganj Town P.S. 347 of 2016.

6. The Enquiring Authority submitted its report on 20.11.2018. He recorded in his report that the petitioner must have been going to the nearby villages for patrolling duty and for investigation of cases. He further recorded that the petitioner



should have known that there was complete prohibition imposed by the State of Bihar and stringent provisions have been made for implementation of prohibition laws. Despite that, illegal business of illicit liquor at a place hardly 2 kms away from the Police Station was going on which was suggestive of the petitioner's negligence, dereliction of duty and his suspicious conduct. The Disciplinary Authority, noting the materials on record and the petitioner's conduct of not having defended himself in the departmental proceeding, recording his agreement with the findings of the Enquiring Authority imposed punishment of 'two black marks', having the effect of stoppage of increment in salary for one year with cumulative effect. The petitioner did not prefer any appeal against the said order of punishment and thus accepted the order of punishment dated 24.11.2011 passed by the Superintendent of Police, Gopalganj. The Deputy Inspect General of Police, was not in agreement with the aforesaid findings and punishment awarded to the petitioner, as he was of the view that the proved misconduct of the petitioner warranted harsher punishment considering the seriousness of the matter. He, therefore, sent the entire records to the police headquarters for further action under Rule 853 A (a) of Bihar Police Manual through his letter no. 264 dated 25.01.2019. The petitioner was



thereafter served with a notice against proposed termination of his service in exercise of powers under Rule 853 A (a) of the Bihar Police Manual.

7. The Rule 853 A (a) of the Bihar Police Manual confers revisional jurisdiction on the Inspector General-cum-Director General of Police to call for the file in any case even when no appeal lies and pass such order as he may deem fit. Rule 853 A (a) of the Bihar Police Manual reads as under:-

“853 A. (a) Inspector-General may call for the file in any case even when no appeal lies and pass such order as he may deem fit. The Deputy Inspector-General may call for any file but he should refer it to the Inspector-General with his recommendation for his order. The above action should be taken within a reasonable time from the date of final order in departmental proceeding.

8. Exercising the aforesaid power, under Rule 853 A (a) of the Bihar Police Manual, the Director General-cum-Inspector General of Police has passed an order dated 12.06.2020, imposing punishment of dismissal from service on the petitioner. This is to be noted that the petitioner had submitted his explanation pursuant to the notice issued to him which did not find favour with the Inspector General-cum-Director General of Police. The said order dated 12.06.2020 issued vide memo no. 1061 dated 15.06.2020



and other consequential orders are under challenge in the present writ application.

9. Counter affidavits have been filed on behalf of the respondent State of Bihar and the Superintendent of Police, Gopalganj District.

10. In response to the counter affidavit filed on behalf of the contesting respondents, rejoinder affidavit has been filed on behalf of the petitioner. The pleadings are there on record.

11. I have heard Mr. Y.V. Giri, learned Senior Counsel for the petitioner with Mr. Sanjay Kumar Giri, learned Advocate. Mr. P.K. Verma, learned AAG-3, Mr. Manish Kumar, learned GP-4 with Mr. Saroj Kumar Sharma and Mr. Ravi Sharma have represented the State respondents.

12. Mr. P.K. Verma, learned AAG-3 has at the outset raised a preliminary objection over maintainability of the writ petition on the ground that the petitioner has an alternative statutory remedy of appeal under Rule 24 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as 'the Bihar CCA Rules'). He has submitted that this Court may not entertain the present writ application under writ jurisdiction as the petitioner has approached



this Court without availing the said alternative statutory remedy of appeal, which is equally efficacious.

