

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.25445 of 2019

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Md. Giaaul Hak, Son of Md. Mussa Resident of Village- Simmalbari New Tola, Post- Gachhpara, District- Kishanganj.

... .. Petitioner/s

Versus

1. The State of Bihar through the Director General of Police, Bihar at Sardar Patel Bhawan, Bailey Road, Patna.
2. The Inspector General of Police, Purnia Zone, Purnia.
3. The Superintendent of Police, Kishanganj.
4. The Superintendent of Police, Araria.
5. The Conducting Officer-cum-Deputy Superintendent of Police (Head Quarter), Kishanganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ambuj Nayan Chaubey, Adv. Mr. Sanjay Kumar Singh, Adv. Mr. Shashank Shekhar Dubey, Adv. Mr. Shadhwai Harsh, Adv.
For the State	:	Mr. Sheo Shankar Prasad, (SC-8) Mr. Sanjay Kumar, (AC to SC-8)

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 06-11-2023

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

2. The present writ petition has been filed for quashing the order dated 30.10.2019 contained in Memo No. 1570 passed by the Inspector General of Police, Purnia zone, Purnia and further for quashing the order dated 27.07.2019 contained in Memo No. 3640 passed by the Superintendent of Police, Kishanganj by which the petitioner has been dismissed



from the service with immediate effect. Further prayer has also been made to quash the consequential order dated 05.08.2019 contained in Memo No. 2288 passed by the Superintendent of Police, Araria by which the petitioner has been dismissed from his service and direction was made for deletion of name of the petitioner from all registers of the District pursuant to order dated 27.07.2019 contained in Memo No. 3640.

3. Learned counsel for the petitioner submits that the departmental proceeding against the petitioner has been conducted in complete violation of the provisions of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as “Bihar CCA Rules 2005”). He also submits that the Presenting Officer was appointed, but from the report of the Enquiry Officer, final order of punishment and Appellate order, it transpires that the Presenting Officer has not done any act and the role of Presenting Officer in this case has been conducted by the Enquiring Authority himself. Counsel for the petitioner further submits that the examination of the list of witnesses used against the petitioner for proving of the charge indicates that examination of only one witness has taken place i.e. the doctor whose signature is present on the evidence whereas, signature of



other witnesses are not present on the evidence nor the signature of the Enquiry Officer is present. Counsel further submits that there is gross violation of rules laid down under Rule 17 of the Bihar CCA Rules 2005 which expressly specified the role of Presenting Officer in the departmental proceeding. Counsel relied on the decision passed by this Hon'ble Court, in case of the Sonu Kumar Vs. State of Bihar contained in CWJC No. 17527 of 2019 dated 22.09.2021 whose paragraph 17 is very much relevant. Counsel also submits that none of the defence taken by the petitioner before Enquiry Officer or before the disciplinary authority or Appellate authority has been considered.

4. Counsel for the petitioner submits that in the light of above submissions, the original order and appellate order are not sustainable and fit to be quashed, and therefore, it's consequential orders are fit to be quashed.

5. Learned counsel for the State vehemently opposes the prayer of the petitioner to dismiss the original order, appellate order and its effect. He submits that the petitioner was a constable in the Police Department and the disciplinary action has been taken against the petitioner completely in the light of Bihar Police Manual. He also submits that in the Bihar Police



Manual, there is no direct provision to appoint the Presenting Officer and the role of Presenting Officer has also not been defined expressly and therefore, the plea taken by the petitioner is not sustainable. Counsel for the State also submits that from the reasoning's assigned in the enquiry report as well as the disciplinary order of punishment, it is clear that the witnesses were examined and cross-examined and then only the Enquiry Officer has reached on the finding and found charge to be proved and in furtherance, the order of punishment has been passed. The appellate authority has also affirmed the original order in appeal.

6. Learned counsel for the State also submits that the judgment rendered in the case of Sonu Kumar Vs. State of Bihar (supra), on which the petitioner is relying is not applicable at all in the present case due to the reason that the case of petitioner shall run according to the provisions of Bihar Police Manual and not according to the provisions of Bihar CCA Rules, 2005.

7. After hearing the parties and going through their pleadings, it is necessary for this Court to decide one issue which is most fundamental for adjudication of this case i.e. **whether rule of Bihar Police Manual shall apply or the**



Bihar CCA Rules, 2005 shall apply in the case of the petitioner.

8. With a view to decide this issue, it is necessary to quote the relevant Rule 824 A 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.”

Similarly Rule 32 of the CCA Rules, 2005 states as under:-

“Repeal and Savings. (1) The Notification No.-III/RI-101/63-8051-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.”

