

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12788 of 2021

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Abhay Kumar Singh, Son of Ram Ayodhya Singh, Resident of Village-Chatar,
Barhara, P.S.-Barhara, District-Arah (Bhojpur).

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Director General of Police, Law and Order (Head Quarter), Patna.
2. The Deputy Inspector General of Police, Saran Range, Chhapra.
3. The Superintendent of Police, Chhapra.
4. The Superintendent of Police-Cum-Enquiring Officer, Siwan.
5. The Assistant Sub-Inspector of Police, Officer of D.I.G.-Cum Presenting Officer, Saran Range, Chhapra.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Akhilesh Dutta Verma, Advocate
For the Respondent/s : Mr. Sheo Shankar Prasad, SC-8

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAV JUDGMENT

Date : 18-07-2024

1. On or about 10 August 2016, there was a communal violence at Chapra. Sensing the situation grave, the administrative authority imposed Section 144 of the Cr.P.C. in the disturbed area, which was continuing for few days prior to 10th of August, 2016. In spite of promulgation of an order under Section 144 of the Cr.P.C., a mosque and some shops were damaged, though the S.H.O. Muffassil, Chapra had sufficient force under his command. After the incident, Superintendent of Police, Siwan made an initial inquiry and directed the petitioner, who was posted as the S.H.O., Mufassil, Chhapra Police



Station, at the relevant point of time, to show cause as to why departmental proceeding would not be conducted against him. The petitioner duly filed his reply to the said show cause notice, refuting all the charges and clearly mentioning that on 6th of August, 2016, the members of Bajrang Dal and the Vishwa Hindu Parishad made violent protest and called *Bandh* in and around the township of Chapra. At the relevant point of time, a fair under the name and style of *Shravani Mela* was continuing in the city of Chapra. Police personnel and force, attached to both Mufassil and town Police Station, Chapra were deployed in *Mela* ground for protection of law and order. Therefore, there was no sufficient force with the petitioner on 10th of August, 2016. In spite of a scarcity of force, he deployed some officers and members of police force at different strategic points and he was continuously on mobile duty to see that no incident of communal violence might take place. The reply to the show cause was not found satisfactory by the police authority and the department decided to commence a proceeding against the petitioner. Accordingly, Memorandum of Charge, issued by the DIG of Police, Saran Range, Chapra was served to the petitioner. The Superintendent of Police, Siwan, was appointed as the Inquiry Officer. The petitioner filed a statement of



defence against the charges levelled against him. The Inquiry Officer found the charges against the petitioner to have been proved and the petitioner was directed to file second show cause. That on 19th of September, 2019, the DIG of Police, Saran Range, Chapra passed major punishment against the petitioner imposing two black marks with forfeiture of one year's increment of salary with cumulative effect with further order that the forfeited amount would be recovered from the future increment of the salary of the petitioner. The petitioner preferred an appeal challenging the order passed in departmental proceeding by the DIG of Police. However, the appeal was dismissed, affirming the order of punishment passed against the petitioner.

2. The petitioner has challenged both the orders dated 19th of September, 2019 passed by the departmental authority and communicated to him under the signature of Superintendent of Police, Saran and order dated 9th of October, 2020 passed by the appellate authority.

3. As last resort, the petitioner has filed the instant writ petition, praying for issuance of writ/command/order in the nature of certiorari for quashment of the aforesaid two orders of the disciplinary authority as well as the appellate authority with



other consequential benefits.

4. Mr. Akhilesh Dutt Verma, the learned Advocate appearing on behalf of the petitioner submits that a departmental proceeding is a quasi-judicial proceeding. The Inquiry Officer conducts inquiry in quasi-judicial manner. Therefore, it is the duty of the inquiry officer as well as the disciplinary authority to see that the inquiry is held following the basic rules of natural justice and granting the petitioner adequate opportunity to defend his case.