13. Mr. Y.V. Giri, learned Senior counsel appearing on behalf of the petitioner, on the other hand, has urged that an appeal does not lie against the order passed by the Revisional Authority and the appeal, as stipulated under Rule 23 and 24 of the Bihar CCA Rules, refers to original order of suspension or punishment and not an order passed by the Revisional Authority. He has submitted that after coming into force of the Bihar CCA Rules, the disciplinary proceedings against all government servants, within the meaning of Section 2 (j) of the Rules is governed by the Bihar CCA Rules. He has argued that the revisional power under Section 853 A (a) of the Bihar Police Manual by the Competent Authority is exercisable in accordance with Rule 28 of the Bihar CCA Rules and not otherwise. He has next submitted that there was no evidence before the Enquiring Authority to prove the allegation of misconduct against the petitioner. There is absolutely no evidence that the petitioner in any manner failed in discharging his duty as an Armed Guard deputed at Gopalganj Police Station. According to him, the finding is based on conjectures and surmises only. The Enquiring Authority has merely recorded that during the course of patrolling duty and investigation of cases, the petitioner, must



have learnt about illicit trade of liquor at a location hardly 2 kms away from the Police Station. He has submitted that on the basis of so called suspicious conduct of the petitioner, the punishment of dismissal from service has been imposed which is arbitrary and irrational. He has further submitted that it would be evident from the report of the Enquiring Authority that it is a case of no evidence. The copies of the order of suspension, the order whereby order of suspension was revoked and the F.I.R. of Gopalganj P.S. Case No. 347 of 2016 were the only documentary evidences produced during the departmental enquiry. The witnesses merely proved these documents. There was absolutely no material made available in the departmental enquiry to establish petitioner's negligence or dereliction of duty on his part. He has accordingly submitted that the finding of the Enquiring Authority is without evidence and, therefore, perverse. He has further submitted that the Director General-cum-Inspector General of Police, in purported exercise of power under Rule 853 A (a) of the Bihar Police Manual, has passed the order without appreciating the materials available on record of the departmental enquiry and has completely overlooked the petitioner's response to the show cause notice issued to him by the Police Headquarters. He has contended that the order suffers from non-application of



mind. Mr. Giri has further submitted that passing of the impugned order by the Director General-cum-Inspector General of Police is a mindless exercise as he has passed similar orders imposing punishment of dismissal from service on all police personnel posted in the said Police Station by identical orders without any application of mind and without advertent to individual misconduct of each of the police personnel.

14. Mr. P.K. Verma, learned AAG-3 appearing on behalf of the respondent State of Bihar, while reiterating his submission that the petitioner has the remedy of appeal under Rules 23 and 24 of the Bihar CCA Rules, has submitted that the impugned order has been passed after following due procedure. He has submitted that there is no irregularity in the holding of the departmental enquiry as alleged in the writ application and that the petitioner cannot question the findings of the Enquiring Authority, which remained unchallenged as he had accepted the punishment earlier imposed on him based on the said report of the Enquiring Authority. He has further argued that it is a well-settled principle of judicial review that the Court, exercising power under Article 226 of the Constitution of India does not enter into the correctness of finding rather the Court is required to examine whether the decision making process is legally sustainable or not. He has



contended that because of gross negligence on the part of the police officials and personnel posted in the Police Station, in question, the serious mishap had taken place wherein 16 innocent persons died because of consumption of illicit liquor. He has argued that during the raid conducted soon after the occurrence in the village in question, substantial quantity of illicit liquor and other materials, used for the preparation of country made liquor were recovered which clearly suggested that the petitioner and other police personnel posted in the Police Station were negligent in their duties. According to him, considering the gravity of lapse on the part of the petitioner, the punishment imposed upon him by the impugned order cannot be said to be excessive and; since due process has been followed before passing of the order, the same does not require any interference by this Court.

15. The issue of the preliminary objection raised by Mr. P.K. Verma, learned AAG-3 needs to be addressed first, which raises a question, as to whether, an appeal would lie under Rule 23 read with Rule 24 of the Bihar CCA Rules against an order passed in revisional jurisdiction under Rule 28 of the Bihar CCA Rules or Rule 853 A (a) of the Bihar Police Manual. Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 have been framed in exercise of the powers conferred on the State



