

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4152 of 2020

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Bhagwan Thakur, Son of Late Chit Narayan Thakur, resident of Village p-
Pahlam, Post- Paharpur, Police Station- Salkhua, District-Saharsa.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home
(Police), Government of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Zonal Inspector General of Police, Darbhanga Zone, Darbhanga.
4. The Regional Deputy Inspector General of Police, Saharsa Region, Saharsa.
5. The Superintendent of Police, Supaul.
6. The Inquiry Officer cum Deputy Superintendent of Police, Birpur, District-
Supaul.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ambuj Nayan Chaubey, Advocate Mr. Sanjay Kumar Singh, Advocate Mr. Shabwal Harsh, Advocate Mr. Shashank Shekhar Dubey, Advocate Mr. Sanjay Kumar Singh
For the Respondent/s	:	Mr. Sheo Shankar Prasad (SC8) Ms. Ruchi Jha, AC to SC8 Mr. Sanjay Kumar, AC to SC8

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 10-11-2023

Heard learned counsel for the parties.

2. The present writ application has been filed for



quashing of the order dated 10.05.2019 issued vide Memo No. 388, passed by the Zonal Inspector General, Darbhanga, Zone (contained in Annexure-13) (appellate order); order dated 07.02.2019 contained in Memo No. 201, passed by DIG, Koshi Region, Saharsa (original order, as contained in Annexure-11); order dated 04.02.2019, issued vide Memo 219, passed by the Superintendent of Police, Supaul in departmental proceeding Case No. 26/2018 (recommendation for dismissal, as contained in Annexure-9); order dated 14.02.2019, issued vide Memo No. 294 (as contained in Annexure-12) and order dated 18.05.2019, issued vide memo no. 748 passed by the Superintendent of Police, Supaul (as contained in Annexure-4).

2. Learned counsel for the petitioner submits that the petitioner is working on the post of Assistant Sub Inspector in the District of Saharsa during his posting at Saharsa, a complaint was filed before the Vigilance Department with an allegation to demand of Rs. 20,000/- as bribe made by one Sintu Yadav. On the basis of said complaint, the Vigilance raid was made by virtue of FIR No. 435 of 2017 lodged, he was arrested thereafter suspended by the order of the Superintendent of Police, Supaul bearing District Order No.338/2018 dated 11.04.2018. Learned counsel for the petitioner further submits



that the entire departmental proceeding initiated against the petitioner from suspension and issuance of charge memo is non-jurisdictional and in violation of the Bihar Government Servants (Classification, Control and Appeal), Rules, 2005 (hereinafter referred to as the 'CCA Rules, 2005) and, therefore, the enquiry report, final order, appellate order and the memorial order all are fit to be set aside.

3. Learned counsel for the petitioner further submits that the petitioner was working as an Assistant Sub Inspector and his services are primarily guided by the Bihar Police Manual, 1978 and for the purpose of any disciplinary action, the provisions laid down under the CCA, Rules 2005 are applicable. According to Rule 9 of the CCA, Rules, 2005, the order of suspension may be passed by the appointing authority or by any subordinate authority after authorization by the competent government. He further submits that as per Rule 16 of the CCA Rules, 2005, a charge memo has to be issued by the appointing authority or any person who is competent to authorize from the government. Counsel further submits that from the charge memo dated 18.05.2018, which is Annexure-4 to the writ petition, it transpires that there is a gross violation in the preparation of the charge memo. He further submits that the



presenting officer has also not been appointed which is necessary as per the CCA Rules, 2005 as well as in the light of decision 22.09.2021 rendered by this Court in the case of **Sonu Kumar Vs. State of Bihar in CWJC No. 17527 of 2019**. Learned counsel for the petitioner further submits that non-appointment of the presenting officer resulted in the defective inquiry in furtherance of the said defective enquiry on the basis of non-jurisdictional charge memo shall also make the enquiry report, the order of disciplinary authority, appellate authority and memorial order defective as all the orders which are challenged in the present proceeding are fit to be quashed.

