

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4643 of 2016

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Vijay Kumar Singh, Son of Ramehwar Prasad Singh, Resident of Village
-Dumduma Police Station Mashrakh District Saran at Chapra.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Home Department , Govt. of Bihar, Patna.
3. The Director General of Police, Bihar, Patna
4. The Inspector General of Police, Tirhut Range, Muzaffarpur
5. The Deputy Inspector General of Police Tirhut Range, Muzaffarpur
6. The Superintendent of Police, Vaishali.
7. The Sub-Divisional Police officer, Mahua.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Bindhayachal Singh, Sr. Advocate Mr. Vipin Kumar Singh, Advocate Ms. Nikita Mittal, Advocate
For the Respondent/s	:	Mr. AAG5- P.K. Verma

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL JUDGMENT

Date : 19-01-2023

This writ petition has been filed for following

reliefs:

(i) For issuance of writ in the nature of certiorari or any other appropriate writ for quashing of the inquiry report contained in memo No. 144 of 23.01.2014 whereby the conducting/enquiry officer found that article of charge has been proved and held the petitioner guilty.



(ii) For issuance of writ in the nature of certiorari or any other appropriate writ for quashing of the order dated 06.02.2014 contained in memo No. 334 whereby the Deputy Inspector General of Police, Tirhut Region, Muzaffarpur dismissed the petitioner from service.

(iii) For issuance of writ in the nature of certiorari or any other appropriate writ for quashing of the order dated 23.07.2014 contained in memo No. 1429 whereby the appeal filed by petitioner has been dismissed by the Inspector General of Police, Muzaffarpur.

(iv) For issuance of writ in the nature of certiorari or any other appropriate writ for quashing of the order dated 21.11.2014 contained in memo No. 5045 passed by the Director General of Police, Patna, Bihar whereby the memorial filed by the petitioner has been dismissed by the Director General of Police, Patna, Bihar.

(v) For issuance of writ in the nature of mandamus or any other appropriate writ for directing the respondents to reinstate the petitioner on the post of Sub-Inspector of Police, with all consequential benefits.

Short facts of the case are that the petitioner was arrested in the trap case while he was posted as Station House



Officer, Jandaha on 13.05.2003 and an F.I.R. was instituted against the petitioner bearing Vigilance F.I.R. No. 46 of 2013 for alleged demand and recovery of illegal gratification of amount of Rs. 25,000/-. The aforesaid case is still pending. In the meanwhile, a departmental proceeding was also initiated against the petitioner which finally culminated into the order of punishment which stands affirmed in appeal and memorial and is put to question before this Court.

Among the several issues raised by learned counsel for the petitioner to question the order of dismissal passed by the disciplinary authority, one of the issues is to the effect that a memo of charge has been framed and issued by an authority who is not competent to issue the charge. In the present case, memo of charge has been issued by Superintendent of Police, Vaishali. It is the submission of the petitioner that proceeding has been initiated by Superintendent of Police, Vaishali while the disciplinary authority of the petitioner is Deputy Inspector General of Police/Inspector General of Police. The very initiation by an authority who is not competent to do so is illegal and that itself vitiates the entire departmental proceeding. In this connection, he places reliance upon paragraph Nos. 27 to 33 of the judgment passed by co-ordinate Bench of this Court in **Uday Pratap Singh**



v. State of Bihar & Ors reported in 2017(4) PLJR 195 which reads as follows:

Re: Invalidity in the framing of charge:

27. Rule 2(f) of “the Disciplinary Rules” defines an appointie Disciplinary Rules” is the other relevant rule in the present context inasmuch as it providng authority and inter alia under sub-rule (iii) includes the authority who has appointed the Government servant to such service. The appointment order thus having been issued under the signature of the Inspector General of Police, he would be the appointing authority of the petitioner in terms of Rule 2(f) (iii) of “the Disciplinary Rules”.

28. Rule 2(j) of “the Disciplinary Rules” defines a Disciplinary Authority to mean the appointing authority or any other authority authorized by it who shall be competent under these Rules to impose on a Government servant any of the penalties provided under Rule 14 of the Rules.