Government under the proviso to Article 309 of the Constitution of India, Rule 3 thereof clearly states that these Rules shall apply to every government servant. Government servant has been defined in Rule 2 (k) as a member of 'service' or holds a civil post under the State. 'Service' has been defined in Rule 2 (o) as Civil Service of the State. There is no gainsaying that the petitioner is a government servant and, therefore, the Rules govern the disciplinary action against him. Part V of the Rules (Rules 14 and 15) delineates minor and major penalties which can be imposed on a government servant and defines the Disciplinary Authorities. Rule 17 prescribes the procedure for imposing major penalty by holding a departmental enquiry. A detailed procedure has been prescribed under Rule 17 of the Rules for holding a departmental enquiry on conclusion of which the Enquiring Authority is required to submit his enquiry report to the Disciplinary Authority. Rule 18 lays down the procedure for taking action on the enquiry report. Rule 18 (5) reads that if the Disciplinary Authority, having regard to its findings on all or any of the Articles of charge, is of the opinion that any of the penalties, specified in Clause I to V of Rule 14 (minor penalties) should be imposed on a government servant, it shall make an order imposing such penalty. Be it noted that though a separate procedure has been prescribed under Rule



19 of the Bihar CCA Rules for the imposition of minor penalties under Rule 18 (5), the Disciplinary Authority may impose a minor punishment even if the proceeding was initiated for the imposition of a major penalty. The Disciplinary Authority, having regard to its finding on all or any Articles of charge and on the basis of evidence adduced during the course of enquiry, may impose one of the punishments prescribed under Clause VI to XI of Rule (major penalties).

16. Rule 23 of the Bihar CCA Rules provides that a government servant may prefer an appeal against an order of suspension or order of punishment.

17. Rule 23 and 24 of the Rules read thus:-

“23. Orders against which appeal lies. -
A Government Servant may prefer an appeal against order of suspension or order of punishment.

24. Appellate Authorities. - (1) A
Government Servant, including a person who has ceased to be in government service, may prefer an appeal against the orders specified in Rule 23 to the authority specified in this behalf by a general or special order of the Government or, where no such authority is specified:-

(i) where such Government Servant is or was a member of Civil Service, Group-A or Group-B or holder of Civil Post, Group-A or Group-B,-

(a) to the appointing authority, where the order appealed against is made by an authority subordinate to it; or

(b) to the Government where such order is made by any other authority;



(ii) where such Government servant is or was a member of a Civil Service, Group-C or Group-D, to the authority to which the authority making the order appealed against is immediately subordinate.

(2) There shall be no appeal against the orders of the Government, however, review petitions may be filed in the form of Memorials.

(3) Where the person, who made the order appealed against becomes, by virtue of his subsequent appointment or otherwise, the appellate authority in respect of such order, an appeal against such order shall lie to the authority to which such person is immediately subordinate or to an authority specially authorised for this purpose by the Government.”

18. On careful reading of the Rule 24, it can be easily discerned that an appeal can be preferred only in respect of the orders, which are appealable under Rule 23 of the Bihar CCA Rules, namely, an order of suspension or order of punishment. Sub-Rule I of Rule 24 provides that a government servant may prefer an appeal against the orders specified in Rule 23 to the authority specified in this behalf by general or special order of the government. Nothing has been brought to this Court's notice that any appellate authority has been specified by a general or special order of the government for appeal by Group C to D employees against an order passed by the Director General-cum-Inspector General of Police exercising his revisional jurisdiction.



19. Sub-Rule 1 of Rule 24 further stipulates that in case no such authority is specified, where such government servant is or was a member of Civil Service Group A or Group B or holder of Civil post, Group A or Group B, an appeal shall lie (I) to the Appointing Authority, where the order, appealed against, is made by an authority subordinate to it; or (II) to the government where such order is made by any other authority. The petitioner was a constable and not a holder of Civil post, Group A or Group B, nor member of Civil Service, Group A or Group B, and, therefore, Clause I of sub-Rule I of Rule 24 shall have no application. The petitioner's classification would be falling under Group C or Group D. Clause II of Sub-Rule 1 of Rule 24 prescribes for the Appellate Authority in case of a member of Civil Service Group C or Group D, which reads 'the authority to which, the authority making the order appealed against is immediately subordinate'.

