

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8664 of 2017

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Ras Bihari Paswan Son of late Kripa Ram, Resident of Village- Jalwasi, P.S.-
Itarhi, District- Buxar. Petitioner

Versus

1. The State Of Bihar through the Principal Secretary, Home (Police)
Department Government of Bihar, Patna
2. The Principal Secretary, Home (Police) Department, Government of Bihar, Patna
3. The Director General of Police, Government of Bihar, Patna
4. The Inspector General of Police, Patna Zone, Patna
5. The Deputy Inspector General of Police, Central Range, Patna
6. The Senior Superintendent of Police, Patna
7. The Dy. Superintendent of Police, Police Control Room, Patna (Enquiry
Officer)
8. The Sub Divisional Police Officer, Danapur, Patna

... .. Respondents

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Appearance :

For the Petitioner	: Mr. Vinod Kanth, Sr. Advocate Mr. Sanjay Singh, Sr. Advocate Mr. Amresh, Advocate Mr. Binod Kumar, Advocate Mr. Nitesh Kumar, Advocate Mr. Gyanendra Kumar Shukla, Advocate Mr. Gaurav Govinda, Advocate
For the State	: Mr. Sheo Kumar Prasad, SC 8 Mr. Ruchikar Jha, AC to SC 8

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

CAV JUDGMENT

Date : 04-05-2023

Heard Mr. Vinod Kanth, learned Senior Counsel, Mr.
Sanjay Singh, learned Senior counsel assisted by Mr. Amresh,
learned Advocate for the petitioner and Mr, Sheo Kumar Prasad,
SC 8 assisted by Mr. Ruchikar Jha, learned Advocate for the
respondents.



2. This writ application has been filed for the following reliefs:-

“(i) For issuance of a writ in the nature of certiorari for quashing the order contained in File No. - 4/M3-10-15/2014, GRI.AA / Memo No. 5016 Patna dated 28.06.2016 (Annexure -26) issued by the Joint Secretary, Department of Home, whereby the memorial filed against the dismissal order before the Home Secretary, has been dismissed in a most mechanical manner without considering the genuine grievance of the petitioner.

(ii) For issuance of a writ in the nature of certiorari for quashing the order contained in Memo No. - 3186/L-1, Patna dated 18.06.2014 (Annexure-24) passed by the DGP, Government of Bihar Patna whereby and where under the memorial filed by the petitioner has not been entertained by the DGP on totally wrong premises which is patently illegal and arbitrary in the eyes of law.

(iii) For issuance of a writ in the nature of certiorari for quashing the order bearing Memo No. 1905/Sa/sh. Dated 01.10.2013 (Annexure-22) passed by the Inspector General of Police Zone whereby and where under the appeal filed by the Petitioner has been rejected in a most arbitrary and cavalier manner.

(iv) For issuance of a writ in the nature of certiorari for quashing the order bearing Memo No. 22/vi. ka. Patna dated 08.02.2013 (Annexure-20) whereby and where under the D.I.G. Central Range, Patna dismissed the petitioner from service which is patently illegal and arbitrary in the eyes of law.

(v) For issuance of a writ in the nature of mandamus, directing and commanding the concerned respondents to re-instate the petitioner in service taking into consideration that in a most cavalier and arbitrary manner, the Petitioner has been dismissed from service though admittedly there is a gross violation of the established procedures of the departmental proceeding. As well as the dismissal order is apparently



sheer violation of the order and judgment of the Hon'ble Apex Court as well as of this Hon'ble High Court.

(vi) For any other appropriate writ/writs be issued, direction/directions be given, order/orders be passed in the given facts and circumstances of the case.”

Brief Facts

3. It is the case of the petitioner that he was appointed vide Memo No. 6317/P-2/CPS-5 dated 21st August, 1994 under seal and signature of the Inspector General of Police (Admn.), Bihar, Patna as contained in Annexure '1' to the writ application. After completion of his training, he was posted at Deoghar in the year 1995. After coming into force of the Bihar Reorganization Act, 2000, in the cadre division, he was allocated Bihar Cadre and transferred to Patna.

