

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.2264 of 2023**

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Gauri Rani, daughter of Shri Umesh Kumar Jha, Resident of Netaji Colony,  
Nasratkhani, Mohanpur P.O.-Champanagar, P.S.-Lalmatiya Nath Nagar O.P.  
District-Bhagalpur, Bihar-812004.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secreary, Home Department,  
Government of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Inspector General of Police, Patna Range, Patna.
4. The Senior Superintendent of Police, Navin Police Kendra, Patna.
5. The Deputy Superintendent of Police, Navin Police Kendra, Patna.
6. The S.D.O.P. Cum Additional Superintendent of Police, Barh
7. The Inspector Cum Station House Officer, Buddha Colony Police Station-  
Patna.

... .. Respondent/s

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**Appearance :**

|                      |   |                                                                                                                                                        |
|----------------------|---|--------------------------------------------------------------------------------------------------------------------------------------------------------|
| For the Petitioner/s | : | Mr. Apurv Harsh, Advocate<br>Mr. Manu Tripurari, Advocate<br>Mr. Raghu Raj Pratap, Advocate<br>Mr. Hritik Anand, Advocate<br>Mr. Sujit Kumar, Advocate |
| For the Respondent/s | : | None                                                                                                                                                   |

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**CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI**  
**ORAL JUDGMENT**

**Date : 12-09-2024**

1. The petitioner was a trainee Constable, appointed on 24<sup>th</sup> of August, 2018. On 2<sup>nd</sup> of November, 2018, while she was at Patna Police Lines, one of her colleagues, namely, Savita Kumari Pathak died. As a result of her death, incident of commotion, group fighting, disturbances, in one word, affray, took place at Patna Police Lines. Over the said incident, two criminal cases were registered *vide* Buddha Colony P.S. Case



Nos. 435 of 2018 and 436 of 2018. A Special Investigation Team under the leadership of the Senior Superintendent of Police, Patna was constituted to conduct investigation of the alleged incident of affray. Subsequently, on 4<sup>th</sup> of November, 2018, by an order of Sr. Superintendent of Police, Patna, the petitioner along with 164 Constables were dismissed from service without any show cause or inquiry. The petitioner challenged the said order of dismissal in C.W.J.C. No. 13987 of 2021. The said writ petition was disposed of *vide* an order dated 8<sup>th</sup> of December, 2021 by a Coordinate Bench of this Court, quashing the order of dismissal, directing payment of back-wages, reserving liberty to initiate fresh departmental proceedings.

2. As the respondents failed and neglected to comply with the order passed in the above-mentioned writ petition, the petitioner filed a contempt petition bearing M.J.C. No. 3131 of 2022 and she received her back-wages finally at the intervention of this Court.

3. On 19<sup>th</sup> of July, 2022, the petitioner received Memo No. 3817 dated 6<sup>th</sup> of July, 2008, directing her to submit an explanation showing cause as to why departmental action shall not be taken against her. However, along with the show cause notice, she did not receive the Memorandum of Charge.



Only on 19<sup>th</sup> of July, 2022, she received Memorandum of Charge, dated 25<sup>th</sup> of February, 2022. During departmental inquiry, the petitioner submitted series of letters/representations, requesting the Inquiry Officer to supply any photographs of CCTV footage, capturing the her presence at the scene of occurrence on 2<sup>nd</sup> of November, 2018. However, the said documents were denied to be supplied by the Inquiry Officer.

4. That on 5<sup>th</sup> of September, 2022, the S.S.P., Patna confirmed the order of dismissal and issued second show cause notice to the petitioner.

5. On 12<sup>th</sup> of September, 2022, the petitioner filed a detailed representation, submitting therein that the findings of the Inquiry Officer was based on the report of the City S.P. (West) and the basis were the video footage/photographs. However, the said video footage/photographs were never provided to the petitioner. The S.S.P., Patna without proper appreciation of the reply to the second show cause notice, passed impugned order of dismissal on 13<sup>th</sup> of September, 2022.

6. The departmental appeal filed by the petitioner and the revision/memorial also received the same fate, vide an order dated 21<sup>st</sup> of September, 2022 and 4<sup>th</sup> of November, 2022.

7. The petitioner has challenged the order of



punishment in the instant writ petition.

8. The learned Advocate on behalf of the petitioner submits that the basis of the order of dismissal of the petitioner from service was purported CCTV footage and photographs. However, copies of CCTV footage or the photographs were not supplied to the petitioner. Therefore, the petitioner did not get any opportunity to controvert the aforesaid documents during her cross-examination. This, according to the learned Advocate for the petitioner, is gross violence of principles of natural justice.

9. It is also submitted by the learned Advocate for the petitioner that in the departmental proceeding, the Inquiry Officer examined only one witness, that too in the absence of the petitioner. She was also not allowed to cross-examine the said witness. Thus, principle of *audi alteram partem* was grossly denied in the departmental proceeding.