4. On the facts, counsel for the petitioner submits that the person who has made the allegation, i.e. fardbeyan has not been proved. In the FIR, it was alleged that the petitioner had demanded Rs.20,000/- to file a chargesheet in favour of a complainant relating to Triveniganj P.S. Case No. 435 of 2017. The said allegation was made on 10.12.2018 whereas the petitioner has already filed the chargesheet in the said case on 31.12.2017 and, therefore, the demand of any bribe after about one year of the filing of the chargesheet is absolutely false and may not be accepted, but this basic factual matrix has not been considered at any stage during the disciplinary proceeding



instead of the fact that this is the consistent pleading of the petitioner throughout.

5. On the contrary, learned counsel for the State submits that none of the points as raised by the petitioner before this Court is acceptable and the writ petition is fit to be rejected. He further submits that the petitioner was in police service and his services particularly disciplinary actions have been guided by the Bihar Police Manual, not by the CCA Rules, 2005. He submits that Rules 3(1) (d) of the CCA Rules, 2005 clearly states that these rules shall apply to every government servant but shall not apply to -

a.....

b.....

c.....

d. Any person from whom special provision is made, in respect of matter covered by these Rules, by or under any law for the time being enforced or by or under any agreement entered into with the previous approval of the government before after the commencement of these rules, in regard to matter covered by such special provisions.

6. Learned counsel further submits that the Bihar



Police Manual was enacted in the year 1978 and Rule 824A and its Chapter 25 categorically deal with the punishments / departmental proceedings. Learned counsel further submits that in Chapter 25 of the Bihar Police Manual, there is no provision for the appointment of a Presenting Officer in the departmental proceeding, and as such the argument of the petitioner that appointment of the disciplinary proceeding and its role are not appear to be mandatory provision. Learned counsel further submits that Volume-3 /Appendix-41 of the Bihar Police Manual indicates the list of authorities who can make appointments and give promotions to different ranks in the police department. He submits that at Sl. No.7, for the post of Assistant Sub Inspector, there is no appointing authority indicated but an indication of promoting authority is there and it has been mentioned that promoting authority is Superintendent but selection of rank seniority basis by DIG.

6.1. In this background, counsel for the State has taken the plea that the suspension order (Annexure-2) and the charge memo (Annexure-4) issued by the Superintendent of Police is legal and completely in accordance with the law. Learned counsel further submits that in support of his argument that for ASI the issuance of charge memo and suspension order



by the Superintendent of Police has been tested in CWJC No. 8864 of 2017, titled as Ras Bihari Paswan Vs. the State of Bihar and Ors. dated 04.05.2023 and, therefore, this point may not be decided in favour of the petitioner

7. On the point of the presenting officer, learned counsel submits that since the strict provision of CCA, Rules, 2005 is not applicable in the case of police service and in the special manual, i.e. the Bihar Police Manual, Chapter 25 does not indicate about the appointment of the presenting officer, therefore, for this irregularity, the proceeding cannot be quashed. He submits on merits that Enquiry Officer has meticulously examined in inquiry proceeding about the case of the petitioner and found charges proved against him as well as the Superintendent of Police after the preparation of the report referred this matter before the DIG who has passed the final order. The said order was challenged before the IG and subsequently approved. In this view of the matter, this writ petition is fit to be dismissed.

8. Upon going through the pleadings of the case, this Court reached the opinion that with a view to deciding this case, there are three types of issues which has to be tested and decided, as under : -



(i) The applicability of CCA Rules, 2005 for the member of the police service in relation to the disciplinary proceeding;

(ii) Whether the Superintendent of Police is the competent authority to suspend and issue charge memo to the ASI, being the appointing authority or not and whether the punishment order of dismissal could be passed by the Superintendent of Police ? and

(iii) The effect of non-appointment of the presenting officer or appointment or non-action /non-participation of the presenting officer in the departmental proceeding and its effect in the present departmental proceeding.

9. For the purpose of answering the first issue there are certain rules which are necessary to be looked into afresh, those are Rules 3 and 32 of the CCA Rules, 2005 as under: -

“3. Application of these Rules. - (1) These Rules shall apply to every Government Servant but shall not apply to-

- (a) any member of the All India Services,*
- (b) any person in casual employment,*
- (c) any person subject to discharge from service on less than one month's notice,*
- (d) any person for whom special provision is made, in respect of matter covered by these Rules,*



by or under any law for the time being in force or by or under any agreement entered into with the previous approval of the Government before or after the commencement of these Rules, in regard to matter covered by such special provisions.