4. It is stated that on 30.06.2011, petitioner was posted as In-charge of the Maner Police Station at Patna. During his posting at Maner, on 13.06.2012, he was on mobile/patrolling duty with Dharendra Kumar (Sub-Inspector), Saurabh Kumar (Sub-Inspector) and other Sahastra Bal at 03:00 A.M. In course of his patrolling, in the early morning hours, he saw three suspect with a Maruti van bearing registration no. BR01D-7676 in a lonely place at Mahadeo asthan, NH-30 behind Pir Baba Mazar, Maner. On arrival of the officers, two suspects ran away from there and one hide himself beneath the said vehicle. According to the petitioner,



the two officers namely Saurabh Kumar and Dharendra Kumar conducted a routine verification of the suspect who disclosed his name as Salman Khan, a resident of Alamganj, Gulzarbagh, Patna. He was searched and from his possession, many unwanted items like the tools of making keys, hammer, farsa, cutter, a bunch of key with other machines were seized.

5. It is stated that the S.I., Saurabh Kumar seized the objects found from the suspect namely Salman Khan and he went for verification of his identity by the said Maruti van with the suspect. The petitioner returned to the police station at 06:05 A.M. and entered the details of his round-up in the station diary. He also mentioned about the aforesaid occurrence in the station diary. It is stated that the petitioner specifically mentioned in the station diary that Sub-Inspector Saurabh Kumar with other went for verification of the suspect from the very spot and after verification further action may be taken against him.

6. It is stated that Sub-Inspector Saurabh Kumar went to village Bagahi for verification along with the suspect and after verification, Sub-Inspector Saurabh Kumar informed the Police Station (Bihiya Police Station) about his returning along with the suspect vide Entry No. 317 dated 14.06.2012 (Annexure '4' series). He returned to Maner Police Station on 14.06.2012 at



09:00 A.M. along with the suspect after completing his identification and verification. The case of the petitioner is that at this stage, the suspect was arrested as he was found to be an active member of a notorious gang involved in theft etc. A first information report was lodged against accused Salman Khan under Section 401, 120B of the Indian Penal Code.

7. It is stated that one Shri Kant Bharti (Sub-Inspector) was handed over the investigation of the case. On 15.06.2012 at 07:00 A.M. He prepared forwarding report and took further action through Chaukidar Bajrang Kumar and Chaukidar Vishwanath Paswan to forward the accused to the court of learned Addl. C.J.M., Danapur. In the court, the accused did not make any complaint of assault or any kind of atrocities against the police man. The learned A.C.J.M., Danapur sent him in judicial custody till 26.06.2012 but when he was brought to the Beur Jail, he was not taken into the jail for the reason that the jail administration found that the accused was suffering from high temperature (fever) and feeling thirsty. The petitioner alleges that the act of the jail administration was in violation of Rule 111 A of the Jail Mannual.

8. Further case of the petitioner is that on refusal by the Jail Administration, the Chaukidars returned to the police station with accused in the accused family's vehicle wherein son and son-



in-law and one another family member of the accused were also accompanying in the said vehicle. On the direction of the petitioner, it is stated that the accused was taken to the Primary Health Centre, Maner, where the doctor gave him first aid and found him suffering from 105.3 degree Celsius fever due to loo (heat wave). He was referred to Nalanda Medical College and Hospital (NMCH), Patna for better treatment. The Sub-Inspector Saurabh Kumar went to NMCH, Patna but on the way he met with Mr. B.K. Singh, Inspector-cum-SHO, Danapur Police Station and on the recommendation of the Inspector-cum-SHO, the accused was admitted in the IGIMS, Patna for treatment. From there, he was referred to PMCH. The accused was admitted in PMCH but during treatment, he died. In this connection, the medical papers of the deceased accused has been brought on record as Annexure '11' Series.

9. It is the case of the petitioner that all the medical and forensic science laboratory reports suggest that the accused died due to heat (sun stroke) as well as brain and lungs infection. Petitioner states that after the death of the accused, namely, Salman Khan, his son lodged FIR under Sections 379, 302, 323 and 504 of the Indian Penal Code in which frivolous allegations were made against the petitioner as well as the Sub-Inspectors of



the Maner Police Station. Petitioner was made accused and later on he was arrested on the same day. He remained in jail custody for more than 90 days and since no chargesheet was filed against him, he was released on bail under Section 167(2) Cr.P.C. by the learned court below.

Deemed suspension of the petitioner and revocation of suspension

10. With the arrest of the petitioner, vide District Order No. 2981/12 dated 15.06.2012, he was placed under suspension and a disciplinary proceeding was initiated against him by order of Senior Superintendent of Police, Patna.

