

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9015 of 2023

Navin Kumar Singh Son of Late Satyadeo Singh Resident of 501, Durga Heritage, Jagdeo Path, P.S.-Shastrinagar, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna (Bihar).
2. The Additional Chief Secretary, Home Department (Police Branch), Government of Bihar, Patna (Bihar).
3. The Director General of Police, Bihar, Patna.
4. The Deputy Inspector General of Police, Saran Range, Chhapra.
5. The Deputy Inspector General of Police (Karmik and Welfare Section), Bihar, Patna.
6. The Police Superintendent, Saran, Chhapra.
7. The Police Superintendent Cum Inquiry Officer, Siwan.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Mrigank Mauli, Sr. Advocate.
		Mr. Anil Kumar, Advocate.
For the State	:	Mr. Fazle Karim, AC to SC-1.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 14-11-2024

Re.: I.A. No. 01 of 2023

Learned senior counsel appearing on behalf of the petitioner by filing the present Interlocutory Application seeks amendment in Para-1 of the writ petition by adding additional relief as stated in Para-1 of the present interlocutory application.

2. Having considered the information contained in the interlocutory application and the grounds mentioned therein and the affidavit, I find that there are sufficient reason to allow the amendment of the prayer as prayed in Para-1 of the writ petition



by adding additional relief as stated in Para-1 of the interlocutory application.

3. Office/petitioner is directed to take steps to amend Para-1 of the writ petition by adding additional relief as stated in Para-1 of the interlocutory application.

4. I.A. No. 01 of 2023 is allowed.

Re.: C.W.J.C. No. 9015 of 2023

5. Heard Mr. Mrigank Mauli, learned senior counsel along with Mr. Anil Kumar, learned counsel appearing on behalf of the petitioner and Mr. Fazle Karim, learned AC to SC-1 for the State.

6. The petitioner in paragraph no. 1 of the present writ petition has sought, inter alia, following relief(s), which is reproduced hereinafter:-

“(i) For issuance of an appropriate writ directing and commanding the respondents to quash the order dated 02.11.2022 containing Memo No. 668 issued by respondent no. 3 whereby imposed a punishment of reverting the petitioner to the post of Sub-Inspector for five years with cumulative effect.

(ii) For any other relief(s) for, which the Petitioner is found entitled in the eye of law.”

7. Learned senior counsel, at the outset, submitted that the entire disciplinary proceeding is vitiated in the eye of law, as the charge memo itself has not been approved by the disciplinary authority who in the present case is the Director General of Police. Learned counsel referring to charge memo



(Annexure-4) submits that first part of the charge memo relates to personal information of the government employee, second part relates to summary of the allegations of misconduct, third parts relates to allegations of imputation of misconduct or misbehavior and fourth part relates to evidences in support of the charge. All the parts have been issued under the signature of Deputy Inspector General of Police, Saran Range, Chhapra and has not been approved by the disciplinary authority.

8. Learned counsel in above view submitted that from the statement made in the counter affidavit, there is no pleading or evidence relating to any authorization to have been given or any notification authorizing the Deputy Inspector General, Saran Range, Chhapra to be the disciplinary authority in accordance with the provision of Rule 16 of the Bihar CCA Rules, 2005, the entire disciplinary action against the petitioner is vitiated in the eye of law. Learned senior counsel in support of his contention relying on the law laid down by the Apex Court in the case of *Union of India Vs. B. V. Gopinath*, reported in *2014 (1) SCC 351*, submitted that in the said case also, the charge memo was not approved by the disciplinary authority, the same having not fulfilled the mandate of Article 311 was set aside holding the proceeding also to be vitiated in the eye of



law. Learned counsel further informs this Court that the petitioner is aggrieved by the penalty order dated 02.11.2022 contained in Memo No. 668 (Annexure-15 to the writ petition) and order dated 22.06.2023 contained in Memo No. 7493, whereby memorial appeal of the petitioner filed against the order dated 02.11.2022 passed in Saran District Departmental Proceeding No. 48 of 2018 has been rejected, are vitiated in the eye of law.

9. *Per contra*, learned counsel appearing on behalf of the State submits that no information relating to the jurisdiction of the Deputy Inspector General of Police, Saran Range, Chhapra as to whether he has been authorized or not, has been given in the counter affidavit, the same cannot vitiate the entire departmental proceeding. The petitioner was provided with due opportunity of hearing and he had also participated before the Inquiry Officer who gave him all opportunity to defend his case, produce witnesses and examine and cross-examine the witnesses produced by the presenting officer. So far as the technical plea taken by the petitioner that the charge memo has not been approved by the disciplinary authority cannot be interfered with in view of the fact that final penalty order has been passed by the disciplinary authority.



10. Heard the parties.

11. At the outset, I must record that in want of specific pleading made in the writ petition and the supported documents, especially forwarding letter along with the charge memo for initiating disciplinary proceeding (Annexure-4) has not been brought on record to judge the legality of the charge memo in question. However, going by the words of the learned senior counsel that the appointing authority of the petitioner is the Director General of Police, it can be said that, in want of approval by the disciplinary authority, who is the Director General of Police, the charge memo issued by the Deputy Inspector General of Police, Saran Range, Chhapra don't confirm the requirement of Rule 16 of the Bihar CCA Rules, 2005 and Article 311 of the Constitution, which calls for interference of this Court. I find that if the information recorded hereinabove is found to be correct, then, the charge memo so served to the petitioner not in conformity with the Bihar CCA Rules, 2005 calls for interference. It is well settled that in absence of pleading and supporting documents for judging the validity of the charge memo, the writ petition must be held to be not maintainable in light of the law laid down by the Apex Court in the case of *Ram Sarup Gupta Vs. Bishun Narain Inter*



College and Ors., reported in **(1987) 2 SCC 555** in view of the observation made in Para no. 6, which is, *inter alia*, reproduced herein after:

“It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that the party should settle the essential material facts so that other party may not be taken by surprise. The pleadings however should receive a liberal construction; no pedantic approach should be adopted to defeat justice on hair-splitting technicalities.”