(2) Notwithstanding anything contained in sub-rule (1), the Government of Bihar may, by order, exclude any class of Government Servants from the operation of all or any of these Rules against him.

(3) Notwithstanding anything contained in sub-rule (1), these Rules shall apply to every government servant temporarily transferred to a Service or post coming within (d) in sub-rule (1).

(4) If any doubt arises with respect to the provisions of these Rules the matter shall be referred to the Government in the Department of Personnel & Administrative Reforms, whose decision shall be final.

32. Repeal and Savings. - (1) The Notification No.-III/RM01/63-8051 -A dated 3rd July, 1963 adopting the *Civil Services (Classification, Control and Appeal) Rules, 1930 and the Bihar and Orissa Subordinate Services (Discipline and Appeal) Rules, 1935* as well as Notifications making amendments in the said two Rules are hereby repealed.

(2) All instructions issued under the *Civil Services (Classification, Control & Appeal) Rules, 1930 and the Bihar and Orissa Subordinate Services (Discipline and Appeal) Rules, 1935* from



time to time are hereby repealed.

(3) Anything done or any action taken in exercise of the powers under the Civil Services (Classification, Control & Appeal) Rules, 1930 and the Bihar and Orissa Subordinate Service (Discipline & Appeal) Rules, 1935 shall be deemed to have been done or taken in exercise of the powers conferred by or under those Rules as if those Rules were in force on the day on which such thing or action was done or taken.

(4) Nothing in these Rules shall operate to deprive any person of any right of appeal, which he would have had if these Rules had not been made in respect of any order passed before they came in force.

(5) Notwithstanding anything contained in these Rules any departmental proceedings initiated under the Rules repealed shall continue under those Rules including the Appeal preferred against any punishment imposed as if those Rules were still in existence.”

With a view to decide this issue, it is necessary to look the relevant Rule 824A of the Bihar Police Manual as under:-

“(a) Disciplinary action against members of the Indian Police Service shall be instituted according to All India Services (Discipline and Appeal) Rules, 1969.



(b) Action against Deputy Superintendents and their equivalent ranks shall be taken according to Civil Services (Classification, Control and Appeal) Rules, 1930.

(c) Action against ministerial officers shall be taken according to Bihar Subordinate Services (Discipline and Appeal) Rules 1935.

(d) The rules concerning members of Bihar Sashastra police are given in a separate Manual.

(e) For experts and other ranks, action shall be taken according to sub-rule (b) above, if gazetted, and according to sub-rule (c), if non-gazetted, unless expressly proposed otherwise for any special person. Inspectors of Police are not included in Civil Services (Classification, Control and Appeal) Rules although they are of gazetted rank and rule 824 shall be applicable to them like other Police Officers who are recruited according to Police Act, 1861.”

After a bare reading of CCA Rules, 2005, it is apparent that these rules shall apply to every government servant but shall not apply to members of All India Services any person in casual appointment, any person subject to discharge from service on less than one months notice and any person from whom special provision is made, in respect of matter covered by these Rules, by or under any law for the time being



in force or by or under any agreement entered into with the previous approval of the Government before or after the commencement of these Rules, in regard to matter covered by such special provisions.

10. This Court agrees on the submissions made by learned counsel for the respondent that the Bihar Police Manual which was enacted in the year 1978 has been framed specially to deal with the employees of the Bihar Police but under the said rule, particularly Rule 824A clearly indicates that the provisions of the All India Services (Discipline and Appeal) Rules, 1969 shall apply for disciplinary action against members of Indian Police Service, disciplinary action against Deputy Superintendent of Police and its equivalent shall run according to Civil Services (Classification, Control and Appeal) Rules, 1930. The disciplinary action against ministerial staff shall be taken according to Bihar and Orissa Sub-ordinate Services (Discipline and Appeal) Rules, 1935. The disciplinary action against Bihar Sashastra Police used to be dealt with by a separate manual. But for other ranks according to Rule 824A (e) of the Bihar Police Manual, those persons in gazetted rank, the disciplinary action shall run according to Civil Services (Classification, Control and Appeal) Rules, 1930 and those who