9. Upon going through Rule 824 A of Bihar Police Manual, it transpires to this court that there are broad



classification of 5 types of Police personnel's which have been discussed in the said manual.

10. The first category is those persons who comes within the category of Indian Police Service against whom disciplinary action shall be directed to be instituted according to the All India Services (Discipline and Appeal), Rules, 1969.

11. The second category is Deputy Superintendent and their equivalent ranks against whom the disciplinary action shall be taken according to Civil Services (Classification, Control and Appeal) Rules, 1930.

12. The third category is the Ministerial Officers against whom disciplinary action has directed to be taken according to Bihar Subordinate Services (Discipline and Appeal), Rules 1935.

13. The fourth category is of the members of Bihar Sashastra Police for whom indication has been made that disciplinary rule has been given in separate manual.

14. The fifth category has been divided into 2 sub categories viz, first is for those personnel's against whom action shall be taken according to Rule 824 A(b), if gazetted and second for those personnel's against whom action shall be taken according to Rule 824 A(c), if non-gazetted, unless expressly



proposed otherwise for any special person. It is made clear in Rule 32 of Bihar CCA Rules 2005 that by enactment of the said Bihar CCA Rules 2005, rules of 1930 and rules of 1935 mentioned above were repealed, meaning thereby, the Bihar CCA Rules, 2005 has adopted the rules of 1930 and 1935 both.

15. In this background, it becomes crystal clear to this Court that for the police officials whether gazetted or non-gazetted, the Bihar CCA Rules, 2005 shall be applicable to take disciplinary action against them. In this view of the matter, this Court rejects the contention of the respondent that police manual shall only apply because police manual itself indicates that disciplinary action shall run according to disciplinary rules 1930 & 1935, which are replaced by Bihar CCA Rules, 2005. After conjugal reading of Rules 824 A of Bihar Police Manual read with Rule 32 of Bihar CCA Rules, 2005, the issue about applicability of the rule in the disciplinary action against the police personnel is hereby cleared that in all types of Police personnel's in Bihar CCA Rules 2005 shall apply.

16. When it is clear that in the present case there is applicability of Bihar CCA Rules 2005, then the question shall arise that whether the Presenting Officer has been appointed in the present case or not, and whether the Presenting Officer has



discharged any of his duties as mentioned in the Bihar CCA Rules 2005 for the purpose he was appointed. After perusal of those rules, it transpires that the role of the Presenting Officer have been laid down firstly in Rule 17(6)(4), secondly in proviso of (17)(8)(a), thirdly in Rule 17(11), fourthly in Rule 17(14), fifthly in Rule 17 (15), sixthly in Rule 17(16), seventhly in Rule 17(19) and finally in Rule 17(23)(ii)(d) of the Bihar CCA Rules, 2005.

17. In this view of the matter, this Court finds that after appointment of Presenting Officer, he has not discharged any of his duties mentioned in the above eight rules except that he has signed on the enquiry report. Therefore, it transpires to this Court that any action which ought to be done by the Presenting Officer has been done by the Enquiry Officer himself. Therefore, on this ground this Court is of the view that the enquiry proceeding which resulted into punishment i.e. punishment order and acquired finality by appellate order contained in Annexure-4 vide memo no. 500 dated 02.03.2019, in Annexure-16 vide memo no. 2288 dated 05.08.2019 and in Annexure-17 vide memo no. 1570 dated 30.10.2019 are not sustainable and fit to be quashed. The another aspect of the matter on which the counsel for the petitioner has invited



attention of this Court i.e., the copy of the evidences which has been served upon the petitioner which is annexed to the writ petition as Annexure-7 relevant page 33 onwards in which examination of the witnesses are there, but on those papers, neither the signature of the witnesses nor of the Enquiry Officer were present. Only in the case of doctor's examination, the signature of the doctor and the Enquiry Officer is present.

18. This Court finds that in view of the reasons assigned above, the order dated 02.03.2019 issued vide Memo No. 500 as contained in Annexure-4; the order dated 30.10.2019 issued vide Memo No. 1570, as contained in Annexure-17; order dated 27.07.2019 issued vide Memo No. 3640, as contained in Annexure-15 and consequential order dated 05.08.2019 issued vide Memo No. 2288, as contained in Annexure-16 are not sustainable, and accordingly, the same are hereby quashed.

19. However, the authorities are free to proceed further on the basis of charge alleged and in case the respondent decides to proceed further, the departmental proceeding shall continue from the charge memo onwards and the said exercise is directed to be concluded within 6 months, but in the meantime, the petitioner is directed to be re-instated.



20. With the above directions and observations, this writ petition stands allowed.

(Dr. Anshuman, J.)

Divyansh/-

AFR/NAFR	AFR
CAV DATE	NA
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Transmission Date	NA