20. For the foregoing discussions, I do not have any hesitation in reaching a definite conclusion, on careful reading of Clause I and Clause II of Rule 1 of Rule 24, that under the Rules, appeal against an order of punishment will lie to the State Government, if the order of punishment has not been passed by an authority subordinate to the Appointing Authority in case of members of Civil Service Group A or Group B or holder of Civil



post, Group A or Group B. In case, such order has been passed by an authority subordinate to the Appointing Authority, the appeal shall lie to the Appointing Authority. In case of members of Civil Service, Group C or Group D, the appeal shall lie to the authority to which, the authority making the order appealed against is immediately subordinate.

21. The inevitable conclusion which the Court arrives at, on careful scrutiny of the provisions under Rule 23 and 24 of the Bihar CCA Rules is that no appeal by a government servant, who is or was a member of Civil Service, Group C or Group D shall lie to the government against any order made under Rule 23 of the Bihar CCA Rules. This is evident from the language of the Rule inasmuch as situations where an appeal can be preferred before the State Government has been specifically prescribed under Clause I of sub-Rule I of Rule 24 of the Bihar CCA Rules. Accordingly, the plea of existence of alternative statutory remedy of appeal against the order passed by the Director General-cum-Inspector General of Police, exercising his revisional jurisdiction purportedly under Rule 853 A (a) of the Bihar Police Manual, has no merit. Situated thus, the preliminary objection taken on behalf of the State of Bihar stands overruled.



22. In any view of the matter, it is well settled legal position that existence of an alternative remedy is no bar for the High Court to entertain a writ petition under Article 226 of the Constitution of India. The facts of the present case, which are being discussed hereunder, would reveal that the impugned order has been passed in most casual and cavalier manner, without even referring to the materials available on the records of the departmental enquiry to establish petitioner's misconduct. The petitioner's reply to the show cause notice of proposed action of his dismissal from service, exercising revisional jurisdiction, has not at all been dealt with in the impugned order. Further, I have noticed that the finding recorded by the Enquiring Authority, holding the petitioner guilty of the charge, suffers from perversity, the same having been recorded without any evidence to establish any specific misconduct. These are also the reasons why plea of maintainability of the application, on the ground of availability of alternative remedy of appeal is meritless.

23. The allegation against the petitioner of misconduct has been referred to in the forgoing paragraphs. The allegation presumes that it was within the knowledge of all the police personnel deputed/posted at the police station regarding preparation and sale of the illicit liquor, which was not taken with



due seriousness by them. It is preposterous to notice that to prove the charge, the order, whereby the petitioner was placed under suspension, and subsequent order, whereby his order of suspension was revoked, were relied on. Further, the Disciplinary Authority relied on the F.I.R. registered in relation to the occurrence in question. The Court is bemused, as to how, these three documents could have established the allegation against the petitioner about his personal knowledge in respect of preparation and sale of illicit liquor in the concerned village, who was posted as an Armed Guard in the Police Station. It is further baffling to note that the witnesses, listed in the list of witnesses, were only those, who were to prove the issuance of order of suspension, order of revocation of suspension and registration of the F.I.R. The finding of the Enquiring Authority, on the basis of these documents and evidence of the witnesses, suffer from absolute perversity wherein, on the basis of his own fanciful notion it has recorded that the petitioner must have been going to the nearby villages for patrolling duties and duties in relation to investigation of cases. The Enquiring Authority has recorded in his report that the petitioner did not participate during the course of departmental enquiry. Mere non-participation of the petitioner in the departmental enquiry would not have absolved the duty of the



department from its duty to prove the allegation of misconduct against the petitioner in the departmental proceeding.

24. The charge against the petitioner itself was vague. The Disciplinary Authority, i.e. Superintendent of Police, Gopalganj, passed his order on 24.11.2018 on the basis of report of the Enquiring Authority. The Disciplinary Authority, accepting the finding recorded by the Enquiring Authority, imposed punishment of two black marks, having the effect of withholding of one increment with cumulative effect. The order of the Disciplinary Authority was not appealed against by the petitioner.

