

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8054 of 2021

Satyavrat Bharti, Son of Late Rajendra Prasad, Resident of Village-Nirsa,
P.S.-Nirsa, District-Dhanbad (Jharkhand).

... .. Petitioner/s

Versus

1. The State of Bihar through the Director General of Police, Bihar, Patna.
2. The Deputy Inspector General of Police, Munger Range Munger.
3. The Superintendent of Police, Jamui.
4. The Sub-Divisional Police officer, Jamui.
5. The Station House Officer, Jamui.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Satya Prakash Parasar, Advocate
For the Respondent/s : Mr. Ajay Kumar, AC to GP 4

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAV JUDGMENT

Date : 13-08-2024

The petitioner has filed the instant writ petition under
Article 226 of the Constitution for following reliefs:-

*“(i) For issuance of writ in the nature of
certiorari for quashing of the order as
contained in Memo No. 75 dated 11.1.2014
passed by the Superintendent of Police, Jamui
whereby and where under the order of
dismissal dated 9.1.2014 passed in Office
Memo No. 77 by the Inspector General of
Police, Munger Range Munger whereby and
where under the order of dismissal has been
passed and on the basis of the proceeding*



conducted by invoking the power of Article 311 Sub-Article 2(b) of the Constitution of India without giving reason for same and entire finding is based on presumption and assumption.

(ii) For further quashing of the order dated 21.8.2014 passed in memo no. 3139 in appeal against the district order Case No. 708/2014 passed by the Inspector General of Police, Bhagalpur Range whereby the appeal preferred by the petitioner has been dismissed without application of mind.

(iii) For further quashing of Memo No. 114 dated 4.2.2020 passed by the Director General of Police, Bihar, Patna and communicated to the petitioner vide Memo No. 532 dated 26.2.2020 whereby and where under the petitioner's memorial for consideration of his dismissal order has been rejected.

(iv) For further direction to the respondents authority to reinstate the petitioner on the suitable post with all consequential benefits as the petitioner has been exonerated/acquitted from the criminal charges vide judgment of acquittal and order dated 18.9.2019 passed in Sessions Trial No. 171/2016 by the A.D.J.-I, Jamui."

2. In the year 2013, the petitioner was posted as the S.H.O. of Gidhaur P.S. in the District of Jamui. In connection with the Jamui



P.S. Case No. 95 of 2013 dated 6th May 2013 under Section 364A/34 of the Indian Penal Code (hereinafter, described as IPC for short), the principal accused, namely, Munna Singh was arrested for the purpose of investigation. One Jitendra Kumar, the S.H.O. of Jamui P.S. filed an application before the jurisdictional Magistrate on 20th June 2013 praying for police remand of the above-named accused. As per the order of the learned Magistrate, police remand was allowed but he was directed to be taken to police custody at Gidhaur Police Station. After police remand, when he was produced before the learned magistrate, there were serious bodily injuries on the person of the said Munna Singh. He was remanded to judicial custody. The Superintendent of the Correctional Home, considering the seriousness of the accused Munna Singh referred him to Patna Medical College and Hospital (PMCH), Patna. Subsequently, he died in the hospital. Over the said incident, there was a commotion causing serious violation of law and order amongst the inmates of the said Correctional Home. The relatives and the local people also raised protest in front of Jamui P.S. against the police atrocities perpetuated upon the said Munna Singh as a result of which, Mahila P.S. of Jamui was damaged.



3. Over the said incident, the petitioner was primarily held responsible, he was suspended from service and a Memorandum of Charge was framed and served upon the petitioner on 30th June 2013, under the signature of Superintendent of Police, Jamui.

4. In the instant writ petition, it is pleaded by the petitioner that on the basis of a complaint submitted by the Chief Jailer of Jamui Correctional Home, namely, Arvind Kumar Mishra, to the effect that the said Munna Singh was brutally assaulted by the S.H.O., Jamui, Superintendent of Police, his bodyguard and the Station House Officer (S.H.O.) of Gidhaur police station and due to merciless assault, he sustained serious injuries on his person and finally, the said accused expired at PMCH, Patna, a case under Section 302/34 of the Indian Penal Code was registered. On the basis of the said complaint, police conducted an investigation and on completion of investigation, charge sheet was submitted against the petitioner under Section 304 of the IPC. However, the learned Judicial Magistrate took cognizance of the offence under Section 302 and the other penal provisions under the IPC against the petitioner. Contending, *inter alia*, that he was falsely implicated in the case, the petitioner filed an application for Anticipatory Bail but his prayer was rejected up to the Hon'ble Supreme Court. It is contended by the petitioner that he was not concerned about Jamui