5. It is submitted by the learned Advocate for the petitioner that in *State of Orissa & Anr. v. Sangram Keshari Misra & Anr.* reported in (2010) 13 SCC 311, the Hon'ble Supreme Court held that normally a charge-sheet is not quashed prior to the conclusion of the enquiry on the ground that the facts stated in the charge are erroneous for the reason that correctness or truth of the charge is the function of the disciplinary authority.

6. In the instant case, the petitioner took a specific defence that at the relevant point of time, due to Sharvani Mela and communal disturbance, he had deployed entire force on different parts within the jurisdiction of Chapra Mufassil, P.S. Therefore, he had no sufficient force on 10th of August, 2016,



when Mosque and some shops unfortunately burnt causing destruction of public and private property.

7. According to the learned Advocate for the petitioner, the SHO, Chapra, Muffassil, P.S. was not in a position to control the violence because of inadequacy of force in his hand. Neither the Inquiry Officer nor the disciplinary authority considered the specific defence taken by the petitioner in course of enquiry of the departmental proceeding. The enquiry report and the order of punishment passed by the DIG of Police, Saran, at Chhapra do not consist of any statement regarding number of forces available to the SHO on the date of occurrence to ascertain as to whether defence version was correct or not. Gravity of the alleged misconduct is a relevant factor to be taken into consideration while imposing punishment to the charge-sheeted officer.

8. It is further submitted by the learned Advocate on behalf of the petitioner that the order of punishment cannot be passed by an authority lower than the appointing authority. The appointment letter of the petitioner was issued by the Inspector General of Police (Administration), Bihar, Patna. Therefore, the Inspector General of Police and not the DIG of Police is the departmental authority of the petitioner. Since, the



disciplinary proceeding was not initiated by the Inspector General of Police, Bihar, it violates Article 311 of the Constitution of India and entire disciplinary proceeding is erroneous and liable to be quashed.

9. In support of his contention, he refers to a decision of the Hon'ble Supreme Court in the case of ***Secretary, Ministry of Defence & Ors. v. Prabhash Chandra Mirdha*** reported ***(2012) 11 SCC 565***.

10. On the same point, the learned Advocate on behalf of the petitioner refers to a decision of this Court in the case of ***Uday Pratap Singh v. State of Bihar*** reported in ***2017 4 PLJR 195***.

11. It is contended by the learned Advocate on behalf of the petitioner that the Rule 17(4) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as the "Bihar CCA Rules" for short) casts an obligation on the disciplinary authority to deliver charge memo on the charged officer and required him to submit a written statement of defence as well as to state whether he desires to be heard in person. It is only when the disciplinary authority is not satisfied by the explanation given by the delinquent in the manner provided under Rule 17(4) that a



discretion is vested in him under Rule 17(5) to hold formal proceeding and either enquire into the allegation himself or to appoint an inquiry authority.

12. In the instant case, the petitioner was not given opportunity to submit written statement of defence.

13. In this regard, he also refers to the case of ***Union of India v. B.V. Gopinath***, reported in ***(2014) 1 SCC 351*** to demonstrate that the charge-sheet can only be drawn up by the disciplinary authority. However, it can be issued after the approval of the appointing authority or by any officer other than the disciplinary authority. If the charge sheet is not drawn up by the disciplinary authority and caused to deliver to the charged officer by him, this would destroy the underlying protection guaranteed under Article 311(1) of the Constitution of India. Such procedure would also violate to the protective provisions contained under Article 311(2) which ensures that no public servant is dismissed, removed or suspended without following a fair procedure in which he or she has been given a reasonable opportunity to meet the allegations contained in the charge sheet. Such charge sheet can only be issued by the disciplinary authority or by some officer upon approval by the appointing authority.



14. On the same issue, the learned Advocate for the petitioner also refers to a decision of the Division Bench in the case of *State of Bihar & Ors. v. Shashi Bhushan Prasad* reported in *2015 4 PLJR 127*.