11. Learned Senior Counsel for the petitioner has placed before this Court copy of the memo of charge as contained in Annexure '12' Series in the memo no. 3474 dated 17.06.2012. The memo of charge was served upon the petitioner while he was in the judicial custody. After his release on bail, he submitted his joining and the respondent authorities vide its letter dated 12.09.2012 revoked the suspension of the petitioner. He was posted at Agam Kuan Police Station at Patna as Sub-Inspector.

Challenge to the Disciplinary Proceeding

12. The petitioner has assailed the initiation of the disciplinary proceeding on various grounds. According to him, the



memo of charge was not based on an opinion formed by the Disciplinary Authority as envisaged under Rule 17(2) of the Bihar Civil Services (Classification, Control and Appeal) Rules (hereinafter referred to as the 'Service Rules'). It is his case that in course of disciplinary proceeding, the Management did not appoint any Presenting Officer, the Inquiry Officer assumed the role of the Presenting Officer and examined three management witnesses on 10.10.2012 in absence of the petitioner.

13. It is stated that the petitioner received a letter being Memo No. 2293/PCR dated 12.10.2012 issued by the Conducting Officer-cum-Dy.S.P., Police Control Room, Patna only on 16.12.2012 at Police Control Room wherein the petitioner was directed to appear in the departmental proceeding at 12:00 Noon on the same day.

14. It is stated that vide an application dated 26.12.2012 (Annexure '17'), petitioner requested the Inquiry Officer to allow him to examine the management witnesses and also permit him to record the statement of the witnesses in his defence but the same was not allowed. The Inquiry Officer only permitted the petitioner to cross-examine the management witnesses but so far as the request of the petitioner for recording of the statement of defence witnesses are concerned, the same was deliberately denied. No



date was fixed for recording of the statement of the defence witnesses. Only four management witnesses were allowed to be examined out of total seven witnesses. It is stated that a new witness, namely, Mr. Aditya Kumar, the Officer-in-Charge, Maner was added apart from the list of witnesses furnished by the management, however, no opportunity was given for his cross-examination.

Inquiry report

15. The Inquiry Officer submitted his inquiry report in which the charges against the petitioner were found proved. The petitioner was asked to submit a second show cause vide Memo No. 12/BKA dated 28.01.2013 along with Inquiry Report containing Letter No. 1344 by the D.I.G., Central Range, Patna directing the petitioner to submit his explanation before 01.02.2013. The petitioner submitted his second show cause before the D.I.G., Central Range, Patna on 01.02.2013, however, it is stated that his defence has not been considered and the D.I.G., Central Range, Patna passed the order of dismissal of the petitioner vide Memo No. 22/V KA dated 08.02.2013 (Annexure '20').

16. It is stated that the petitioner filed an appeal before the I.G., Police, Patna Zone, Patna vide his appeal dated



19.03.2013 in which he raised several issues of the irregularities committed by the Inquiry Officer but the grievance of the petitioner is that his appeal has been rejected without assigning any cogent reason in a completely mechanical manner with patent illegality.

17. It is further stated that the petitioner filed a memorial before the Director General of Police vide his Memorial dated 28.03.2013 (Annexure '23') but the same was not entertained on the ground that in view of Rule 853 of the Bihar Police Manual, 1978 (hereinafter referred to as the 'Manual' or 'Police Manual') the petitioner's appeal can only be entertained by the Home Commissioner, Government of Bihar. In such circumstance, the petitioner lastly approached the Principal Secretary, Home but his application was rejected vide Memo dated 19.09.2016 (Annexure '26' to the writ application).

Submissions on behalf of the Petitioner

18. Learned Senior Counsel for the petitioner has taken this Court through Annexure '1' to the writ application to submit that the Appointing Authority of the petitioner is the I.G. of Police (Administration). It is pointed out that Article 311(1) of the Constitution of India mandates that an order of dismissal, removal from service or compulsory retirement may be passed only by the



Appointing Authority. It is his submissions that Rule 2(j) of the Service Rules clearly states that “Disciplinary Authority” means Appointing Authority or any other authority authorized by it shall be competent under these Rules to impose on a government servant any of the penalties specified under Rule 14 of these Rules.