P.S. Case no. 95 of 2013 dated 06th May 2013. The investigation of the case was conducted by the police officer attached to Jamui police station. On the application of S.H.O., Jamui, the deceased accused was taken to police remand, however, it was directed that during the period of police remand, he would be confined to Gidhaur P.S. As the case was not instituted by Gidhaur P.S., the petitioner had no occasion to interrogate the said accused and the allegation of causing bodily injuries to the accused is absolutely false and the concocted. When the prayer for Anticipatory bail filed by the petitioner was rejected, he surrendered before the court of the learned Magistrate on 25th January 2016. On his surrender, the petitioner was taken into custody and his prayer for Regular Bail was also rejected.

5. It is also submitted by the petitioner that over the said incident, a criminal case was registered against the petitioner under Section 302 of the IPC bearing Sessions Trial No. 171 of 2016. The petitioner faced trial before the learned Sessions Judge and on conclusion of the trial, he was honorably acquitted *vide* judgment dated 18th September 2019.

6. With regard to the departmental proceeding, it is submitted by the petitioner that the departmental proceeding was initiated against the petitioner on the basis of the institution of Town P.S.



Case No. 95 of 2013 and memorandum of charge was framed by the Superintendent of Police, Jamui. As the petitioner, at the relevant point of time, was pursuing for Anticipatory Bail, the memorandum of charge contemplating departmental proceeding was not served upon him. He did not get any opportunity to file his statement of defense. In spite of the petitioner's genuine inability to contest the departmental proceeding, the same was conducted, violating the law laid down under Article 311(2)(b) of the Constitution of India and he was dismissed from service with effect from 11th January 2014. Against the said order of dismissal, the petitioner filed a statutory appeal before the Inspector General of Police, Bhagalpur which was also dismissed. The said order was challenged by the petitioner by filing a Memorial on 12th February 2015 before the Director of General of Police. The said Memorial was also dismissed. Hence the instant writ petition.

7. The respondent no. 03 has filed a counter-affidavit, denying all allegations made out by the petitioner in the writ petition. It specifically pleaded on behalf of the respondent that the Superintendent of Police, Jamui passed an order *vide* memo no. 75 dated 11th January 2014, dismissing the petitioner from service by a well-reasoned and speaking order, keeping in view the seriousness of the matter that custodial violence and atrocity by the



persons in authority is an example of blatant violation of Article 21 of the Constitution.

8. The petitioner, in turn, has filed a supplementary affidavit, annexing the copy of the judgment dated 18th September 2019 passed in Sessions Trial No. 171 of 2016.

9. Mr. Satya Prakash Parasar, learned Advocate on behalf of the petitioner submits, at the outset, that the petitioner was a Sub-Inspector of Police, In-charge of Gidhaur P.S. in the district of Jamui at the relevant point of time. The appointing authority of Sub-inspectors of Police is the DIG of Police. The appointing authority alone is the disciplinary authority, however, the Memorandum of Charge was framed against the petitioner by the Superintendent of Police, Jamui. Therefore, framing of charge is bad in law and liable to be quashed.

10. I am not in a position to accept such submission made by the learned Advocate on behalf of the petitioner on the ground that the Government or the appointing authority or any authority to which the appointing authority is subordinate or any other authority empowered by general or special order of the Government may-

*“(a) institute a disciplinary proceeding
against any Government Servant*



(b) direct a disciplinary authority to institute disciplinary proceedings against any Government Servant on whom that disciplinary authority is competent to impose any of the penalties specified in Rule 14 under these Rules.

(2) A disciplinary authority, competent under Rule 14 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter, described as CCA Rules, 2005) also stipulates that a disciplinary authority, competent under the Rules to impose any of the penalties specified in clauses (i) to (v) of Rule 14 of the CCA Rules, 2005, may institute disciplinary proceedings against any government servant for the imposition of any of the penalties specified in clauses [(vi) to (xi)] of Rule 14 notwithstanding that such disciplinary authority is not competent under these Rules to impose any of the penalties under clauses [(vi) to (xi)] of Rule 14.”

