

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5883 of 2021

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Md. Khurshid Alam, Son of Md. Bashiruddin Resident of Raipatty, PS-Dhigbara, District- Saran (Chhapra).

... .. Petitioner/s

Versus

1. The State of Bihar .
2. The Director General of Police, Bihar, Patna.
3. The Additional Director General of Police (Headquarter), Bihar, Patna.
4. The Inspector General of Police, Saran Range at Chapra.
5. The Deputy Inspector General of Police, Saran Range at Chapra.
6. The Superintendent of Police, Siwan.
7. The Deputy Superintendent of Police, Siwan.
8. The Sub-Divisional Police Officer, Sadar Siwan.
9. The Deputy Superintendent of Police (Headquarter), Siwan.
10. The Deputy Superintendent of Police (Reserve), Police Line, Siwan.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjeet Kumar, Advocate Mr. Satya Prakash Parasar, Advocate Mr. Aditya Dev, Advocate
For the Respondent/s	:	Mr. Md. Nadim Seraj, GP 5

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAV JUDGMENT

Date : 16-07-2024

In the instant writ petition, the petitioner has invoked constitutional writ jurisdiction of this Court under Article 226 of the Constitution for the following reliefs:-

(i) For issuance of writ in the nature of certiorari for quashing of the Siwan District Order No. 1424/2020 contained in Memo No. 4942 dated 17.12.2020 issued under the



signature of the Superintendent of Police, Siwan (Respondent No. 6) whereby and where under the petitioner has been dismissed from the service on the basis of vague and malicious charges without following the mandate as prescribed under Article 311 of the Constitution of India and without following the due process of law as given under the Bihar Government Servant (Classification, Control & Appeal) Rules, 2005 as the service of the petitioner is govern by the aforesaid rules and the punishment order is completely based on the accounts of whim and fancy of the respondent authorities.

(ii) For further direction to the respondent authorities to reinstate the petitioner to any suitable post with all consequential benefits after holding that the charges has not been proved out and out in accordance with law governing the instant issue.

(iii) And for any such other reliefs for which this Hon'ble Court may deem fit and proper.”

2. The factual aspect leading to the filing of the instant writ petition is that the petitioner was appointed as Sub-Inspector of Police in the year 2009. He has claimed that he had been discharging his duties with the satisfaction of his higher authorities independently, honestly, and without any adverse report. On or



about 12th June 2020, an audio chat (in the petition, it was wrongly stated as video) was made viral and it was alleged that the petitioner being a Sub-Inspector of Police was talking to some unknown lady at late hours of night and their chat reflects obscene, immoral and illicit discussion. When the said audio chat was made viral, it prompted the department to initiate an inquiry under the leadership of the Sub-Divisional Police Officer, Town-Siwan, and the petitioner was placed under suspension that is on 13th June 2020. A departmental proceeding was initiated against the petitioner. The memorandum of charge contains three heads of charge which are narrated below:-

(i) While the petitioner was posted at the SHO, Ashav, he was found talking to a lady on some matters beyond his scope of duty, such a specific act of the petitioner lowered down the dignity of the Police Department at large and the said conversation with an unknown lady by the petitioner was an instance of violation of his official duty, dereliction, lack of integrity and carelessness. Charge No. 01 says, on or about 13th June 2020, an audio chat was made viral on social media from which it was ascertained that a man was talking with a woman. On preliminary inquiry, it was found that the said man was the petitioner himself. He was talking to the said lady on some subject beyond the scope



of his service. During the preliminary inquiry, the audio chat was confronted with some Police Officers, Constables, and house guards of the petitioner who used to work with him at the relevant point of time and all of them identified the male voice as that of the petitioner's voice in the said audio chat.

(ii) The petitioner was charged with the allegation that the CDR of the petitioner's departmental mobile phone having Airtel Mobile No. 9801104445, was examined and it was ascertained that from the said mobile number several calls were made to another person having Mobile No. 74629110313 during the period from 1st June 2020 to 10th June 2020 during odd hours of night. It was also ascertained that the holder of mobile no. 74629110313 is one Karishma Kumari, daughter of Tribhuvan Mishra within P.S. Ashav in the District of Siwan. It is further alleged that the petitioner used private Sim No. 9801104445 in the departmental mobile set.

