

IN THE HIGH COURT OF JUDICATURE AT PATNA

C.W.J.C. No. 23862 of 2019

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Dhananjay Jha, s/o late Jagdish Jha, resident of village + PO-Hardiya,
PS- Purpari, District-Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Home Department, Government of Bihar,
Patna
3. The Director General of Police, Bihar, Patna
4. The Inspector General of Police, Muzaffarpur Zone, Muzaffarpur
5. The Deputy Inspector General of Police, Tirhut Range, Muzaffarpur
6. The Superintendent of Police, Vaishali at Hazipur
7. The Additional Superintendent of Police, Sadar Hazipur-cum-
Conducting Officer

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Prashant Sinha, Adv.
For the opposite party	:	Mr. N.H. Khan (SC 1)
	:	Md. Harun Qureshi (AC to SC 1)

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

29-07-2021 The present petition has been taken up for consideration
through the mode of Video Conferencing in view of the
prevailing situation on account of COVID-19 Pandemic,
requiring social distancing.

2. The present petition has been filed for quashing the memo



of charge contained in Memo no. 2644 dated 21.08.2015, issued by the Superintendent of Police, Vaishali, whereby and whereunder a departmental proceeding has been initiated against the petitioner. The petitioner has further prayed for quashing of the inquiry report dated 08.11.2018, the order of punishment dated 09.01.2019, passed by the Deputy Inspector General of Police, Tirhut Range, Muzaffarpur, whereby and whereunder, the petitioner has been dismissed from service, the Memo no. 3391 dated 19.07.2019, passed by the Inspector General of Police, dismissing the appeal of the petitioner and the order dated 03.10.2019, issued by the Director General of Police, Bihar, Patna dismissing the Memorial filed by the petitioner.

3. The brief facts of the case are that a trap team is alleged to have caught the petitioner while taking bribe, at his house on 31.07.2015, while he was posted as Sub-Inspector of Police at Bidupur Police Station in the district of Vaishali, which led to filing of a Vigilance PS case no. 62 of 2015 and the petitioner was taken into custody. While the petitioner was in custody, the Superintendent of Police, Vaishali vide Memo dated 21.08.2015, had framed charges against the petitioner alleging therein that he



was caught red-handed by the Vigilance trap team while receiving a bribe of a sum of Rs. 10,000/- . By the same Memo dated 21.08.2015, though the Conducting officer was appointed, however no Presenting Officer was appointed.

4. It appears that a departmental proceeding was started behind the back of the petitioner, inasmuch as the petitioner was in custody at that time and was released from custody only on 02.02.2016, whereafter he had joined the inquiry proceedings on 21.07.2016, at a time when one witness had already been examined behind the back of the petitioner and then two witnesses were examined on 28.12.2017, who were members of the trap team, however, the petitioner was not granted an opportunity to cross-examine them. Thereafter, two more witnesses were examined on 04.04.2018 and only at this juncture, the petitioner got the opportunity to cross-examine these two witnesses.

5. It is a matter of record that belatedly, at the fag end of the inquiry proceedings, a Presenting Officer was appointed on 04.04.2018. The inquiry officer has then submitted his inquiry report dated 08.11.2018, finding the petitioner to be guilty of the charges levelled against him. Thereafter, a second show cause



notice dated 12.12.2018 was issued to the petitioner, to which, the petitioner had submitted his reply and then, the order of dismissal dated 09.01.2019 was passed by the Deputy Inspector General of Police, Tirhut Range, Muzaffarpur. The petitioner had then filed an appeal, however the same was dismissed by an order dated 19.07.2019. The petitioner had challenged the Appellate Order by filing a Memorial before the Director General of Police, Bihar, Patna, however the same has also stood dismissed by an order dated 03.10.2019.

6. The learned counsel for the petitioner has raised various legal issues and the first issue raised by the learned counsel for the petitioner is that the appointing authority of the petitioner is the Deputy Inspector General of Police, nonetheless the memo of charge was issued by the Superintendent of Police, Vaishali, hence the memo of charge stands vitiated in view of **Rule 17(3) of the Bihar Government Servant (Classification, Control and Appeal, Rules, 2005** (hereinafter referred to as the 'Rules 2005'). The next issue raised by the learned counsel for the petitioner is that the memo of charge was issued to the petitioner without providing an opportunity to the petitioner to furnish his statement of defence, hence the same is contrary to **Rule 17(4)**



of the Rules, 2005.

