

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.455 of 2018

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Dheeraj Kumar Son of Uday Kumar Sharma, Resident of Village- Koshi College Road, Khagaria, Post- Koshi College, Thana- Chitragupta Nagar, District- Khagaria.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Director General of Police, Bihar, Patna.
3. The Superintendent of Police, Arwal.
4. The Chairman, Central Selection Board (Constable Recruitment), Bihar, Patna.
5. The Officer on Special Duty, Central Selection Board (Constable Recruitment), Bihar, Patna.
6. Dy. S.P. Head Quarter cum-Conducting Officer, Arwal.
7. The Deputy Inspector General of Police (D.I.G.) Magadh Range, Gaya.

... .. Respondent/s

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WITH
Civil Writ Jurisdiction Case No. 2783 of 2018

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Manoj Kumar Son of Arun Paswan, Resident of Village + P.O.-Bhaikh, P.S.- Makhdumpur, District-Jehanabad, Bihar.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Director General of Police, Bihar, Patna.
3. The Superintendent of Police, Rohtas.
4. The Chairman, Central Selection Board (Constable Recruitment), Bihar, Patna.
5. The Officer on Special Duty, Central Selection Board (Constable Recruitment), Bihar, Patna.
6. The Dy. S.P. (H.Q.) Cum Conducting Officer, Rohtas.

... .. Respondent/s

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WITH

Civil Writ Jurisdiction Case No. 2784 of 2018

Ranjit Kumar Son of Devan Mahto, Resident of Village-Devghara, Chandra Tola, P.O.-Amarpur, P.S.-Medni Chauki, District-Lakhisarai.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Director General of Police, Bihar, Patna.
3. The Superintendent of Police, Muzzafarpur.
4. The Chairman, Central Selection Board (Constable Recruitment), Bihar, Patna.
5. The Officer on Special Duty, Central Selection Board Constable Recruitment, Bihar, Patna.
6. The Dy. S.P. (H.Q.) Cum Conducting Officer, Muzaffarpur.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 455 of 2018)

For the Petitioner/s	:	Mr. Sumit Singh, Advocate Mr. Kumar Avinash, Advocate Ms. Alka Singh, Advocate Ms. Deepali Singh, Advocate
For the Respondent/s	:	Mr. P. K. Verma , AAG-3 Mr. Saroj Kumar Sharma, AC to AAG-3
For the CSB	:	Mr. Sanjay Pandey, Advocate Mr. Binod Kumar Mishra, Advocate Mr. Vivek Anand Amritesh, Advocate

(In Civil Writ Jurisdiction Case No. 2783 of 2018)

For the Petitioner/s	:	Mr. Sumit Singh, Advocate Mr. Kumar Avinash, Advocate Ms. Alka Singh, Advocate Ms. Deepali Singh, Advocate
For the Respondent/s	:	Mr. Sanjay Pandey, Advocate

(In Civil Writ Jurisdiction Case No. 2784 of 2018)

For the Petitioner/s	:	Mr. Sumit Singh, Advocate Mr. Kumar Avinash, Advocate Ms. Alka Singh, Advocate Ms. Deepali Singh, Advocate
For the Respondent/s	:	Mr.

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT
Date : 04-12-2023



Heard learned counsel for the petitioners and learned counsel for the State.

2. The petitioners of CWJC No.455 of 2018 and CWJC No.2784 of 2018 were appointee on the post of constable by virtue of advertisement No.1 of 2014 whereas the petitioner of CWJC No.2783 of 2018 was appointee of advertisement No.1 of 2012. In all three cases the issues directly and substantially are identical, therefore, it has been decided to hear all those cases together.

3. The petitioners in these cases are seeking quashing the order of dismissal from their services . They were selected as constable following the recruitment process vide advertisement No.1 of 2014 and advertisement No.1 of 2012 respectively as mentioned and after joining started the work of constable, but at latter stage it came to the knowledge of the authorities that appointment of the petitioners had taken place by virtue of commenting interpolation in the selection process and, as such, the enquiry was set up and report has come in which the petitioners were found guilty and after giving opportunity to show-cause the disciplinary authority has passed the orders of dismissal. The petitioners had preferred appeals. Their appeals were also dismissed.