29. Rule 16 of “the Disciplinary Rules” is the other relevant rule in the present context inasmuch as it provides for the authority to institute a proceeding and inter alia empowers the Government or the appointing authority or any authority to which the appointing authority is subordinate or any other authority empowered by general or special order of the Government, to institute disciplinary proceeding against a Government servant or direct a disciplinary authority to institute disciplinary proceeding.



30. *A careful reading of the three provisions leaves no room for confusion that it is either the appointing authority or any authority authorized by it or an authority authorized by special or general order, who would be competent to initiate a disciplinary proceeding against a Government servant.*

31. *In so far as the case in hand is concerned it is the Senior Superintendent of Police, Patna who has initiated the proceeding against the petitioner by service of charge memo placed at Annexure-6 and which also directs the petitioner to file his reply before the Senior Superintendent of Police but then in absence of any authorization given to the Senior Superintendent of Police either under the Bihar Police Manual or by the Inspector General of Police being the appointing authority or the Deputy Inspector General of Police being the Disciplinary Authority to initiate the process, the very initiation is without jurisdiction.*

32. *The judgment of the Supreme Court rendered in the case of **B.V. Gopinath** (supra) lays down the law on the issue of initiation of a disciplinary proceeding by a competent authority. Mr. Anjani Kumar though made reference to an unreported judgment rendered by a coordinate Bench of this Court in CWJC No.15687 of 2015 (**Shailendra Kumar Vs. The State of Bihar**) to submit that a clear distinction has been made by the Bench in between the provisions of rules 14 and 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 which fell for consideration before the Supreme Court qua the provisions of “the Disciplinary Rules” which are in consideration before this*



*Court as well as on the judgment of the Supreme Court rendered in the case of **Prabhash Chandra Mirdha** (supra), to canvass that a proceeding can be initiated by an authority other than the Disciplinary Authority but in my opinion the reliance would be of no help to the respondents.*

*33. There cannot be a contest on the legal proposition that a disciplinary proceeding can only be initiated by an authority competent to do so and even the judgment relied upon by Mr. Anjani Kumar in the case of **Prabhash Chandra Mirdha** (supra) at paragraph 13 would confirm this position which holds thus:*

"Thus, the law on the issue can be summarized to the effect that charge-sheet cannot generally be a subject-matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the charge-sheet be quashed at an initial stage as it would be a premature stage to deal with the issues. Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings."

Learned counsel for the State, however, supports the impugned order and submits that after following due process the petitioner has been dismissed from service. He next submits that while the petitioner was posted as Station House Officer at



Jandaha, he was arrested in the trap case and there was recovery of illegal gratification of amount of Rs. 25,000/-. He further submits that in view of the heinous nature of crime committed by this petitioner, the writ petition has no merit and is fit to be dismissed.

Considering the rival submissions of both the parties and having perused the materials available on record, this Court is of the opinion that the contention raised by the petitioner is admitted. It is not in dispute that the petitioner is on the rank of Sub-Inspector of Police and it is also not in dispute that the disciplinary authority in the case of the petitioner is Deputy Inspector General of Police/Inspector General of Police. In terms of Rule 17(3) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 a charge memo has to be framed by the disciplinary authority, in this case, Deputy Inspector General of Police/Inspector General of Police. However, in the present case charge memo has been framed by Superintendent of Police, Vaishali.

In view of the discussion and for reasons indicated above, impugned orders dated 23.01.2014 contained in memo No. 144, 06.02.2014 contained in memo No. 334, 23.07.2014 contained in memo No. 1429 and 21.11.2014 contained in memo



No. 5045 are hereby, quashed with all the consequential benefits to the petitioner. Needless to say that respondents are at the liberty to proceed fresh against the petitioner, in accordance with law, if so advised.

This writ petition stands allowed.

(Prabhat Kumar Singh, J)

Navya/-

AFR/NAFR	NAFR
CAV DATE	N/A
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