

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1110 of 2023

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Nisha Kumari, Daughter of Arvind Prasad Mandal, Resident of Village-
Athagama, Post Office- Shankarpur, Police Station- Sabour, District-
Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar, through Principal Secretary, Home (Police) Department,
Government of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Deputy Inspector General of Police, Saran Range, Chapra.
4. The Superintendent of Police, Saran, Chapra.
5. The Central Selection Board (Constable Recruitment) Bihar, Patna through
its Secretary.
6. The Chairman, Central Selection Board (Constable Recruitment), Bihar,
Patna.
7. The Officer-on-Special Duty, Central Selection Board, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Dr. Mayanand Jha, Sr. Advocate Mr.Arvind Kumar, Advocate
For the State	:	Mr. Sheo Shankar Prasad (SC-8) Mr. Ruchikar Jha, AC to SC-8
For C.S.B.C.	:	Mr. Sanjay Pandey, Advocate Mr. Binod Kumar Mishra, Advocate Mr. Vivek Anand Amritesh, Advocate

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 18-07-2023

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

2. The petitioner was a participant in the recruitment
process for appointment of Constable under Advertisement No.
01/2014 conducted by the Bihar Central Selection (Constable
Recruitment) Board. She appeared at the examination and was



declared selected and started discharging her duty from the date of her joining in June, 2015.

3. Petitioner has subsequently been dismissed from her service by an order dated 03-10-2018 on the ground that she had engaged someone to appear for her in the written examination conducted in the process of selection. On the ground of such impersonation, she was also made accused in a criminal case, details of which are not relevant for the instant proceedings.

4. The petitioner has assailed the order in appeal before the Deputy Inspector General of Police (DIG), Saran Range. The appeal has been rejected on 20.11.2018. Whereafter, she has availed the remedy of memorial. The same has also been rejected and order of rejection communicated to the petitioner by the Superintendent of Police, Saran, under communication dated 30-06-2022.

5. The three orders dated 03-10-2018, 20-11-2018, and 30-06-2022 have been put to challenge by way of the instant proceedings.

6. It is submitted by the learned senior counsel representing the petitioner that the proceedings are vitiated for non-compliance with the mandatory procedure under Rule



17(14) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as 'Bihar (CCA) Rules').

7. It is apparent from bare perusal of the inquiry report that the presenting officer had been appointed, but he has not presented the case on behalf of the department. The inquiry officer has assumed the role of the presenting officer and resorting to such process, the inquiry officer, who was performing a *quasi judicial* function, has committed a major procedural lapse striking at the root of fairness in the process.

8. So as to enable the learned State counsel to examine whether the presenting officer had presented the case on behalf of the department, the matter was adjourned on the last occasion.

9. Today, when the matter is taken up, on going through the inquiry report, learned State counsel relies upon paragraph 5 thereof which reads as follows:

"5. **मंतव्य** :- आरोप-प्रारूप, साक्षी द्वारा दिये गये साक्ष्य, वादी का प्रारंभिक / अंतिम बचाव स्पष्टीकरण एवं संचिका में उपलब्ध प्रदर्शो तथा संबंधित कांड अभिलेखों का अवलोकन प्रस्तुतीकरण पदाधिकारी के समक्ष किया गया। अवलोकनोपरान्त यह बात प्रकाश में आयी है कि पुलिस अधीक्षक का कार्यालय ,



सारण का ज्ञापांक 4766/र0 का0 दिनांक 06.10.15 के आलोक में सिपाही भर्ती विज्ञापन संख्या 01/2014 के अन्तर्गत महिला सिपाही / 906 निशा कुमारी की जाँच हेतु विशेष कार्य पदाधिकारी, केन्द्रीय चयन पर्षद (सिपाही भर्ती) बोर्ड, बिहार पटना के पास पुलिस अवर निरीक्षक मदन महतो एवं प्रा०अ०नि० गोपाल दूबे पुलिस पदाधिकारी, मार्गरक्षी दल को आदेश पत्र संख्या 2276991 दिनांक 07.10.15 के माध्यम से उनके सभी मूल अभिलेख सहित जाँच हेतु भेजा गया।"

10. Referring to the same, he submits that the presenting officer was very much present in the proceedings.

11. Considering the rival submissions, this Court would examine the paragraph 5 of the inquiry report with reference to the legal position arising from Rule 17 (14) of the Bihar (CCA) Rules, and the law in this regard, which stands settled by the judgment of the Hon'ble Apex Court in the case of *State Of U.P. & Ors vs Saroj Kumar Sinha* reported in (2010) 2 SCC 772, as reiterated by the Hon'ble Apex Court in the case of *Union of India & Ors. v. Ram Lakhan Sharma*, reported in (2018) 7 SCC 670.

12. The law is very clear that the charges which are levelled by the department are to be supported by the presenting officer in the course of inquiry. In a situation like the



instant case where the presenting officer is a mute spectator, and the inquiry officer assumes the role of the presenting officer and acted as a prosecutor, his capacity as an independent adjudicator was lost. It can not be said that the petitioner has been dealt with by a fair procedure.

13. The decision arrived at pursuant to such a procedure is unsustainable in the eyes of law, in view of the provision contained in the Bihar (CCA) Rules, and the law in this regard which stands settled as per the decision of the Hon'ble Apex Court in the cases of *Saroj Kumar Sinha* (supra) and *Ram Lakhan Sharma* (supra).

14. The procedural flaw having occurred at the very initial stage before the inquiry officer, the conclusion based thereon, which culminated into the order of dismissal, dated 03.10.2018, is unsustainable. The order passed by the disciplinary authority is therefore quashed.

15. The appellate authority as well as the authority considering the memorial of the petitioner has affirmed the order of the disciplinary authority, which in view of the fatal procedural lapse, has been found to be legally unsustainable. The two orders being an affirmation of the illegal order, therefore must also collapse. The order passed by the appellate authority



dated 20-11-2018, and the order under communication dated 30-06-2022, insofar as it communicates rejection of the petitioner's memorial, are also quashed. The writ petition is allowed.

16. The authority would be at liberty to proceed against the petitioner from the stage of after issuance of charges, in accordance with law.

(Madhuresh Prasad, J)

SUMIT/-

AFR/NAFR	NAFR
CAV DATE	NA
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Transmission Date	NA