comes within the non-gazetted category, the disciplinary action shall be guided by Bihar and Orissa Sub-ordinate Services (Discipline and Appeal) Rules, 1935. Hence, for the petitioner who was working as an ASI, his disciplinary action ought to be guided by the Bihar and Orissa Sub-ordinate Services (Discipline and Appeal) Rules, 1935. But Rule 32 of the CCA Rules, 2005, which is basically, a repealing and saving clause indicates that by virtue of the enactment of CCA Rules, 2005, rule of Civil Services (Classification, Control and Appeal) Rules, 1930 and Bihar and Orissa Sub-ordinate Services (Discipline and Appeal) Rules, 1935 both were repealed and in place of these rules, the Bihar CCA Rules 2005 came into existence. Hence, upon conjugal reading of Rules 3, 32 of CCA Rules, 2005 with Chapter 25 particularly, Rule 824A of the Bihar Police Manual, it becomes crystal clear that all the officials come within the category of Bihar Police Manual whether gazetted or non-gazetted, their disciplinary action shall be guided by the CCA Rules, 2005, in addition to provisions laid down in Bihar Police Manual.

11. From the charge memo and disciplinary orders passed by the different authorities as well as a letter which has been issued vide a Letter No. 294 dated 20.05.2022 issued from



the office of DIG, Bihar, Patna to all departments of police officials, it further appears that CCA Rules, 2005 is applicable. A scanned copy of Letter No. 294 dated 20.05.2022 issued from the office of DIG, Bihar, Patna, is extracted as part of the order as under :-

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पत्र संख्या-पीठ-1/04-09-88-2021/...294
बिहार पुलिस मुख्यालय
(कार्मिक एवं कल्याण प्रभाग)

email/Fax

प्रेषक,
पुलिस उप-महानिरीक्षक (कार्मिक),
बिहार, पटना

सेवा में,
उपरी महानिदेशक/अपर पुलिस महानिदेशक, बिहार
सभी पुलिस महानिरीक्षक/पुलिस उप-महानिरीक्षक (रत/इकाई सहित), बिहार
सभी प्रमुख पुलिस अधीक्षक/पुलिस अधीक्षक (रत/इकाई सहित)/सहायक
सभी प्राचार्य, पुलिस प्रशिक्षण केंद्र, बिहार

पटना, दिनांक- 20.05.22

विषय :- विभागीय कार्यवाही (जॉच) को नियमानुसार एवं त्रुटिरहित निष्पादित करने के संबंध में।

महाराज,

निदेशानुसार उपर्युक्त विषय के संबंध में कहना है कि बिहार पुलिस के अंतर्गत सिपाही एवं समकक्ष से लेकर पुलिस निरीक्षक एवं समकक्ष के विरुद्ध सक्षम प्राधिकारी द्वारा विभागीय कार्यवाहियों में दण्ड अधिरोपित किया जाता है। ऐसे कई दृष्टान्त प्राप्त हुए हैं जिसमें उक्त दण्डादेशों के विरुद्ध समर्पित थानिका धर माननीय न्यायालयों द्वारा विभागीय कार्यवाही में वर्णित त्रुटियों का उल्लेख करते हुए दण्डादेश को निरस्त किया गया है।

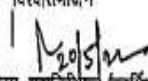
इस संबंध में पुलिस मुख्यालय स्तर से की गई समीक्षा के दौरान यह पाया गया है कि विभागीय कार्यवाही (जॉच) के क्रम में सामान्यतः निम्नांकित त्रुटियों की जा रही है:-