25. There is another aspect which requires to be noted at this stage. From the order passed by the Disciplinary Authority, it transpires that the respondents were following the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 for taking disciplinary action against the petitioner. The Superintendent of Police, Gopalganj (Disciplinary Authority) was immediately subordinate to the Deputy Inspector General, Saran region, Chhapra, who was the Appellate Authority, before whom, appeal could have been filed by the petitioner, in view of Clause II of sub-Rule 1 of Rule 24 of the Bihar CCA Rules. The petitioner did not prefer any appeal under the said Rule. Rule 28 of the Bihar CCA Rules permits the Appellate Authority to exercise revisional



jurisdiction, either on his own motion or otherwise, call for the records of any enquiry and revise any order made under the Rules.

Rule 28 of the CCA Rules reads as under:-

“28. Revision - (1) Notwithstanding anything contained in these Rules,-

(i) the Government, or

(ii) the head of a department directly under the Government, in the case of a Government servant serving in a department or office, under the control of such head of a department, or

(iii) the appellate authority, or

(iv) any other authority specified in this behalf by the Government by a general or special order, and within such time as may be prescribed in such general or special order, may at any time within six months of the date of the order proposed to be revised, either on his or its own motion or otherwise call for the records of any inquiry and revise any order made under these Rules or under the Rules repealed by the Rule 32 (from which an appeal is allowed but from which no appeal has been preferred or from which no appeal is allowed), after consultation with the Commission where such consultation is necessary, and may-

(a) confirm, modify or set aside the order, or

(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed, or

(c) remit the case to the authority, making the order or to any other authority, directing such authority, to make such further inquiry as he may consider proper in the circumstances of the case, or

(d) pass such other orders as it may deem fit:

Provided that no order imposing or enhancing any penalty shall be made by any revising authority unless the Government Servant concerned has been



given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses(vi) to (x) of Rule 14 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses, no such penalty shall be imposed without an inquiry in the manner laid down in Rule 17 and after giving a reasonable opportunity to the Government Servant concerned of showing cause against the penalty proposed on the evidence adduced during the inquiry and except after consultation with the Commission where such consultation is necessary: Provided further that the power of revision shall be exercised by the head of department, unless-

(i) the authority which made the order in appeal, or

(ii) the authority to which an appeal would lie, where no appeal has been preferred, is subordinate to him.

(2) No proceeding for revision shall be commenced until after

(i) the expiry of the period of limitation for an appeal, or

(ii) the disposal of the appeal, where any such appeal has been preferred.

(3) An application for revision shall be dealt with in the same manner as if it were an appeal under these Rules."

(Underlined for emphasis)

26. The Deputy Inspector General of Police, who was the Appellate Authority under the Bihar CCA Rules invoking Rule 853 A (a) of the Bihar Police Manual referred the records of the departmental proceeding to the Police Headquarters, as according to him, the punishment imposed was not befitting the gravity of allegation against the petitioner.



27. Apparently, because of the provision under Rule 853 A (a) of the Bihar Police Manual to the effect that the Deputy Inspector General may call for any file but he should refer it to the Inspector General of Police with his recommendation for an order, the Deputy Inspector General, though the Appellate Authority, did not pass any order rather referred the same to the Director General-cum-Inspector General of Police, Bihar. It is evident that the Authorities were not sure among themselves whether disciplinary proceeding against a member of police force is to be governed by the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 or by the provisions under the Bihar Police Manual. While raising a question of maintainability of this writ application before this Court, learned Additional Advocate General 3 has placed reliance on Rules 23 and 24 of the Bihar CCA Rules, whereas the impugned order has been passed by the Director General-cum-Inspector General of Police, Bihar, invoking provision under Rule 853 A (a). A comparison of Rule 853 A (a) of the Bihar Police Manual with Rule 28 of the Bihar CCA Rules clearly demonstrates that the two provisions are not identical. Under the Bihar CCA Rules, the Appellate Authority may exercise revisional jurisdiction under Rule 28 thereof, whereas under Rule



853 A (a), the Deputy Inspector General of Police, who is the Appellate Authority, could only recommend for exercise of revisional power to the Director General-cum-Inspector General of Police, Bihar. It is noted here that Bihar CCA Rules have been framed in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, Rule 3 of which specifically provides that it shall apply to every government servant except any persons for whom special provision is made, in respect of matters covered by these Rules, by or under any law for the time being in force.