19. Referring to the memo of charge issued under signature of the Senior Superintendent of Police, Patna, it is submitted that the Senior Superintendent of Police, Patna was not competent to submit a chargesheet upon the petitioner. Learned Senior Counsel has relied on Rule 17(2) of the Service Rules to submit that it is the Disciplinary Authority who has to form an opinion that there are grounds for inquiry about the truth of any imputation of misconduct or misbehaviour against a government servant, in such circumstance, he may himself inquire into it or appoint under these rules an authority to inquire about the truth thereof. Learned Senior Counsel submits that the memo of charge does not indicate that it has been issued by order of the competent authority.

20. It is further submitted that in this case, no Presenting Officer was appointed and the role of the Presenting Officer has been assumed by the Inquiry Officer himself. It is submitted that the appointment of a Presenting Officer is mandatory and in any



case, the Management is obliged to follow the procedures prescribed under Rule 17 of the Service Rules which is a complete scheme of the manner in which a disciplinary proceeding is to be conducted. Relying upon a judgment of this Court in the case of **Sanjay Kumar Vs. State of Bihar** reported in **2019 (2) PLJR 447**, learned Senior Counsel has submitted that the inquiry has stood vitiated for non-observance of the procedures established by law.

21. Learned Senior Counsel has further submitted that when the Rules prescribed to do a particular thing in a particular manner, the said act should be done in that manner or not at all. In this regard, reliance has been placed on the judgment on the Hon'ble Supreme Court in the case of **Ramchandra Keshav Adke (Dead) by Lrs. vs. Govind Joti Chavare and others** reported in **AIR 1975 SC 915** (paragraph '25').

22. Reliance has also been placed on the judgment of the Hon'ble Supreme Court in the case of **Union of India & Ors. Vs. B. V. Gopinath** reported in **(2014) 1 SCC 351** to submit that under Article 311(1) of the Constitution of India, it is to be ensured that no person who is a member of a civil service of a Union or all India service or in the service of a State holding a civil post can be dismissed or removed by an authority sub-ordinate to that by



which he was appointed. Learned Senior counsel has also relied upon the judgment of the Hon'ble Supreme Court in the case of **State of UP and Others Vs. Saroj Kumar Sinha** reported in **AIR 2010 SC 3131**.

23. It is submitted on behalf of the petitioner that the very initiation of a disciplinary proceeding and thereafter the conduct of the proceeding are liable to be set-aside for the reason that the memo of charge was served by an authority who was not competent under the law to initiate a disciplinary proceeding against the petitioner, then the inquiry has been conducted in complete violation of the principles of natural justice. The order of disciplinary authority, appellate authority and the order of the Principal Secretary, Department of Home have been assailed on the ground that those suffered from non-consideration of the materials available on the record, are non-speaking and un-reasoned.

Submissions on behalf of the State

24. Mr. Shiv Shankar Prasad, learned SC-8 assisted by Mr. Ruchikar Jha, learned AC to SC-8 for the State has contested the writ petition. It is submitted that the charges against the petitioner are serious in nature. Referring to post mortem report (Annexure '11' series) it is pointed out that the deceased accused



had suffered several injuries on his both buttock and different parts of the body and the doctors had opined that all injury no. 1 to 4 were caused by hard and blunt object. It is submitted that the Senior Superintendent of Police, Patna is competent to initiate a disciplinary proceeding against the petitioner. Referring to Rule 3(1) (d) of the Service Rules, learned counsel for the petitioner submits that the Service Rules would not apply in the case of the petitioner because the Police Manual contains the special provisions governing the procedures of the departmental proceeding and the punishments to be inflicted upon the petitioner who was in the rank of a Sub-Inspector of Police.

25. Learned counsel submits that Rule 825(f) falling under Chapter XXI of the Police Manual specifically states that a list of officers competent to give punishments or order of suspension according to Act V, 1861 is given in Appendix '84'. Learned counsel submits that Appendix '84' contains the table prescribing the authorities who may impose punishment of dismissal, removal or compulsory retirement. In case of Sub-Inspector, the Deputy Inspector General is competent to impose punishment of dismissal, removal and compulsory retirement. It is further pointed out that under Appendix '84', the Superintendent of Police is the competent authority to suspend a Sub-Inspector.



26. Referring to Rule 825 of the Police Manual, learned Counsel submits that Chapter XXV of the Police Manual deals with the subject “Punishment”. Rule 825 of the Police Manual prescribes that (a) no police officer shall be dismissed or compulsorily retired by an authority sub-ordinate to that which appointed him but Clause (d) provides that the Superintendent may impose on any police officer subordinate to him and or below the rank of Sub-Inspector in or more of the punishments in Rule 825 except dismissal, removal and compulsory retirement in case of Sub-Inspector or Assistant Sub-Inspector.