11. Thus, the Superintendent of Police be authorized by a general order may formulate and serve memorandum of charge upon a police officer under his administrative control and there is no violation of statutory rules in initiating a departmental inquiry against the petitioner.



12. Learned counsel for the petitioner, Mr. Satya Prakash Parasar further submits that the memorandum of charge was not served upon the petitioner. The departmental proceeding was conducted *ex parte*. The petitioner did not get any opportunity to submit his written statement of defense in the departmental proceeding.

13. Indisputably, the petitioner disappeared from his place of posting, immediately after the institution of a criminal case under Section 302 of the IPC against him. From his hideouts, he repeatedly persuaded his prayer for Anticipatory Bail up to the Hon'ble Supreme Court. When the prayer for the said Anticipatory Bail was rejected by the Hon'ble Supreme Court, he surrendered before the trial court on 25th January 2016 with a prayer for granting Regular Bail. Therefore, from 30th June 2013, when the memorandum of charge was directed to be served upon the petitioner till 25th June 2016 he remained absent. Rule 17 (11) of the CCA Rules, 2005 states as follows:-

(11). The inquiring authority shall, if the Government Servant fails to appear within the specified time or refuses or omits to plead, require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case



to a later date not exceeding thirty days, after recording an order that the Government Servant may, for the purpose of preparing his defence,-

(i) inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow, the documents specified in the list in sub-rule (3);

(ii) submit a list of witnesses to be examined on his behalf;

14. If the petitioner fails to appear, the inquiring authority is empowered to proceed with the departmental inquiry *ex parte*. In the instant case, the departmental proceeding was conducted *ex parte* because of the fact that the petitioner was not traceable at his place of posting or residence for a continuous period of two and a half years. It is contended by the learned Advocate appearing on behalf of the petitioner in the course of his argument that disciplinary proceeding is bad in law in the teeth of Article 311(2)(b) of the Constitution of India.

15. Article 311(2)(b) of the Constitution states that a person shall not be dismissed or removed or reduced in rank except after an inquiry in which she/he has been informed of the charges and given a reasonable opportunity of being heard in respect of those charges.



16. The petitioner due to his unauthorized absence from duty after the institution of a criminal case could not be served with the memorandum of charge. He did not take part in the departmental proceeding, not for the fault of the disciplinary authority but due to his unauthorized absence. He had chosen not to appear before the disciplinary authority. Moreover, the record of this case shows that against the order of dismissal, the petitioner preferred an appeal and subsequently, a memorial against the appellate order. Therefore, the allegations that he was not given the chance/opportunity to represent himself in the departmental proceeding, does not have any leg to stand.

17. Mr. Parasar next submits that the petitioner was acquitted of the charge under Section 302 of the IPC in Sessions Trial No. 171 of 2016. It is submitted by him that when a departmental proceeding and a criminal proceeding are based on the same set of allegations and evidence and in criminal trial the accused is acquitted, he is entitled to be exonerated from the departmental proceeding. In *Karnataka Power Transmission Corpn. Ltd. v. C. Nagaraju*, reported in (2019) 10 SCC 367, the Hon'ble Supreme Court has held as under:-

“9. Acquittal by a criminal court would not debar an employer from exercising the



power to conduct departmental proceedings in accordance with the rules and regulations. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. [Ajit Kumar Nag v. Indian Oil Corpn. Ltd., (2005) 7 SCC 764 : 2005 SCC (L&S) 1020] In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings, the question is whether the offences registered against him under the PC Act are established, and if established, what sentence should be imposed upon him. The standard of proof, the mode of inquiry and the rules governing inquiry and trial in both the cases are significantly distinct and different. [State of Rajasthan v. B.K. Meena, (1996) 6 SCC 417 : 1996 SCC (L&S) 1455]

13. Having considered the submissions made on behalf of the appellant and Respondent 1, we are of the view that interference with the order of dismissal by the High Court was unwarranted. It is settled law that the acquittal by a criminal court does not preclude a departmental inquiry against the delinquent officer. The disciplinary authority is not bound by the judgment of the criminal



court if the evidence that is produced in the departmental inquiry is different from that produced during the criminal trial. The object of a departmental inquiry is to find out whether the delinquent is guilty of misconduct under the conduct rules for the purpose of determining whether he should be continued in service. The standard of proof in a departmental inquiry is not strictly based on the rules of evidence. The order of dismissal which is based on the evidence before the inquiry officer in the disciplinary proceedings, which is different from the evidence available to the criminal court, is justified and needed no interference by the High Court.”