1. अपराधी से स्पष्टीकरण की मांग किए बिना विभागीय जॉच प्रारम्भ करने का आदेश निर्गत करना।
2. अपराधी से प्राप्ति स्पष्टीकरण में अंकित तथ्यों की समीक्षा/विशेषता किए बिना और कारण अंकित किए बिना स्पष्टीकरण को अंतर्नीयजनक मानना।
3. आरोप पत्र अति संक्षिप्त होना तथा बिहार आरोप पत्र विनियमावली-2017 में वर्णित विहित प्रपत्र के अनुसार नहीं होना।
4. आरोप पत्र में आरोपित के आचरण के अद्वार/कदाचार का स्पष्ट उल्लेख नहीं होना।
5. आरोप में जांचकर्ता पदाधिकारी को साक्षी नहीं बनाना।
6. आरोप में पीड़ित व्यक्ति/प्रत्यक्षदर्शी साक्षी को साक्षी नहीं बनाना।
7. धर्मा के विरुद्ध प्राथमिकी दर्ज होने पर आरोप गठित करने से पूर्व जॉच नहीं करना।
8. प्राथमिकी वाले मामलों में केवल प्राथमिकी के आधार पर आरोप गठित करना।
9. आरोप से सम्बंधित अभिलेखों को प्रदर्श नहीं बनाना।
10. अपराधी को आरोप पत्र एवं प्रदर्शों को सामिल नहीं करना।
11. प्रस्तुतीकरण पदाधिकारी की नियुक्ति के बिना विभागीय कार्यवाही का संचालन करना।
12. आरोप के साक्षी का बयान अभिलेखित नहीं करना।
13. अपराधी को साक्षियों के बयान की प्रति उपलब्ध नहीं करना।
14. अपराधी को साक्षियों से प्रति-परीक्षण हेतु तिथि निर्धारित नहीं करना एवं मौका नहीं देना।
15. अपराधी द्वारा आरोप से संबंधित अभिलेखों की मांग करने पर उपलब्ध नहीं करना।
16. आरोप से सम्बंधित साक्षियों को साक्ष्य हेतु बुलाने के अपराधी के अनुरोध को अनिर्णीत रहना।
17. अपराधी को प्रतिरक्षा साक्षियों को प्रस्तुत करने का अवसर नहीं देना।
18. अपराधी को प्रतिरक्षा हेतु प्रतिवाद सहायक (Defence Assistant) की सुविधा लेने का अवसर नहीं प्रदान करना।
19. केवल Video के आधार पर आरोप गठित करना एवं प्रमाणित मानना।
20. केवल Breath Analyzer Report के आधार पर आरोप को प्रमाणित मानना।



21. केवल Formal Witness के अतिरिक्त आरोप को प्रमाणित माना जाना।
22. दोनों पक्षों की ओर से साक्ष्य की कार्रवाई पूर्ण होने पर लिखित पक्ष प्रस्तुत करने का अवसर प्रदान नहीं किया जाता।
23. वरीय पुलिस अधीक्षक/पुलिस अधीक्षक के स्तर से स0अ0नि0 एवं पुलिस अथर निरीक्षण पंक्ति के अपचारियों से अनुशासनिक प्राधिकार के रूप में स्पष्टीकरण की माँग करना और सजा का निर्धारण करते हुए अनुशासनिक प्राधिकार को अनुशासनात्मक प्रक्रिया के अन्तर्गत प्रयोग में लाना।
24. अनुशासनिक प्राधिकार द्वारा संचालन पदाधिकारी के भ्रष्टाचार की प्रतीति अपचारों को उपलब्ध नहीं करना।
25. अनुशासनिक प्राधिकार के स्तर से आदेश पारित करने के पूर्व अपचारी से द्वितीय कारण पृथक्/स्पष्टीकरण की माँग नहीं किया जाना।
26. अनुशासनिक प्राधिकार द्वारा अपचारी से प्राप्त स्पष्टीकरण को अस्वीकार करने का कोई स्पष्ट मंतव्य नहीं देना एवं यात्रिक तरीके से आदेश पारित करना।
27. जौध प्राधिकार, वरीय पुलिस अधीक्षक/पुलिस अधीक्षक एवं अनुशासनिक प्राधिकार द्वारा आरोपित द्वारा संचालित स्पष्टीकरण में उठाये गये बिन्दुओं की समीक्षा/विवेचना किये बिना आदेश पारित कर देना।
28. वरीय पदाधिकारी के आदेश के आलोक में नियमों की अपहेलना कर कार्रवाई करना।
29. अनुच्छेद 311(2)(b) के प्रवचन का केवल उल्लेख कर अनुशासनिक प्राधिकार द्वारा दखलाने का आदेश पारित करना।
30. अनुच्छेद 311(2)(b) में प्रदत्त शक्तियों के आलोक में विनाशपूर्ण जौध प्रमाणित होने को व्यवहारिक नहीं होने का कोई कारण अनुशासनिक प्राधिकार द्वारा अंकित नहीं करना।
31. माननीय न्यायालयों द्वारा अन्वय किए गए "अपचारी के डिरास्त न होने, खरित कार्रवाई करने, आरोप के गंभीर होने, पुलिस की छवि धूमिल होने" इत्यादि आधार को अनुशासनिक प्राधिकार द्वारा दिनांकीय जौध प्रमाणित होने का कारण सिद्ध करना।
32. सेवाकाल में संचालित वि0का0 का कर्मी के सेवाकाल में निष्पादन नहीं होने एवं कर्मी के सेवानिवृत्त होने के उपरान्त उक्त वि0का0 को बिहार पेंशन नियमावली, 1950 के नियम-43(बी) के तहत परिवर्तित करने हेतु तत्काल प्राधिकार द्वारा आदेश निर्गत नहीं करना।