27. Learned counsel for the State has defended the action of the Inquiry Officer but on perusal of the official files in which the proceeding has been dealt with, learned counsel does not deny the averment of the petitioner that three management witnesses had been examined by the Inquiry Officer on 10.10.2012 without any notice to the petitioner and that no Presenting Officer was appointed on behalf of the Department, therefore, the role of the Presenting Officer was performed by the Inquiry Officer.

28. Learned counsel has placed before this Court a copy of the order dated 30.04.2018 passed in C.W.J.C. No. 8955 of 2018 (Arun Kumar Jha Vs. The State of Bihar & Ors.) in which reference has been made to the judgment of this Court in L.P.A.



No. 1571 of 2014 (The State of Bihar & Ors. Vs. Shashi Bhushan Prasad) reported in **(2015) 3 BLJ 287**. Attention of this Court has been drawn towards paragraph '13' and '14' of the said judgment.

Considerations

29. This Court heard learned Senior Counsel for the petitioner, learned Standing Counsel 8 for the State at length and perused the records including the official records placed before this Court by the State in course of hearing.

30. Before appreciating the facts of the case and application of law to those facts, this Court deems it just and proper to take a glance over Article 311 of the Constitution of India. For a ready reference Article 311 is extracted hereunder:-

“311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.-

(1)No person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by a authority subordinate to that by which he was appointed.

(2)No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

[Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed: Provided further that this clause shall not apply].



(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.”

31. On perusal of the Article 311 of the Constitution of India, it is crystal clear that no person who is a member of a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by a authority subordinate to that by which he was appointed.

32. This Court further finds that in the case of **Arun Kumar Jha (supra)**, the learned co-ordinate Bench of this Court has considered a similar plea of the petitioner in the said case that the Bihar CCA Rules would apply in respect of the officers below the rank of Deputy Superintendent of Police. After consideration what has been held by the learned co-ordinate Bench are recorded in paragraphs ‘13’, ‘14’ and ‘15’ are being reproduced hereunder:-

“13. On bare perusal of the provisions contained in Clause 824(A) of the Bihar Police Manual, it would be apparent that the Civil Services (Classification, Control and Appeal)



Rules, applies in respect of action against Deputy Superintendent of Police. The Bihar Police Manual does not mandate the application of Bihar CCA Rules, to officers below the rank of Deputy Superintendent of Police.”

“14. Other than Rule 825 the petitioner cannot be permitted to place reliance on the provisions of the Bihar CCA Rules. In this connection it would be also relevant to notice Rule 3 of the Bihar CCA Rules which deals with application of the said Rules. The same is being reproduced herein below

“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.”

“15. Bare perusal of Rule 3 more specifically sub rule (d) would show that the same read with the provisions contained in Rule 825 of the Bihar Police Manual which has been considered by the Division Bench makes it abundantly clear that the proceedings are to be guided by the provisions made in the Bihar Police Manual.”



33. In the case **Kashi Nath Singh Vs. State of Bihar & Ors.** reported in **2019 (2) PLJR 293** (Full Bench), this Court has held that “.....the Bihar Police Manual is a compilation which has continued to be observed for the purpose, as presently involved, for appointments throughout the State in the Bihar Police Forces. It therefore has the mandate of the Government which in turn is entrusted with the obligation of governance including police administration being an exclusive State subject. The observance of the instructions contained in the Bihar Police Manual are binding on the State of Bihar and even it is argued that some of the provisions are directory in nature, then too even such provisions are not meant to be disobeyed or acted in breach thereof.....”

34. In view of the authoritative pronouncements of the Hon’ble Full Bench, this Court would say that even in the matter of punishment of the officers below the rank of Deputy Superintendent of Police, the Police Manual is required to be followed.

35. In this case the petitioner was admittedly appointed by Inspector General of Police (Admn.), therefore, an order of dismissal in respect of him cannot be passed by an authority subordinate to the appointing authority.