18. In the State of **Karnataka v. Umesh**, reported in (2022) 6 SCC 563, the Hon’ble Supreme Court observed as follows:-

“16. The principles which govern a disciplinary enquiry are distinct from those which apply to a criminal trial. In a prosecution for an offence punishable under the criminal law, the burden lies on the prosecution to establish the ingredients of the offence beyond reasonable doubt. The accused is entitled to a presumption of innocence. The purpose of a disciplinary proceeding by an employer is to enquire into an allegation of misconduct by an employee which results in a



violation of the service rules governing the relationship of employment. Unlike a criminal prosecution where the charge has to be established beyond reasonable doubt, in a disciplinary proceeding, a charge of misconduct has to be established on a preponderance of probabilities. The rules of evidence which apply to a criminal trial are distinct from those which govern a disciplinary enquiry. The acquittal of the accused in a criminal case does not debar the employer from proceeding in the exercise of disciplinary jurisdiction.”

19. In ***Nirmal Krida & Samaj Prabodhan v. State of Maharashtra***, reported in **2022 SCC OnLine Bom 5901**, the Hon’ble Bombay High Court relied on the above-mentioned decisions of the Hon’ble Supreme Court and came to the finding that even where the FIR was quashed, the same could not have been reasoned for the Petitioner-Trust to drop the disciplinary proceeding. No presumption could have been drawn either by respondent no. 2 or by the Tribunal that mere quashing of the FIR would automatically entail dropping of disciplinary proceedings.

20. In the instant case, this Court is not supposed to appreciate the evidence against the petitioner adduced in *ex parte* departmental proceeding. The power of judicial review does not



permit this Court to act as a Court of Appeal. It is only to be considered as to whether the charge against the delinquent employee was proved on the basis of evidence on the principle of preponderance of probabilities and whether the impugned orders passed by the disciplinary authority, appellate authority, and the Inspector General of Police in memorial against the appellate authority are reasoned and speaking order.

21. It is true that in a departmental proceeding, the delinquent employee did not take part. It is also true that at the time of the decision taken by the disciplinary authority, the criminal case instituted against him was not concluded. Since the petitioner himself has produced the judgment passed in criminal trial acquitting the accused/petitioner of the charge under Section 302 of the IPC, while exercising the power of judicial review, this Court can very well look into the contents of the said judgment. The learned Sessions Judge passed the order of acquittal in Sessions Trial No. 171 of 2016, on the ground that the witnesses on behalf of the prosecution turned hostile. It is also found from the said judgment that the deceased made a dying declaration, stating, *inter alia*, that he was tortured and mercilessly assaulted by one Jitendra Kumar, the bodyguard of the Superintendent of Police and the present petitioner. The said dying declaration was



marked as exhibit during the trial of the criminal case, however, the learned Sessions Judge did not consider the said dying declaration of the deceased due to the fact that the dying declaration was not recorded in accordance with the relevant provision of the statute.

22. Be that as it may, the said statement of the deceased revealed a specific allegation against the petitioner that he mercilessly assaulted the deceased while he was in the custody of the Gidhaur P.S. The statement of the deceased corroborates the finding of misconduct arrived at by the disciplinary authority and affirmed by the appellate authority and reviewing authority. This Court is absolutely conscious of the fact that this Court while exercising the power of judicial review, has considered the judgment passed by the learned Sessions Judge in Sessions Trial No. 117 of 2016, as it was produced by way of a supplementary affidavit by the petitioner. Petitioner's document suggests the involvement of the petitioner in physically assaulting the deceased and as a result of such assault, he died of shock and hemorrhage caused by the injuries inflicted upon him.

23. In view of such circumstances, this Court does not find any scope to quash the departmental order of punishment, exercising its extraordinary jurisdiction under Article 226 of the



Constitution. Accordingly, the instant writ petition is dismissed on contest. There shall be no order as to cost.

(Bibek Chaudhuri, J)

Suraj Dubey/-

AFR/NAFR	NAFR
CAV DATE	31.07.2024
Uploading Date	13.08.2024
Transmission Date	13.08.2024