(iii) It was alleged that the repeated calls made by Khurshid Alam, SHO, Ashav to a particular lady during late hours of night created suspicion, and such involvement of the petitioner with said lady had lowered down the dignity and honor of the Police Department before the common man in general. Therefore,



he was placed under departmental inquiry of the above-mentioned charges.

3. In the memorandum of charge, prayed and submitted by the Superintendent of Police, Siwan, the names of the witnesses and the description of documents proposed to be relied on in departmental inquiry were supplied to the delinquent police officer.

4. The delinquent officer submitted a written reply against the said charges on 12th August 2020, stating, *inter alia*, that he was not given any opportunity to submit his explanation before the initiation of departmental proceedings and denial of the right to submit explanation offends Rule 17(4) of the Bihar Government Servants (Classification, Control, and Appeal) Rules, 2005.

5. It was also pleaded by the petitioner in his statement of defense that no complaint against the petitioner was made by any person regarding any sort of misconduct. The departmental proceeding was initiated on the basis of a viral audio chat in which the complainant was allegedly claimed to be a party. In this regard, the complainant refers to letter no. 945 dated 24th June 2005 issued by the Administrative Reform Department wherein, it is directed that the complaints without the name of the complainant shall not



be considered and such complaints are liable to be rejected. In the departmental inquiry against the petitioner, no complaint was ever lodged over the so-called viral audio chat by any person, therefore, the departmental inquiry is bad in law and cannot be continued.

6. The above-stated reply submitted by the petitioner was not considered. Subsequently, the inquiry was conducted against him and he was held guilty of misconduct. The inquiry report was sent to the disciplinary authority. The disciplinary authority passed the order of dismissal from service against the petitioner. The petitioner preferred an appeal which was also dismissed which prompted the petitioner to move before the Court under Article 226 of the Constitution for appropriate relief.

7. Learned Advocate appearing on behalf of the petitioner further submits that the appointing authority of the petitioner is the Deputy Inspector General (DIG for short) of the Police. Nonetheless, the memo of charge was issued by the Superintendent of Police, Vaishali, hence, the memo of charge stands vitiated in lieu of Rule 17 (3) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005. The learned counsel for the petitioner has also raised the issue that the memo of charge was issued to the petitioner without providing any opportunity to him to furnish his statement of defense. Thus, the



memorandum of charge is bad being contrary to Rule 17(4) of the CCA Rules, 2005.

8. It is further contended by the learned counsel appearing on behalf of the petitioner that the second show-cause notice was also bad in law as it was issued by the Superintendent of Police, Siwan. The order of punishment was also passed by the Superintendent of Police. It is needless to say that the appointing authority of an employee can only terminate such employee on some proven misconduct.

9. Per contra, it is submitted by the learned Advocate appearing on behalf of the State that the order of punishment was not passed by the Superintendent of Police. In this regard, the learned Advocate appearing on behalf of the petitioner has fully misplaced the argument. According to the learned Advocate appearing on behalf of the respondents, there was no procedural illegality in the departmental inquiry and imposition of punishment against the petitioner. In support of his contention, he refers to page 29 of the counter-affidavit, filed on behalf of the respondents. The order passed by the D.I.G., Saran Range, Chapra dated 17th December 2020 holding the petitioner guilty for having a private chat with a lady through his mobile phone is annexed on pages 29 to 31 of the said counter-affidavit. Considering the nature of the



charge which was held to have been proved, the DIG passed an order against the petitioner for dismissal of his service with effect from 17th December 2020. The Superintendent of Police was directed to communicate the said order to the charged officer, therefore, the order of dismissal was not passed by the Superintendent of Police but by the DIG, Siwan Range, Chapra, which was communicated by the Superintendent of Police and there is no irregularity in the imposition of sentence.

10. The learned counsel appearing on behalf of the respondents further refers to paragraph 11 of the said counter-affidavit and submits that other police officers and members of the Force who used to work with the charged officer identified his voice in the viral audio chat, therefore, in the departmental inquiry, it is proved that the petitioner was having a private conversation with a lady at odd hours of night. For such reason, the petitioner inserted a private SIM card in his official mobile set. The said fact has not been denied by the petitioner.