36. There is yet another apparent reason for interfering with the impugned orders. In this case it is an admitted position that not only the Inquiry Officer assumed the role of the Presenting Officer, he also indulged in examining three witnesses on behalf of the department on 10.10.2012 without giving any prior notice to the petitioner. The original file which was placed before this Court did not contain any notice to the petitioner prior to 10.10.2012, therefore, this is an admitted position appearing from the records that the petitioner was not given reasonable opportunity of being heard.

Role of Presenting Officer performed by Inquiry Officer

37. In the case of **Sanjay Kumar (supra)**, learned co-ordinate Bench of this Court has considered the effect of not appointing a presenting officer. This Court referred the earlier judgment in the case of **Panchanan Kumar Vs. The Bihar State Electricity Board** reported in **1996(1) PLJR 401** and reiterated the same view. The relevant part of the observations of the learned co-ordinate Bench of this Court in the case of **Sanjay Kumar (supra)** is quoted hereunder for a ready reference:-

“.....In continuation I would also refer to a judgment reported in 1996 (1) PLJR 401 (*Panchanan Kumar vs. The Bihar State Electricity Board*) in which case though a Presenting Officer was appointed but he failed to discharge his obligation and in



his absence his role was assumed by the Enquiry Officer. The opinion of the Bench at paragraph 11 of the judgment would be relevant for the issue at hand:

“11.Considering the rival contentions of the parties, this Court is of the opinion that in the instant case the inquiry has been vitiated inasmuch as the enquiry officer himself has acted as the presenting officer even though the presenting officer was appointed by th Electricity Board. There is no explanation why the said presenting officer did not appear before the enquiry officer to present the case of the department. In the peculiar facts of this case, the action of the enquiry officer to present the case himself on behalf of the department and also to take upon himself the duty of enquiring the correctness or otherwise of the said case clearly shows that the enquiry officer, in the instant case,has failed to discharge his duty as a fair and impartial enquiry authority. He has rolled up within himself the role of both the presenting officer and the enquiry officer and as such has acted in a manner which is not consistent with the principles of natural justice.....”

9. It is undisputed that in the present case, there was no Presenting Officer appointed to lead or to prove the evidence whatsoever, collected against the petitioner. The Enquiry Officer in such circumstances could not have assumed this duty upon himself to examine the evidence to hold it sufficient enough for upholding the charges.”

38. For the reasons stated, this Court would have no difficulty in setting-aside the orders passed by the Disciplinary Authority and the Principal Secretary, Home, Government of Bihar, but the bone of contention in the present case is the memo of charge issued under the seal and signature of the Senior



Superintendent of Police, Patna. This Court has been called upon to declare that the initiation of the disciplinary proceeding by the Senior Superintendent of Police, Patna is liable to be quashed and cancelled because it has not been initiated by a competent authority.

39. Rule 825 of the Police Manual reads as under:-

“825. Officers empowered to impose punishment.- (a) No police officer shall be dismissed or compulsorily retired by an authority subordinate to that which appointed him.

(b) The Inspector-General may award to any police officer below the rank of Deputy Superintendent any one or more of the punishments in rule 824.

(c) A Deputy Inspector-General may impose on any police officer subordinate to him and below the rank of Deputy Superintendent any of the punishments in rule 824 except dismissal, compulsory retirement and removal in the case of an Inspector.

(d) A Superintendent may impose on any police officer subordinate to him and of and below the rank of Sub-Inspector any or more of the punishments in rule 824 except dismissal, removal and compulsory retirement in the case of Sub-Inspector or Assistant Sub-Inspector. It shall be kept in mind that if any enquiry has been initiated by the District Magistrate, a report of the result shall be sent to him for information. If required, the file of departmental proceeding shall also be sent with it. [see Rule 16(a)].

(e) The punishments noted in rules 824 (h) and (i) can be awarded by S.D.P.O. also but its record shall be kept in the office of Superintendent and it shall also be seen that different yard sticks are not used in awarding punishments.



(f) A list of officers competent to give punishments or ordering of suspension according to Act V, 1861 is given in Appendix 84.”

40. From Rule 825 of the Police Manual it would transpire that in consonance with Clause (1) of the Article 311 of the Constitution of India it says that no Police officer shall be dismissed or compulsorily retired by an authority subordinate to that which appointed him. In clause (c) of the Rule 825, a Deputy Inspector-General may impose on any police officer subordinate to him and below the rank of Deputy Superintendent any of the punishments prescribed in rule 824 except dismissal, compulsory retirement and removal in the case of an Inspector. Clause (d) of Rule 825 confers power upon the Superintendent to impose on any police officer subordinate to him and of and below the rank of Sub-Inspector any or more of the punishments in Rule 824 except dismissal, removal and compulsory retirement in the case of Sub-Inspector or Assistant Sub-Inspector.