15. The learned Advocate on behalf of the State-Respondents, at the outset, refers to Rule 825 of the Bihar Police Manual, 1978. Rule 825 describes the designation of the officers empowered to impose punishment. Sub-Rule C of Rule 825 states a Deputy Inspector may impose on any police officer subordinate to him and below the rank of Deputy Superintendent any of the punishments in Rule 824 except dismissal, compulsory retirement and a removal in the case of an Inspector. The petitioner was admittedly Inspector of Police at the relevant point of time. Selection and appointments of the Inspectors of Police have been detailed out in Rule 653-659 of the Bihar Police Manual, 1978.

16. A perusal of the said provisions clearly suggests that the Inspectors are appointed by the Deputy Inspector General (Administration). It is contended by him that the departmental inquiry was initiated by the Deputy Inspector General of Police, Saran range at Chapra. The memo of charge was prepared and served by the DIG of Police. Enquiry was



conducted by the Superintendent of Police, Chapra, and punishment was imposed by the DIG of Police. Thus, there is no ambiguity or illegality in the departmental proceeding.

17. It is submitted by him that while exercising the power of judicial review, the Constitutional Court cannot sit in appeal over the decision of the disciplinary authority. If it is found from the materials that the disciplinary proceeding was lawfully conducted and the charged officer was given opportunity to place his defence and his defence was duly considered, the Court cannot alter the finding of the disciplinary proceeding authority.

18. In the instant case, the petitioner also filed a departmental appeal and the appeal was duly considered by the competent authority and it was dismissed.

19. Therefore, there is no ground to interfere with the decision of the respondent authority with regard to punishment issued against the petitioner.

20. Having heard the learned counsels for the parties, and on careful perusal of the entire material on record, as well as the precedence by the Hon'ble Supreme Court, and also by this Court, this Court finds that the petitioner at the relevant point of time was the Inspector of Police and SHO of



Chapra Muffussil, Police Station. As per Rule 649 of the Bihar Police Manual 1978, the Inspectors and reserved Inspectors are appointed only on promotion by the Inspector General on the advice of the Inspector Generals' Selection Board. The Bihar Police Manual is absolutely clear that the Sub-Inspectors are appointed by the Deputy Inspector of Police (Administration), and the Inspectors are appointed on promotion from the eligible Sub-Inspectors by the Inspector General of Police. Therefore, for the Inspectors of Police, the Inspector General is the appointing authority.

21. Here comes the consideration of the question as to whether procedure for imposing penalties as contained in Bihar CCA Rules, 2005 were followed or not in the departmental proceeding against the petitioner under Rule 17(4) of the Bihar CCA Rules. It is the duty of the disciplinary authority to deliver or cause to be delivered to the Government Servant a copy of the articles of charge. Such statement of the imputations of misconduct or misbehaviour and the list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the Government Servant to submit within a specified time, a written statement of his defence and to state whether he desires to be heard in



person. Subsequent Clauses of Rule 17 makes out a detailed provision as to how the inquiry officer shall be appointed, the mode and manner of holding inquiry and punishment imposed by the disciplinary authority.

22. Since the Inspector General of Police is the appointing authority of the Inspectors of Police on promotion and the petitioner was an Inspector, the appointing authority in his case was the Inspector General of Police. Therefore, the Memorandum of Charge drawn and submitted to the petitioner by Deputy Inspector General followed by holding inquiry by the Superintendent of Police and the order of punishment passed by the Deputy Inspector General of Police, Saran Range at Chapra is unfair, unjust and illegal, in view of violation of Article 311 of the Constitution of India read with Rule 17 (4) of the CCA Rules 2005.

23. In view of the above discussions, this Court quashes both the orders, dated 19th of September, 2019, passed by the departmental authority and communicated to him under the signature of Superintendent of Police, Saran and order, dated 9th of October, 2020, passed by the appellate authority and directs the Additional Director General of Police, Law and Order, Headquarters, Patna to reinstate the petitioner from the



date of his suspension with all consequential monetary benefits/reliefs.

24. The instant repetition is thus allowed, on contest.

25. However, there shall be no order as to costs.

(Bibek Chaudhuri, J)

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AFR/NAFR	NAFR
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