11. It is also submitted by the learned Advocate appearing on behalf of the respondents that the charge was framed against the petitioner only after the initial inquiry conducted by the Sub-Divisional Police Officer, Siwan. During the preliminary inquiry, the petitioner was given the opportunity to state his



defense. The petitioner took part in a preliminary inquiry, therefore, the allegation that the disciplinary authority did not give any opportunity, enabling the delinquent officer to respond thereto, has no leg to stand.

12. Learned Advocate appearing on behalf of the petitioner, at this stage, refers to a decision of a Co-ordinate Bench in the case of ***Dhananjay Jha vs. State of Bihar & Ors.*** reported in ***2021 (4) BLJ 474***. The learned counsels especially refer to paragraphs no. 11 and 12 of the aforesaid decision which are quoted below:-

*“ 11. I have heard the learned counsel for the parties and perused the materials on record. **Rule 17 & 18 of the Bihar Government Servant (Classification, Control & Appeal) Rules, 2005**, lays down a mandatory procedure to be followed by the disciplinary authority which begins from the stage of service of charge memo by the disciplinary authority, enabling the delinquent to respond thereto, conferring an equal obligation upon the disciplinary authority to satisfy itself, as to whether the allegations are required to be pursued and only after the disciplinary authority is satisfied as also*



*upon completion of such exercise as mandated under **Rule 17(3)** read with **Rule 17(4)**, the disciplinary authority can either interfere in the matter himself or delegate it to an Enquiry Officer under **Rule 17(6)** to enquire into the same and only then the Enquiry Officer takes over the proceeding. Under **Rule 17(6) of the Rules, 2005**, the disciplinary authority has another obligation i.e. to appoint a Presenting Officer for leading the case of the Department, which in the present case has been given a go-bye. It is apparent from the records that the proceeding under challenge has been held de hors the procedure inasmuch as neither the petitioner has been heard on the charge by the disciplinary authority, since he was in custody at that time. Moreover, the absence of the Presenting Officer during major part of the departmental enquiry, as mandated under **Rule 17(5) and (6)** perpetuates the illegality, which is a serious lacuna and has rendered the entire proceeding illegal. The legal position in this regard is no longer res integra inasmuch as the same has been settled by this Court in a judgment dated **29.06.2017** passed in **CWJC No. 7207***



of 2016 (Shankar Dayal vs. State of Bihar & ors.), relevant portion whereof is reproduced herein below:-

“Rule 17(3) of "the Rules" casts an obligation on the Disciplinary Authority to draw a charge against a delinquent Government servant or cause it to be drawn up against the officer delinquent. Sub-rule (4) thereof further mandates the delivery of such charge memo so drawn up either through the Disciplinary Authority or through an officer duly authorized. The obligation cast on the Disciplinary Authority does not stop here rather he has yet to satisfy himself whether the explanation so forwarded by a delinquent on the proposed charge, requires an enquiry by the Enquiry Officer or requires a closure. This power exclusively vested in the Disciplinary Authority under rule 17(4) cannot be delegated. In the present case this mandatory obligation cast on Disciplinary Authority has been flouted as confirmed from the letter dated 1.2.2008 (Annexure 2) issued by the Enquiry Officer directing the petitioner to file his reply on the charges before him. This is a gross statutory violation and has been commented upon



by a Division Bench of this Court in a judgment reported in 1996(2) PLJR 95 (Ravindra Nath Singh vs. Bihar State Road Transport Corporation) when the Division Bench has expressed the following opinion at paragraph 6 of the judgment:

“6. ... The Enquiry Officer is not the competent authority to consider the reply to the charges. It is for the disciplinary authority to consider the reply to charges and on consideration of the causes shown in the reply to decide as to whether to close or to continue with the proceedings by holding domestic enquiry into the charges.”