41. A bare reading of Rule 825 (f) with Appendix ‘84’ of the Police Manual would lead a conclusion that the Superintendent of Police is competent to suspend and impose any other major punishment in case of a Sub-Inspector of Police.

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.

43. So far as the reliance placed by learned Senior Counsel for the petitioner on the judgments of the Hon'ble Apex Court as well as of this Court are concerned, this Court is in agreement with the submission of learned Senior Counsel that when the statute prescribes for a thing to be done in a particular way and manner, it must be done in that manner or not at all. This Court is of the opinion that the observations of the Hon'ble Apex Court in the case of **Ramchandra Keshav Adke (supra)** in paragraph '25' of the order may be aptly produced hereinbelow:-



“25. A century ago, in Taylor v. Taylor, (1875) 1 Ch D 426 Jassel, M.R. adopted the rule that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden. This rule has stood the test of time. It was applied by the Privy Council, in Nazir Ahmed v. Emperor 63 Ind App 372 = AIR 1936 PC 253 (2) and later by this Court in several cases, Shiv Bahadur Singh v. State of U.P., AIR (1954) SC 1098 = (AIR 1954 SC 322 = 1954 SCR 1098 = 1954 Cri LJ 910; Deep Chand v. State of Rajasthan, (1962) 1 SCR 662 = (AIR 1961 SC 1527) = (1961) 2 Cri LJ 705) to a Magistrate making a record under Sections 164 and 364 of the Code of Criminal Procedure, 1898. This rule squarely applies “where, indeed, the whole aim and object of the legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other. Maxwell's Interpretation of Statutes, 11th Edn., pp. 362-63”. The rule will be attracted with full force in the present case, because non-verification of the surrender in the requisite manner would frustrate the very purpose of this provision. Intention of the legislature to prohibit the verification of the surrender in a manner other than the one prescribed, is implied in these provisions. Failure to comply with these mandatory provisions, therefore, had vitiated the surrender and rendered it non est for the purpose of Section 5(3)(b).”

44. In the case of **Saroj Kumar Sinha (supra)** the Hon’ble Supreme Court observed in paragraph 27, 28 and 29 as under:-

“27. Apart from the above, by virtue of Article 311(2) of the Constitution of India the departmental enquiry had to be conducted in accordance with the rules of natural justice. It is a



basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee.”

“28. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.”

“29. The affect of non-disclosure of relevant documents has been stated in *Judicial Review of Administrative Action* by De Smith, Woolf and Jowell, 5th Edn., p. 442 as follows:

“If relevant evidential material is not disclosed at all to a party who is potentially prejudiced by it, there is prima facie unfairness, irrespective of whether the material in question arose before, during or after the hearing. This proposition can be illustrated by a large number of modern cases involving the use of undisclosed reports by administrative tribunals and other adjudicating bodies. If the deciding body is or has the trappings of a judicial tribunal and receives or appears to receive evidence ex parte which is not fully disclosed, or holds ex parte inspections during the course or after the conclusion of the hearing, the case for setting the decision aside is obviously very strong; the maxim that justice must be seen to be done can readily be invoked.”

45. The ratio of the judgment of the Hon’ble Supreme

Court in the case of **Saroj Kumar Sinha (supra)** is fully applicable to the facts of the present case where this Court has



found that at least three departmental witnesses were examined by the Inquiry Officer on 10.10.2012 without giving any opportunity to the petitioner to be present on the said date and no opportunity to cross-examine those witnesses were given to the petitioner.

46. So far as the judgment in the case of **B. V. Gopinath (supra)** is concerned, in the said case the Hon'ble Supreme Court was considering Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. It was submitted before the Hon'ble Supreme Court that the Rule contemplates a detailed procedure, consisting of four stages, which has to be completed before any punishment can be imposed on a public servant.

