

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1710 of 2020

Arvind Kumar Singh Son of Late Gani Nath Singh Resident of Village- Pipra,
P.S.- Dighwara, District- Saran at Chapra.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Director General of Police Bihar, Patna.
3. The Inspector General of Police Mithila Range, Darbhanga.
4. The Deputy Inspector General of Police Darbhanga Range, Darbhanga.
5. The Superintendent of Police Samastipur.
6. The Enquiry Authority-Cum- Subdivisional Police Officer Dalsinghsarai, Samastipur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Bindyachal Singh, Sr. Adv
		Mr. Ram Binod Singh, Adv
For the Respondent/s	:	Mr. Sheo Shankar Prasad (SC-8)

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 01-12-2023

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

2. The petitioner has challenged the order contained in Memo No. 908/441622 dated 20.09.2019 (Annexure-9 series) and order contained in Memo No. 830 dated 30.07.2018 (Annexure-8 series) passed in Appeal for quashing the Memo No. 1634 dated 27.06.2017 (Annexure-6) by which Superintendent of Police, Samastipur has awarded punishment of dismissal from service upon the petitioner and for quashing the Memo No. 732 dated 29.03.2017 (Annexure-4 series) whereby Conducting Officer has proved the charge against the



petitioner without any participation of the Presenting Officer.

3. Counsel for petitioner submits that the petitioner was appointed on the post of constable on 11.11.1996 and worked as bodyguard of various persons between year 1996 to 1998. He submits that in the year 1998, he was transferred to GRP, Muzaffarpur where he continued his service for five years. From GRP Muzaffarpur, he was transferred to GRP, Jamalpur and thereupon he was transferred to Darbhanga Zone by the order of the Police Headquarter dated 22.07.2010. The command for his joining in Darbhanga Zone was issued on 08.04.2011. He submits that when he went to join in Darbhanga Zone, his joining was not accepted as the Inspector General of Police, Darbhanga Zone was on leave. In this result, he could join only on 25.04.2011.

4. Counsel submits that after joining in Darbhanga Zone, he was posted in the Samastipur District Force and from where he was relieved on 02.05.2011 for his joining in the district of Samastipur. He further submits that due to his medical emergency, he could join in police in Samastipur only on 09.08.2016 and thereafter, a Memo No. 1990 dated 20.04.2016 was served indicating two charges. First charge was that he was relieved from Jamalpur on 08.04.2011 but he had joined on



25.04.2011 i.e. delay of ten days in joining. Second charge is of delay of 1924 days in joining his service. The Superintendent of Police, Samastipur appointed SDPO, Dalsinghsarai as Presenting Officer.

5. Counsel for petitioner submits that the said charge memo is Annexure-2 and upon perusal of the said charge memo, it is crystal clear that there was no Presenting Officer appointed. Counsel further submits that in the departmental proceeding which was conducted against him bearing Departmental Proceeding No. 89 of 2016, again there was no Presenting Officer appointed. Second show cause has also been issued in which petitioner has filed his reply. The disciplinary Authority has passed order against the petitioner in appeal and the punishment was affirmed. Counsel for the petitioner has put emphasis that the disciplinary proceeding relating to the present petitioner has to be conducted primarily according to Rule 24(A)(e) the Bihar Police Manual read with Rule 32 of Bihar Government Servant (Classification Control and Appeal) Rules 2005, (hereinafter referred to as “CCA Rules 2005”) it is crystal clear that taking action under the departmental proceeding against the petitioner has to run according to CCA Rules 2005 and Rule 17(14) talks about the conduction of the departmental



proceeding in the presence of the Presenting Officer which is lacking in the present case.

6. Counsel for State submits that the present case is a case in which the petitioner was absent from his service from more than five years and according to Rule 76 of Bihar Service Code, he is entitled from removal after conduction of the departmental proceeding. Counsel for State further submits that his absentia is very much clear from the letter which has been served in the charge memo to the petitioner and in these circumstances, the onus is upon the delinquent to proof and provide the reason for his defense and therefore, the order passed by the disciplinary authority and the appellate authority is completely in accordance with law.

7. Upon going through the pleadings of the parties and the documents on record, the contention of the respondent is absolutely right that if the employee is absent for more than five years than his removal shall be made in accordance with Rule 76 of the Bihar Service Code but that rule itself clear that after conduction of proceeding only, the said decision has to be taken and conduction of the proceeding has to run according to Bihar Police Manual and Bihar Police Manual itself categorically states that any disciplinary proceeding shall ran according to



CCA Rules 1930/35 which are now CCA Rules 2005. The CCA Rules 2005 is very much clear that proceeding has to be conducted in the presence of Presenting Officer. The contention of this Rule has been affirmed by this Hon'ble Court in case of *Upendra Pandit Vs. State of Bihar 2003 (4) PLJR 568* and hence in this view of the matter, this Court held that the entire proceeding has been made in the absence of Presenting Officer and therefore, the order contained in Memo No. 908/441622 dated 20.09.2019 (Annexure-9 series) and order contained in Memo No. 830 dated 30.07.2018 (Annexure-8 series) passed in Appeal and the Memo No. 1634 dated 27.06.2017 (Annexure-6) and the Memo No. 732 dated 29.03.2017 (Annexure-4 series) are hereby quashed.

8. The disciplinary Authorities are free to take action on the basis of charge afresh appointing presenting officer.

9. With regard to payments of benefits, authorities are directed to take decision in accordance with law.

(Dr. Anshuman, J)

Sunnykr/-

AFR/NAFR	
Uploading Date	
Transmission Date	