उपरोक्त वर्णित त्रुटियों बिहार सरकारी सेवक (परिष्करण, नियंत्रण एवं अपील) नियमावली-2005 के नियम 17 एवं 18 के प्रावधानों के प्रतिकूल है तथा माननीय न्यायालयों द्वारा उपरोक्त वर्णित एक या अनेक त्रुटियों के आधार पर दिनांकीय कार्यवाहियों को निरस्त किया जा रहा है। अतः इसपर त्वरित कार्रवाई कर सुधार करने की आवश्यकता है ताकि दोनों कर्मियों/पदाधिकारियों द्वारा तकनीकी आधार पर लागू न प्राप्त किया जा सके।

दिखासभाजन

 पुलिस उप-महानिरीक्षक (कार्यिक)
 बिहार, पटना

ज्ञापक-पी0-1/04-09-30-2022/294

पटना, दिनांक- 20.05.22

प्रतिलिपि :-

01. उपर पुलिस महानिदेशक (बजट, अपील एवं कल्याण), बिहार, पटना को कृपया सूचनार्थ प्रेषित।
02. प्रशाखा पदाधिकारी, एलस0पी0/पी0-2/पी0-3/पी0-4/पी0-5/संक्षिप्त पदाधिकारी, बिहार पुलिस मुख्यालय को सूचनार्थ एवं सावरचक क्रियाय प्रेषित।


 पुलिस उप-महानिरीक्षक (कार्यिक)
 बिहार, पटना

12. In view of the aforesaid, this Court, disagree on the argument made by the learned counsel for the respondent that CCA Rules, 2005 shall not apply in this case or any case whether gazetted or non-gazetted relating to police. Hence, the



first issue is answered in this way that for all police personnel of Bihar whether gazetted or non-gazetted, the procedure for disciplinary action shall be guided by the Bihar Police Manual read with the CCA Rules, 2005.

13. For the purpose of answering the second issue, learned counsel for the petitioner relied on Rule 660 of the Bihar Police Manual, 1978, and submitted that Rule 660(A) states that Assistant Sub Inspector shall be appointed by promotion of Constable to the rank of Assistant Sub-Inspector shall be made by the DIG on range seniority basis and, therefore, it is the DIG who should be treated as the competent authority and only DIG is entitled to issue suspension order to the ASI or he is the only authority to initiate proceedings against him. The Superintendent of Police who is subordinate to DIG is competent to suspend or initiate proceedings only when he is authorized to do so in the light of Rules 9 and 16 of the CCA Rules, 2005.

14. The counsel for the respondent on this issue submits that presently he is not in a position to place before this Court that any authorization letter is given to the Superintendent of Police by the appointing authority or by the Government or not, but he submits that Rule 660 of the Bihar Police Manual



shall not apply. Learned counsel for the respondent relied on Appendix 84 of the Bihar Police Manual and submitted that Appendix 84 contains the list of competent authorities to pass orders for punishment and suspension. In the said Appendix, for police cadre, i.e. Assistant Sub Inspector, the DIG has been made competent to pass orders only in two situations for compulsory retirement or for removal or dismissal, but for passing orders on suspension reduction in rank, other major punishment or minor punishment, the Superintendent of Police is the competent authority.

15. In this view of the matter, the petitioner's services have primarily been guided by the Bihar Police Manual, and for the purpose of conducting disciplinary proceedings CCA Rules, 2005 is applicable and this Court is of the view that the suspension order and the charge memo has been issued by the competent authority.