47. The Hon'ble Court took note of the same. The first stage is (i) initiation of disciplinary proceedings for major penalties; then second stage is (ii) drawing up of charges of misconduct; the third stage is (iii) appointment of inquiry officer and presenting officer and to supervise fair conducting of inquiry by the inquiry officer and the fourth state is (iv) imposition of penalty, if any. In the aforesaid view of the submissions the Hon'ble Supreme Court observed in paragraph '40 and '41' as under:-

“**40.** Article 311(1) of the Constitution of India ensures that no person who is a member of a civil service of the Union



or an all-India service can be dismissed or removed by an authority subordinate to that by which he was appointed. The overwhelming importance and value of Article 311(1) for the civil administration as well as the public servant has been considered, stated and restated by this Court in numerous judgments since the Constitution came into effect on 19-1-1950 (*sic*). Article 311(2) ensures that no civil servant is dismissed or reduced in rank except after an inquiry held in accordance with the rules of natural justice. To effectuate the guarantee contained in Article 311(1) and to ensure compliance with the mandatory requirements of Article 311(2), the Government of India has promulgated the CCS (CCA) Rules, 1965.”

“41. Disciplinary proceedings against the respondent herein were initiated in terms of Rule 14 of the aforesaid Rules. Rule 14(3) clearly lays down that where it is proposed to hold an inquiry against a government servant under Rule 14 or Rule 15, the disciplinary authority *shall draw up* or *cause to be drawn up* the charge-sheet. Rule 14(4) again mandates that the disciplinary authority *shall deliver* or *cause to be delivered* to the government servant, a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and the supporting documents including a list of witnesses by which each article of charge is proposed to be proved. We are unable to interpret this provision as suggested by the Additional Solicitor General, that once the disciplinary authority approves the initiation of the disciplinary proceedings, the charge-sheet can be drawn up by an authority other than the disciplinary authority. This would destroy the underlying protection guaranteed under Article 311(1) of the Constitution of India. Such procedure would also do violence to the protective provisions contained under Article 311(2) which ensures that no public servant is dismissed, removed or suspended without following a fair procedure in which



he/she has been given a reasonable opportunity to meet the allegations contained in the charge-sheet. Such a charge-sheet can only be issued upon approval by the appointing authority i.e. Finance Minister.”

48. In the present case, this Court comes to a conclusion that the Superintendent of Police is competent and duly authorized by Rule 825 read with Appendix ‘84’ of the Police Manual to serve a memo of charge upon the petitioner. No fault may be found with the issuance of charge memo.

Conclusion

49. In the light of the aforementioned discussions, this Court is of the considered opinion that the entire disciplinary proceeding against the petitioner from the stage of conduct of the inquiry stood vitiated for non-observance with the principles of natural justice and fair play in action which is the heart and soul of the Constitution of India. The punishment of dismissal was imposed by Deputy Inspector General of Police who was not the appointing authority of the petitioner. Following the views of Hon’ble Division Bench in the case of **Shashi Bhushan Prasad (supra)**, this Court would have no hesitation in holding that once the petitioner was admittedly appointed by I. O. of Police (Admin.) he cannot be dismissed by any office inferior in rank, to the one, who appointed him. In such circumstance the inquiry report, the order imposing punishment of dismissal upon the



petitioner (Annexure '20'), the order of Appellate Authority (Annexure '22') and the order passed by the Principal Secretary, Home (Annexure '26') are liable to be set-aside and those are accordingly, set-aside.

50. Since this Court has up-held the issuance of memo of charge by the Senior Superintendent of Police, Patna, the disciplinary proceeding against the petitioner shall survive. The matter is remitted to the Disciplinary Authority/Appointing Authority for taking appropriate steps to conduct the inquiry afresh in accordance with the principles of natural justice and the Bihar Police Manual.. Let a fresh decision be taken in the matter within a period of six months from the date of receipt/production of a copy of this order.

51. By virtue of setting-aside of the order of dismissal, the petitioner would be reinstated in service for the purpose of conducting the disciplinary proceeding. However, the Disciplinary Authority may take a view on keeping the petitioner under suspension during the pendency of the disciplinary proceeding in the light of the judgment of the Hon'ble Apex Court in the case of **ECIL v. B. Karunakar** reported in (1993) 4 SCC 727 paragraph 31 which reads as under:-

“**31.** Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary



proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. **It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and**



is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law.”

52. In this case, though the orders impugned are being quashed on various grounds, the views expressed by the Hon’ble Supreme Court as mentioned above are required to be followed by the respondents. The Disciplinary Authority shall act accordingly.

53. This writ application stands allowed to the extent indicated above.

(Rajeev Ranjan Prasad, J)

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