28. A question may arise whether Bihar Police Manual has statutory character or not. As is evident from the preface of the Bihar Police Manual, the same appears to have been issued by and with the authority of the State Government under Section 7 and 12 of the Police Act V, 1861. The Police Act, 1861 has been repealed, to the extent the same relates to the State of Bihar, by the Bihar Police Act, 2007. Section 29 of the Bihar Police Act makes provisions for punishment, subject to the provisions of Article 311 of the Constitution of India. Nothing has been brought to the Court's notice to show whether after enactment of Bihar Police Act, 2007 special provisions have been made laying down procedure or the manner of imposition of punishment by



way of disciplinary action. No clear stand has been taken on behalf of the State of Bihar, as to whether, the Bihar CCA Rules is being followed or the guidelines issued under Bihar Police Manual, for taking disciplinary action against police personnel.

29. Considering the nature of the impugned order, which has been passed in the present case, I need not go into the said aspect of the matter, suffice it to say that no clear decision of the State Government has been shown to this Court to the effect that the procedure laid down under Bihar Police Manual apply notwithstanding framing of Bihar CCA Rules in 2005. I, however, consider it appropriate to direct the Chief Secretary, Government of Bihar, to ensure that necessary clarification is issued by the State Government in accordance with law in respect of applicability or otherwise of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 for the police personnel in the State of Bihar in view of subsequent enactment of Bihar Police Act, 2007. It goes without saying that the State of Bihar may consider making appropriate statutory provisions so as to overcome any ambiguity in the provisions relating to taking of disciplinary action against police personnel in the State of Bihar.

30. Coming now to the order passed by the Director General-cum-Inspector General of Police dated 05.06.2020, it is



noticed that the said order has altogether fourteen paragraphs, out of which, only one paragraph vaguely refers to and reiterates that all police officers/personnel posted in the police station had knowledge about preparation and sale of illicit liquor in the concerned village situated hardly two kms away from the police station. Registration of three earlier criminal cases, namely, Gopalganj P.S. Case Nos. 160/2016, 334/16 and 343/16 is the reason, which has been assigned in the order why all the police personnel/officers posted in the police station including the petitioner must have been aware of the illegal activities going on. There is absolutely no discussion in the impugned order on the petitioner's representation in response to the show cause notice issued to him. The impugned order does not mention, as to why, the explanation of the petitioner was not acceptable to him.

31. On perusal of the impugned order as well as other documents relating to the departmental proceeding, copies of which have been brought on record in the present writ application, the Court forms an opinion that it was in the nature of bare formality, which was done on the part of the superior officers in the name of taking disciplinary action possibly to contain the public uproar arising after the occurrence, in which, 16 persons had died due to consumption of spurious liquor. No



effort at all was made in right earnest to take disciplinary action against erring officials/personnel. The charges were framed on presumption of knowledge of the police personnel regarding the illegal activities going on in the village concerned. No attempt was made by leading cogent evidence to establish that the petitioner was in fact aware of the illegal activities going on in the village, hardly 2 kms away from the Police Station and he failed to act in a matter befitting his duties and responsibilities.

32. In such view of the matter, the impugned order requires interference. The impugned order dated 15.06.2020, is accordingly set aside. The petitioner is directed to be reinstated forthwith. The consequences of quashing of the impugned order shall follow and accordingly the petitioner shall be entitled to the full salary and other emoluments for the period during which he remained out of service because of passing of an illegal order.

33. All orders/communications issued in consequence of the impugned order stands quashed.

34. In the facts and circumstances of this case, it is observed that since the petitioner did not choose to challenge the order dated 24.11.2018, whereby punishment of two black marks was awarded to him, he shall not be allowed to question the correctness of the said order.



35. This application is accordingly allowed.
36. No order as to costs.

(Chakradhari Sharan Singh, J)

AKASH/-

AFR/NAFR	
CAV DATE	06.01.2021
Uploading Date	
Transmission Date	