10. Learned Advocate for the petitioner also submits that Buddha Colony P.S. Case Nos. 435 of 2018 and 436 of 2018 were registered against 164 trainee Constables. Out of them, only the petitioner was dismissed and the remaining Constables were released from suspension and they are doing their regular duty. Thus, the petitioner was treated differently



while her colleagues were exonerated from the alleged charge. This shows unfair bias against the petitioner, since she has approached this Court for redressal of her grievance.

11. Though notice was served, no one appeared on behalf of the respondents.

12. The learned Advocate on behalf of the petitioner refers to an unreported decision, passed by a Coordinate Bench of this Court in the case of ***Bharat Prasad Yadav (C.W.J.C. No. 18331 of 2019, decided on 12<sup>th</sup> of July, 2021)***.

13. In the above-mentioned case, the petitioner was suspended on the basis of a video-clip, which became viral on 14<sup>th</sup> of November, 2018, wherein the petitioner was seen consuming some substance akin liquor and was thus suspended on the very same date. A disciplinary proceeding was initiated on the allegation that he was consuming liquor which was found in video-clips. The petitioner contested the departmental proceeding on the defence that on the date and time of occurrence, he was on evening patrolling duty along with the police force and it was not possible for him to consume liquor and breathe analyzer test of the petitioner suggested zero quantity of alcohol coming out of his smell.

14. The Coordinate Bench refers to Paragraph Nos.



14, 15 and 23 of the case of **Roop Singh Negi v. Punjab National Bank & Ors.** reported in (2009) 2 SCC 570, which runs as under: -

*“14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.*

*15. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the enquiry officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. The appellant being an employee of the Bank, the said*



*confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.*

*23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same*



*could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.”*

15. The Coordinate Bench also relied upon another decision of the Hon’ble Supreme in ***Kuldeep Singh v. The Commissioner of Police and Ors.*** reported in ***(1999) 2 SCC 10*** to the Paragraph Nos. 4 to 10 whereof are relevant, which runs as under:

*“4. Learned counsel for the appellant has contended that the findings recorded by the enquiry officer cannot be sustained as the enquiry itself was held in utter violation of the principles of natural justice. It is also contended that there was no evidence worth the name to sustain the charge framed against the appellant and, therefore, the findings are perverse particularly as no reasonable person could have come to these findings on the basis of the evidence brought on record.*

*5. Learned counsel appearing on behalf of the Union of India has, on the other hand, contended that the enquiry was held in consonance with the principles of natural justice and during the course of the enquiry, full*



*opportunity was given to the appellant to defend himself. As far as the evidence is concerned, it is contended that though it is true that none of the complainants was examined but on account of Rule 16(3) of the Delhi Police (P&A) Rules, 1980, it was not required to produce the complainant in person as the Rule itself contemplated that in the absence of a witness whose presence could not be procured without undue delay, inconvenience or expense, his statement, already made on an earlier occasion, could be placed on record in the departmental enquiry and the matter could be decided on that basis. It was under this Rule that the previous joint statement of the complainants was brought on record without examining any of them. Learned counsel for the respondents contended that the scope of judicial review in disciplinary proceedings is extremely narrow and limited. The Court cannot, it is contended, re-examine or reappraise the evidence and substitute its own conclusion in place of the conclusions arrived at by the enquiry officer or the disciplinary authority on that evidence.*

*6. It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the enquiry officer as a matter of course. The Court cannot sit in appeal*



*over those findings and assume the role of the appellate authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictates of the superior authority.*

*7. In Nand Kishore Prasad v. State of Bihar [(1978) 3 SCC 366 : 1978 SCC (L&S) 458 : AIR 1978 SC 1277 : (1978) 3 SCR 708] it was held that the disciplinary proceedings before a domestic tribunal are of quasi-judicial character and, therefore, it is necessary that the Tribunal should arrive at its conclusions on the basis of some evidence, that is to say, such evidence which and that too, with some degree of definiteness, points to the guilt of the delinquent and does not leave the matter in a suspicious state as mere suspicion cannot take the place of proof even in domestic enquiries. If, therefore, there is no evidence to sustain the charges framed against the delinquent, he cannot be held to be guilty as in that event, the findings recorded by the enquiry officer would*



*be perverse.*

8. *The findings recorded in a domestic enquiry can be characterised as perverse if it is shown that such findings are not supported by any evidence on record or are not based on the evidence adduced by the parties or no reasonable person could have come to those findings on the basis of that evidence. This principle was laid down by this Court in State of A.P. v. Rama Rao [(1964) 2 LLJ 150 : AIR 1963 SC 1723 : (1964) 3 SCR 25] in which the question was whether the High Court under Article 226 could interfere with the findings recorded at the departmental enquiry. This decision was followed in Central Bank of India Ltd. v. Prakash Chand Jain [(1969) 2 LLJ 377 : AIR 1969 SC 983] and Bharat Iron Works v. Bhagubhai Balubhai Patel [(1976) 1 SCC 518 : 1976 SCC (L&S) 92 : 1976 Lab IC 4 : AIR 1976 SC 98 : (1976) 2 SCR 280] . In Rajinder Kumar Kindra v. Delhi Admn. [(1984) 4 SCC 635 : 1985 SCC (L&S) 131 : AIR 1984 SC 1805 : (1985) 1 SCR 866] it was laid down that where the findings of misconduct are based on no legal evidence and the conclusion is one to which no reasonable man could come, the findings can be rejected as perverse. It was also laid down that where a quasi-judicial tribunal records findings based on no legal evidence and the findings are its mere ipse dixit or based on*



*conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated.*

*9. Normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of “guilt” is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny.*

*10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.”*

16. In the ***State of U.P. & Ors. v. Saroj Kumar Sinha***, reported in **(2010) 2 SCC 772**, it is held by the Hon’ble Supreme Court that by virtue of Article 311(2) of the Constitution of India, the departmental enquiry had to be conducted in accordance with 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



proceeding which may culminate in a punishment being imposed on the employee.

17. The learned Advocate for the petitioner next refers to another unreported decision of this Court in the case of ***Jaynarayan Rajak v. State of Bihar & Ors. (C.W.J.C. No. 14967 of 2021*** decided on *1<sup>st</sup> of August, 2024*).

18. In the above-mentioned case also, this Court relies on the decision of ***Roop Singh Negi*** (*supra*) and also the decision of the Hon'ble Supreme Court in the case of ***Capt. M. Paul Anthonly v. Bharat Gold Mines Ltd & Anr.***, reported in ***AIR 1999 SC 1416*** in which the appellant was held guilty for illegal possession of stone dust and other related materials, on the basis of seizure list but no witness was examined to prove the said seizure list. Under such factual matrix, the Hon'ble Supreme Court held that the departmental charge against the appellant was not proved.

19. On the issue that the co-delinquents, numbering 164 Constables, were released from the order of suspension and only the petitioner was dismissed from service, the learned Advocate on behalf of the petitioner refers to the decision of the Hon'ble Supreme Court in the case of ***United Bank of India v. Biswanath Bhattacharjee*** reported in ***(2022) 13 SCC 329***.



Paragraph Nos. 29 and 30 are relevant and reproduced below :-

29. *An interesting side is this — Shri Madan Mohan Saha, who confessed to the misconduct, was charged and proceeded with departmentally. The confession of guilt, which he owned up to, nevertheless resulted in a mild penalty of withholding of increments. However, the respondent, who did not admit his guilt, or confess to it, and in respect of whom there was no credible evidence, even going by the lower standards of acceptable proof in departmental inquiries, was held to be guilty and visited with the penalty of dismissal. A reading of the disciplinary authority's order reveals that his past record of minor misconduct played a major role in determining his guilt, despite lack of evidence, and the extreme penalty of dismissal.*

30. *In view of the foregoing discussion, and having regard to the record, the impugned judgment [Biswanath Bhattacharjee v. United Bank of India, 2008 SCC OnLine Cal 766] cannot be faulted with. The appeal is unmerited. The appellant Bank is directed to ensure that the respondent's services are deemed to be reinstated, and calculate all his benefits, including arrears of salary, pay increase (as applicable), increments, and all consequential benefits, and calculate his terminal benefits, and fix his pension, if*



*admissible to him under the Bank's regulations. The determination of these benefits shall be undertaken, and the payment of all amounts be made, within three months from date of this judgment. The appeal is dismissed without order on costs.*

20. Having heard the learned Advocate for the petitioner and on careful perusal of the materials on record, it is not disputed that the petitioner was not supplied with the photographs or clip of CCTV footage which she claimed during inquiry. The said documents were the basis of punishment of the petitioner. The petitioner was also not allowed to cross-examine the witness during inquiry.

21. In ***State of U.P. v. Shatrughan Lal & Anr.***, reported in ***(1998) 6 SCC 651***, it was decided by the Hon'ble Supreme Court that before a person is called upon to submit his reply to the charge, he/she must, on a request made by him in that behalf, be supplied the copies of the statement of witnesses recorded during preliminary inquiry, if those witnesses are proposed to be examined at the departmental inquiry. The same principle is applicable with regard to the documentary evidence which was made basis of petitioner's punishment.

22. As the petitioner was not granted reasonable opportunity to contest the departmental proceeding in



accordance with law and the principles of natural justice was not maintained by the disciplinary authority, the impugned order cannot sustain.

23. Accordingly, the instant writ petition is allowed.

24. The impugned orders, bearing Office Order No. 5589/2022, dated 13<sup>th</sup> of September, 2022 and Order No. 292/2022, dated 21<sup>st</sup> of September, 2022, are quashed and set aside.

25. The petitioner be reinstated forthwith with all consequential benefits admissible to her in accordance with law.

**(Bibek Chaudhuri, J)**

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