16. This issue has already been settled in the case of *Ras Bihari Paswan vs. the State of Bihar* by this Hon'ble Court vide order dated 04.05.2023 passed in CWJC No. 8664/2017. 19. The said judgment basically covers this case and paragraph 42 of the said judgment is relevant which is quoted as under :-



“42. This Court finds from the pleadings and the prayer made in the writ application that even as the petitioner has raised one of the grounds that the memo of charge has been issued under the signature of the Superintendent of Police who is not an appointing authority of the petitioner in sheer disregard to the guidelines of the departmental proceeding, there is no prayer to quash the Memo of Charge. In course of hearing of the writ application, learned Senior Counsel for the petitioner could not demonstrate from any guidelines or the Rules governing the disciplinary proceeding in case of a Sub-Inspector that the Senior Superintendent of Police under whom the petitioner was working is not competent to form an opinion and initiate a departmental proceeding. This Court having noticed that in the prayer portion of the writ application, there is no specific prayer for quashing of the memo of charge, the disciplinary proceeding against the petitioner cannot be quashed.”

17. The submission of the learned counsel is that the Hon'ble Court at the time of deciding the case of **Ras Bihari Paswan (supra)** had noticed that in the writ petition, there was no specific prayer for quashing of charge memo and, therefore, the disciplinary proceeding against the petitioner cannot be quashed. This was the observation. Counsel submits that in the present case, the prayer for quashing of the charge memo has



been made by virtue of Interlocutory Application No. 1 of 2021 which was allowed vide order dated 24.11.2021.

18. It transpires to this Court that the Superintendent of Police has transgressed the jurisdiction not vested in him by law and vide memo no. 219 dated 04.02.2019 as he has taken a decision for dismissal of the petitioner. For approval, he sent the matter before the DIG. The said decision of the Superintendent of Police which is annexed as Annexure -9 is in gross violation of Appendix - 84 of the Bihar Police Manual itself, where the decision of removal or dismissal has to be taken only by the DIG.

19. Learned counsel for the State submits that it is only a recommendation. The actual decision had been taken by the DIG, but in the opinion of the Court, the Superintendent of Police under the provisions of the Bihar Police Manual cannot recommend for dismissal, and as such the said Annexure 9, letter issued vide memo no. 219 dated 04.09.2019 is fit to be quashed. Therefore, this issue in part is decided in favour of the petitioner, but it is also clear that charge memo and suspension order have rightly been made by the Superintendent of Police.

20. So far as the third issue is concerned, i.e. decision of disciplinary authority without any action on the part of the



presenting officer, from the charge memo, it transpires that no presenting officer was appointed but in the enquiry report, there is one line indication that the evidence of one of the witness has taken place before the presenting officer, save and except, there is no whisper about the presenting officer. The role of presenting officer has been defined under Rules 17(5)(c), 17(6), 17(8) 17(11), 17(14), 17(15) and 17(17) of the CCA Rules, 2005, and particularly, in the light of the decision rendered in the case of Sonu Kumar (supra) decided by this Hon'ble Court whose paragraph 17 is relevant which is as under :-

“17. There is yet another aspect of the matter. It does not appear from the enquiry report that the Presenting Officer performed any role by presenting the case of the department before the Inquiring Authority. It appears from the report of the Inquiring Authority that he himself asked the witnesses to depose in the departmental enquiry. It seems that he himself assumed the role of the Presenting Officer also. The enquiry report does not depict any participation of the Presenting Officer though a Presenting Officer was appointed. It is curious to note that in the charge memo itself the main functions of the Presenting Officer had been mentioned. The enquiry report does not show whether the Presenting Officer discharged any of his duties as mentioned in the order whereby the



Presenting Officer was appointed. The impugned decision of the Disciplinary Authority, which is based on findings of the Inquiring Authority, without any evidence and a perfunctory departmental enquiry, in the Court's opinion, is wholly unjust, illegal, arbitrary and unsustainable."