7. The next issue raised by the learned counsel for the petitioner is that the Presenting Officer was appointed at the fag end of the departmental inquiry and major portion of the departmental inquiry had already been completed in absence of the Presenting Officer and the Conducting Officer had acted as a representative of the disciplinary authority, thus the conduct of the Conducting Officer was biased since the very inception, hence, the inquiry report stands vitiated in the eyes of law.

8. The learned counsel for the petitioner has also submitted that the petitioner was granted opportunity to cross-examine only two witnesses out of the six witnesses examined by the Conducting Officer, hence on this score as well, the entire disciplinary proceeding stands vitiated. Lastly, it is argued that the entire case is a case of no evidence, inasmuch as the complainant himself has not been examined in this case and moreover, no cogent documents have been exhibited so as to bring home the guilt of the petitioner. It is further submitted that the impugned order dated 09.01.2019, passed by the Deputy Inspector General of police, Tirhut Range, Muzaffarpur suffers from the vice of non-application of mind, inasmuch as no



cogent, succinct and clear reasons have been furnished in support of his conclusion so as to warrant dismissal of the petitioner from his service.

9. *Per contra*, the learned counsel for the State Md. Harun Qureshi (AC to SC 1) has submitted that there is no lacuna in the procedure adopted by the disciplinary authority, hence this Court would not sit in appeal and re-appreciate the evidence, thus the order of dismissal of the petitioner is required to be upheld. It is also submitted that the petitioner has not been able to show as to what prejudice has been caused to him on account of delayed appointment of the Presenting Officer, though it has not been denied that the Presenting Officer was not appointed at the initial stage but was appointed only at the fag end of the departmental inquiry. It is also submitted that there is no infirmity as far as issuance of the memo of charges by the Superintendent of Police, Vaishali is concerned, in view of **Rule 824 of the Bihar Police Manual**, more particularly **Rule 824 (e)**, which provides that the case of the Inspectors of Police are not covered by the Civil Services (Classification, Control & Appeal) Rules, inasmuch as the Inspectors of Police, though being gazetted rank officers, shall be governed by the **Bihar**



Sub-ordinate Services (Discipline & Appeal) Rules, 1935.

At this juncture itself, it would be relevant to state, as has been submitted by the learned counsel for the petitioner, that vide ***Rule 32 of the Rules 2005, the Bihar and Orissa Sub-ordinate Services (Discipline and Appeal) Rules, 1935*** has already stood repealed and it has been postulated that anything done or any action taken under the said ***Rules, 1935*** shall be deemed to have been done or taken in exercise of powers conferred by or under the ***Rules, 2005***.

10. Lastly, the learned counsel for the respondent-State has submitted that the authority which has passed the impugned order of dismissal is the competent authority, inasmuch he is the appointing authority of the petitioner i.e. the Deputy Inspector General of Police.

11.

12. I have heard the learned counsel for the parties and perused the materials on record. ***Rule 17 & 18 of the Bihar Government Servant (Classification, Control & Appeal) Rules, 2005***, lays down a mandatory procedure to be followed by the disciplinary authority which begins from the stage of service of



charge memo by the disciplinary authority, enabling the delinquent to respond thereto, conferring an equal obligation upon the disciplinary authority to satisfy itself, as to whether the allegations are required to be pursued and only after the disciplinary authority is satisfied as also upon completion of such exercise as mandated under **Rule 17(3) read with Rule 17(4)**, the disciplinary authority can either interfere in the matter himself or delegate it to an Enquiry Officer under **Rule 17(6)** to enquire into the same and only then the Enquiry Officer takes over the proceeding. Under **Rule 17(6) of the Rules, 2005**, the disciplinary authority has another obligation i.e. to appoint a Presenting Officer for leading the case of the Department, which in the present case has been given a go-bye. It is apparent from the records that the proceeding under challenge has been held de hors the procedure inasmuch as neither the petitioner has been heard on the charge by the disciplinary authority, since he was in custody at that time. Moreover, the absence of the Presenting Officer during major part of the departmental enquiry, as mandated under **Rule 17(5) and (6)** perpetuates the illegality, which is a serious lacuna and has rendered the entire proceeding illegal. The legal position in this regard is no long *res integra* inasmuch



judgment *dated 29.06.2017* passed in *CWJC No. 7207 of 2016* (*Shankar Dayal vs. State of Bihar & ors.*), relevant portion whereof is reproduced herein below:-