4. Learned counsel for the petitioners relied on the judgment of **Amit Kumar Vs. the State of Bihar and Others** decided in **CWJC No.4515 of 2017** with six analogous cases. The point of violation of Rule 17(14) of the C.C.A. Rules, 2005, have also been discussed in the petition by the petitioners and same plea has been taken in the case of **Amit Kumar** (supra) in which this Hon'ble Court has decided the case with finding in paragraphs 21 and 25 which reads as under:-

“21. Having regard to the submissions noted hereinabove and the materials available on the record, this Court finds that there is an admitted fact that these petitioners were proceeded against in a disciplinary proceeding in which they have been dismissed from service. In the said disciplinary proceeding, there was no Presenting Officer on behalf of the Department and there is no denial of the fact that the Inquiry Officer himself usurped the role of the Presenting Officer which is in the teeth sub-Rule (14) of Rule 17 of the Service Rules.

25. In the nature of the submissions and the materials present on record and there being an admitted position that no Presenting Officer was



appointed, this Court sets aside the impugned order of dismissal and the appellate order in all these writ applications and directs the concerned disciplinary authority to conduct the disciplinary proceeding from the stage of inquiry afresh in accordance with the procedures laid down under Rule 17 of the Service Rule governing the employment of these petitioners and take an appropriate decision thereon within a period of four months from the the date of receipt/production of the copy of this order.”

5. Learned counsel for the State opposes the application and submits that non-availability of presenting officer in the departmental proceeding shall not vitiate the departmental proceeding due to the reason that in case of **Board of Directors, Himanchal Pradesh Transport Corporation and Another Vs. K.C. Rahi** reported in **(2008) 11 Supreme Court Cases 502**, Hon’ble Supreme Court has categorically held that whether the non-compliance of principles of natural justice avoiding service of notice has prejudiced the petitioner or not. In the said case, the Court held that it has not prejudiced the petitioners in any manner as the petitioners have participated in the proceeding even if notice was not validly served. In view



of this Court, this judgment shall not apply in present case due to the reason that the notice is alleged not to be served upon the delinquent but even then they have participated in the enquiry proceeding and only due to this reason the Hon'ble Supreme Court has decided that non-service has not actually prejudiced the petitioner. But here in the present case, the situation is completely different as there is mandatory compliance of Rule 17(14) of CCA Rules, 2005 has not been made and the said issue has already been decided by the Hon'ble Court in the case of **Upendra Pandit Vs. State of Bihar** reported in **2023(4) PLJR 568**, in which the departmental proceeding conducted without appointment of Presenting Officer was held to be serious lapse.

6. It is made clear that this writ was allowed in the light of decision made by this Court in the case of **Amit Kumar V. State of Bihar and Others** passed in **CWJC No.4515 of 2017** only to conduct the disciplinary proceeding in accordance with law in which the petitioners were directed to fully cooperate, if not, the official shall be at liberty to take decision in accordance with CCA Rules, 2005.

7. In this view of the matter and with a view to maintain the parity, this Court allow all the three writ petitions



setting aside their dismissal orders dated 31.10.2017, 29.03.2016 and 10.04.2017 passed by Superintendent of Police, Arwal, Commandant, Bihar Military Police-2 Company Dehri and Commandant BMP-7 respectively as well as appellate order under Memo No.1506 dated 12.06.2018/01.06.2018, Memo No.716 dated 02.09.2016 and Memo No.845 dated 08.08.2018 passed by D.I.G., Magadh Range, Gaya, D.I.G., B.M.P., Patna and D.I.G., Muzaffarpur, North Division, Muzaffarpur Range, respectively, in CWJC No.455 of 2018, CWJC No.2783 of 2018 and CWJC No.2784 of 2018 respectively, affirming the dismissal with a direction for reinstatement of the petitioners for the purpose of conducting the disciplinary proceeding only for other consequential benefits, if any, would be admissible to the petitioners depend upon the result of the disciplinary proceeding.

(Dr. Anshuman, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.12.2023
Transmission Date	NA