20. Similarly, this issue has further been decided by a Division Bench of this Court in the case of ***Upendra Pandit Vs. the State of Bihar through the Chief Secretary and Ors.*** (in LPA No.507 of 2017) reported in **2023 (4) PLJR 568** wherein it has been held that the proceeding being conducted without appointment of a Presenting Officer was a clear and serious lapse of the provisions of Rule17. It would be apposite to quote relevant paragraphs 10 to 12 of the said judgment as under :-

"10. So far as the facts of the instant case are concerned, on perusal of the charge-sheet in Form-'ka', this Court finds that the same mentions about the charges levelled against the appellant, which are ten in number. It also transpires from the records that as many as fourteen witnesses were examined in support of the charges. However, so far as the contents of the charge-sheet and/or the covering letter dated 27.11.2004 is concerned, the same neither contains the list of documents nor the list of witnesses by which the articles of charges were proposed to be



sustained.

11. In the opinion of the Court, Rule 17 (3) and (4) of the Rules of 2005 are very clear when they provide that where it is proposed to hold an inquiry against the government servant under the said Rules, the disciplinary authority shall draw up or cause to be drawn up the substance of the imputation of misconduct or misbehaviour in support of each article of charge, the same shall contain a statement of relevant facts, list of documents and list of witnesses by which the articles of charges are proposed to be sustained. Thus, non supply of the list of documents and the list of witnesses to the appellant in the instant case on which the disciplinary authority proposed to sustain the charges levelled against the appellant in the disciplinary proceeding as also the proceeding being conducted without appointment of a Presenting Officer was a clear and serious lapse of the provisions of Rule 17 of the Act of 2005. The requirement of Rule 17 (3) and (4) not having been fulfilled, the order of punishment of dismissal from service of the appellant cannot be sustained. Both the orders of dismissal dated 29.12.2005 and the order dated 30.04.2008 rejecting the appeal preferred by the appellant are both set aside. The order of the learned Single Judge also cannot be sustained and is hereby set aside.

12. The appeal is allowed with all



consequential benefits. There cannot be a resumption of the enquiry proceedings, from the stage at which the defect is noticed, since by virtue of the appellant having crossed the age of superannuation there exists no employer-employee relationship. In view of the order of dismissal having been passed on 29.12.2005 and the appellant having superannuated from service with the passage of time, although the appellant has not worked, in the facts of the case, it is directed that the appellant will be entitled for 50 percent of his arrears of salary which will be paid to the appellant within a period of four months. The appellant will also be entitled for pension admissible to him as per law and arrears, if any, under this head shall also be paid, fully within four months. It is made clear that in computation of pension, the full salary due to the appellant shall be reckoned as the last pay drawn, despite our limiting disbursement of salary to 50% for the remaining period of service. In case of the petitioner not being paid the amount under any head, for no fault of his, he will be entitled for interest on the total unpaid amount at the rate of 8% p.a. from the date of this order.”

21. Particularly, when the contention made in issue no.(i) has already been decided against the respondent that Bihar Police Manual, 1978 with CCA Rules, 2005 shall apply, this



Court is of the opinion that there is a gross violation of Rule 17 by way of no role of the presenting officer in the said proceeding and in this view of the matter also this issue is decided in favour of the petitioner.

22. Conclusively speaking if it is the recommendation of the Superintendent of Police which has been quashed then automatically any subsequent decision on the recommendation of the Superintendent of Police shall automatically be quashed. Hence, the order dated 10.05.2019 issued vide Memo No. 388, passed by the Zonal Inspector General, Darbhanga, Zone (appellate order, as contained in Annexure-13); order dated 07.02.2019, contained in Memo No. 201, passed by DIG, Koshi Region, Saharsa (original order, as contained in Annexure-11); order dated 04.02.2019, issued vide Memo 219, passed by the Superintendent of Police, Supaul in departmental proceeding Case No. 26/2018 (recommendation for dismissal, as contained in Annexure-9); order dated 14.02.2019, issued vide Memo No. 294, as contained in Annexure-12 and order dated 18.05.2019, issued vide memo no. 748 passed by the Superintendent of Police, Supaul, as contained in Annexure -4 are hereby quashed.

23. However, the department is free to take action



against the petitioner afresh from the stage of issuance of charge memo onwards following all the provisions as laid down in the CCA Rules, 2005 but said proceeding has been directed to be concluded within six months from the date of production of a copy of this judgment/order. It is also directed that the respondent shall accept the joining of the petitioner and do the needful in accordance with the law.

24. With the above observation and direction, the writ petition stands disposed of.

(Dr. Anshuman, J)

Ashwini/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	07/12/2023
Transmission Date	NA