“Rule 17(3) of "the Rules" casts an obligation on the Disciplinary Authority to draw a charge against a delinquent Government servant or cause it to be drawn up against the officer delinquent. Sub-rule (4) thereof further mandates the delivery of such charge memo so drawn up either through the Disciplinary Authority or through an officer duly authorized. The obligation cast on the Disciplinary Authority does not stop here rather he has yet to satisfy himself whether the explanation so forwarded by a delinquent on the proposed charge, requires an enquiry by the Enquiry Officer or requires a closure. This power exclusively vested in the Disciplinary Authority under rule 17(4) cannot be delegated. In the present case this mandatory obligation cast on Disciplinary Authority has been flouted as confirmed from the letter dated 1.2.2008 (Annexure 2) issued by the Enquiry Officer directing the petitioner to file his reply on the charges before him. This is a gross statutory violation and has been commented upon by a Division Bench of this Court in a judgment reported in 1996(2) PLJR 95 (Ravindra Nath Singh vs. Bihar State Road Transport Corporation) when the Division Bench has expressed the following opinion at paragraph 6 of the judgment:



“6. ... The Enquiry Officer is not the competent authority to consider the reply to the charges. It is for the disciplinary authority to consider the reply to charges and on consideration of the causes shown in the reply to decide as to whether to close or to continue with the proceedings by holding domestic enquiry into the charges.”

13. This Court finds that the Inquiry Officer himself has acted as representative of the disciplinary authority and has all throughout controlled the departmental proceedings as also ensured that proper witnesses are examined, which is not only contrary to the procedure laid down under Rule 18 of the Rules, 2005 but also law in teeth of the law laid down by the Hon’ble Apex Court in the case of ***State of U.P. and others v. Saroj Kr. Sinha, reported in (2010) 2 SCC 772***, hence this Court is of the view that the inquiry proceedings from its very inception, stand vitiated, thus the inquiry report dated 08.11.2018 is quashed. This Court further finds that the appointing authority of the petitioner is admittedly, the Deputy Inspector General of Police, however, the memo of charges has been issued by the Superintendent of Police, Vaishali vide order dated 21.08.2015, which is in

f ***Rule 17 (3)*** inasmuch as the same



mandates the disciplinary authority to draw the imputation of misconduct or misbehaviour in support of each article of charge alongwith the list of documents and list of witnesses as also the articles of charges, however in the present case, instead of the Deputy Inspector General of Police, who is the disciplinary authority of the petitioner, the Superintendent of Police, Vaishali has drawn up the charges, hence this Court finds that the charge-sheet also stands vitiated in the eyes of law being contrary to Rule 17(3) of the Rules 2005, thus the same is set aside.

14. Now, coming to the order of punishment dated 09.01.2019, passed by the Inspector General of Police, Tirhut Range, Muzaffarpur, this Court finds that the same has got no legs to stand, inasmuch as the memo of charge and inquiry report have already stood quashed, hence is set aside, not on this ground alone but also on the ground of being bereft of any reasons or showing any application of mind so as to arrive at a decision to inflict punishment of dismissal upon the petitioner. Consequently, as a result of setting aside of the memo of charge, the inquiry report and the order of punishment dated 09.01.2019, the appellate order dated 19.07.2019, passed by the Inspector General of Police and the order dated 03.10.2019,



passed by the Director General of Police, Bihar, Patna, on the memorial filed by the petitioner, is also quashed.

15. Having regard to the facts and circumstances of the case and for the grounds mentioned hereinabove, the writ petition stands allowed on the aforesaid terms, however, the matter is remitted back to the disciplinary authority with liberty to proceed afresh from the stage of issuance of memo of charges. It is needless to state that as a consequence of quashing of the order of dismissal dated 09.01.2019, appellate order dated 19.07.2019 and the order passed on memorial dated 03.10.2019, though the petitioner shall be entitled to be reinstated forthwith, however, the payment of the consequential benefits shall abide by the final outcome of the fresh disciplinary proceedings to be conducted by the disciplinary authority, as aforesaid, nonetheless, the same shall be completed within a period of 06 months from the date of receipt/production of a copy of this Order, failing which the petitioner shall become entitled to payment of all the consequential benefits including 100% back wages, as a result of quashing of the impugned orders dated 09.01.2019, 19.07.2019 and 03.10.2019. It is made clear that the petitioner shall cooperate in the fresh proceedings to be



conducted by the disciplinary authority, failing which the disciplinary authority shall be free to proceed ex-parte against the petitioner.

(Mohit Kumar Shah. J)

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AFR/NAFR	AFR
CAV date	NA
Uploading date	.
Transmission date	NA