*12. This Court finds that the Inquiry Officer himself has acted as representative of the disciplinary authority and has all throughout controlled the departmental proceedings as also ensured that proper witnesses are examined, which is not only contrary to the procedure laid down under Rule 18 of the Rules, 2005 but also law in teeth of the law laid down by the Hon'ble Apex Court in the case of **State of U.P. and others v. Saroj Kr. Sinha**, reported in (2010) 2 SCC 772,*



*hence this Court is of the view that the inquiry proceedings from its very inception, stand vitiated, thus the inquiry report dated 08.11.2018 is quashed. This Court further finds that the appointing authority of the petitioner is admittedly, the Deputy Inspector General of Police, however, the memo of charges has been issued by the Superintendent of Police, Vaishali vide order dated 21.08.2015, which is in contravention of **Rule 17 (3)** inasmuch as the same mandates the disciplinary authority to draw the imputation of misconduct or misbehaviour in support of each article of charge alongwith the list of documents and list of witnesses as also the articles of charges, however in the present case, instead of the Deputy Inspector General of Police, who is the disciplinary authority of the petitioner, the Superintendent of Police, Vaishali has drawn up the charges, hence this Court finds that the chargesheet also stands vitiated in the eyes of law being contrary to Rule 17(3) of the Rules 2005, thus the same is set aside.”*

13. He also refers to another decision of this Court passed in the case of *Vijay Kumar Singh Vs. The State of Bihar &*



Ors. reported in **2023 (2) PLJR 105**. In the aforesaid reported decision, the memo of charge was framed and issued and the proceeding was imitated by the Superintendent of Police, while the disciplinary authority of the petitioner is the Deputy Inspector General of Police. Thus, it was held that as the charge memo was not framed by the disciplinary authority, the impugned order of punishment requires to be quashed.

14. Law on the point of compliance of the direction contained in Rule 17(3) and 17(4) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 is no longer *res integra* of the charge. The memorandum of charge, the imputation of misconduct, or misbehavior in support of which article of charge along with a list of documents and list of witnesses shall be drawn up or cause to be drawn up by the disciplinary authority. In the instant case, the respondents have failed to produce any document that the articles of charge substance of imputation, misconduct or misbehavior as a definite and distinct article of charge, statements of the imputation of misbehavior, in support of each article of the charge along with relevant facts and the list of documents by which the articles of charge are proposed to be sustained, were not drawn by the DIG of Police. The memorandum of charge was drawn by the



Superintendent of Police. Nowhere in the memorandum of charge (Annexure-1 and Annexure-2), it is stated that the charge was framed by the disciplinary authority and the Superintendent of Police was directed to serve the memorandum of charge to the petitioner.

15. Apart from non-compliance of relevant provisions of Rule 17 of the CCA Rules, 2005, this Court is of the view that the prosecuting department/respondents miserably failed to produce the contents of the so-called chats, allegedly between the petitioner and one Karishma Kumari. It is *per se*, no misconduct or misbehavior while talking to a lady over the phone by the SHO of a police station at late hours of night. Every citizen has a Fundamental Right to talk to another at any point of time, however, if such conversation revealed obscenity and immorality which might degrade the position of the charged officer as well as the Police Department as a whole, the petitioner was liable to face a departmental inquiry. The memorandum of charge only contains that an audio chat between the petitioner and one lady became viral and the said conversation, at late hours of night between the petitioner and the said lady, is suspicious(संदेहास्पद).

16. Since this is a departmental proceeding and the Rule of Evidence Act is not strictly applicable in a departmental



proceeding, this Court is not going to decide the issue as to whether an audio voice through mobile can be identified by some police personnel and associates of the petitioner without scientific examination of voice sample of the petitioner. Practically in ***Sanjay Rajak v. State of Bihar***, reported in ***(2019) 12 SCC 552***, the Hon'ble Supreme Court accepted that calls on mobile of the accused can be identified by his close associates. Because every individual has a distinctive style of speaking which makes identification by those acquainted possible. However, without the contents of the audio chat, reference of which is not found in the charge memo, the order of disciplinary authority, or appellate authority, it is not possible for the Court to hold as to whether the conversation between the petitioner and a lady at odd hours of night amounts to misconduct or misbehavior of the charged officer for which he was punished with extreme punishment of dismissal from service.

17. For the reasons stated above, this Court is of the view that the impugned orders of punishment passed by the disciplinary authority dated 13.06.2020 and affirmed by the appellate authority on 17.12.2020 are liable to be quashed. Accordingly, the above-mentioned orders of punishment are quashed and set-aside.



18. The instant writ petition is allowed on contest. The petitioner is reinstated in service and be granted consequential financial benefits from the date of his suspension.

(Bibek Chaudhuri, J)

Suraj Dubey/-

AFR/NAFR	NAFR
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