12. The Apex Court has reiterated the said proposition in the case of **Bharat Singh & Ors. vs State of Haryana & Ors.** reported in **1988 (4) SCC 534**, in respect of maintainability of the writ petition in want of pleading in para no. 6, and has made following observation, which is, *inter alia*, reproduced herein after:

“In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ



petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. So, the point that has been raised before us by the appellants is not entertainable. But, in spite of that, we have entertained it to show that it is devoid of any merit.

13. At the same time, I also find that the counter affidavit is too devoid of pleading and evidence to support the penalty order right from the beginning of the disciplinary proceeding.

14. As regard to the relief sought by the petitioner, I find it proper to take note of Rule 16 of the Bihar CCA Rules, 2005, which prescribes for the authority to institute proceedings and the same is reproduced hereinafter:

“16. Authority to institute proceedings.

(1)The Government or 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 disciplinary proceedings 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 these Rules to impose any of the penalties specified in clauses (i) to (v) of Rule 14, may institute disciplinary proceedings against any government servant for the imposition of any of the penalties specified in clauses [(vi) to (xi)] [Substituted by Notification No. 3/M-166/2006-Ka-2797, dated 20.8.2007] 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)] [Substituted by Notification No. 3/M-166/2006-Ka-2797, dated 20.8.2007] of Rule 14.”

15. The Apex Court in the case of ***Union of India and Ors. Vs. B. V. Gopinath***, reported in **2014 (1) SCC 351**, in Para-52 of the said judgment, has held as under:

*“52. In our opinion, the submission of the learned Additional Solicitor General is not factually correct. The primary submission of the respondent was that the charge-sheet not having been issued by the disciplinary authority is without authority of law and, therefore, non est in the eye of the law. This plea of the respondent has been accepted by CAT as also by the High Court. The action has been taken against the respondent in Rule 14(3) of the CCS (CCA) Rules which enjoins the disciplinary authority to draw up or cause to be drawn up the substance of imputation of misconduct or misbehaviour into definite and distinct articles of charges. The term “cause to be drawn up” does not mean that the definite and distinct articles of charges once drawn up do not have to be approved by the disciplinary authority. The term “cause to be drawn up” merely refers to a delegation by the disciplinary authority to a subordinate authority to perform the task of drawing up substance of proposed “definite and distinct articles of charge-sheet”. These proposed articles of charge would only be finalised upon approval by the disciplinary authority. Undoubtedly, this Court in *P.V. Srinivasa Sastry v. CAG* [(1993) 1 SCC 419 : 1993 SCC (L&S) 206 : (1993) 23 ATC 645] has held that Article 311(1) does not say that even the departmental proceeding must be initiated only by the appointing authority. However, at the same time it is pointed out that: (SCC p. 422, para 4)*

“4. ... However, it is open to the Union of India or a State Government to make any rule prescribing that even the proceeding against any delinquent officer shall be initiated by an officer not subordinate to the appointing authority.”

It is further held that: (SCC p. 422, para 4)

“4. ... Any such rule shall not be inconsistent with Article 311 of the Constitution because it will



amount to providing an additional safeguard or protection to the holders of a civil post.”s

16. The above mentioned decision concluded in the case of B. V. Gopinath (supra), wherein the Apex Court held that the charge sheet/charge memo having not been approved by the disciplinary authority would be non est in the eyes of law. Similar view was taken by a coordinate Bench of this Tribunal in ***Sunny Abraham vs. Union of India*** reported in (2021) 20 SCC 12.

17. The said proposition was reiterated by the Apex Court in the case of ***State of Tamilnadu Vs. Pramod Kumar, IPS & Anr.*** reported in 2018 (17) SCC 677. It is also apt to extract the relevant portion from the decision in ***Union of India & Anr. Vs. Kunisetty Satyanarayana*** reported in 2006 (12) SCC 28, which reads as under:-

"13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause notice vide Executive Engineer, Bihar State Housing Board vs. Ramdesh Kumar Singh and others JT 1995 (8) SC 331, Special Director and another vs. Mohd. Ghulam Ghouse and another, AIR 2004 SC 1467, Ulagappa and others vs. Divisional Commissioner, Mysore and others 2001 (10) SCC 639, State of UP vs. Brahm datt Sharma and another. AIR 1987 SC 943 etc.

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse



order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance."

(emphasis supplied)

18. In the case of **Ministry of Defence vs. Prabhash Chandra Mirdha** reported in **2012 (11) SCC 565**, the Hon'ble Supreme Court further held as under:-

"8. Law does not permit quashing of charge-sheet in a routine manner. In case the delinquent employee has any grievance in respect of the charge-sheet he must raise the issue by filing a representation and wait for the decision of the disciplinary authority thereon. In case the charge-sheet is challenged before a court/tribunal on the ground of delay in initiation of disciplinary proceedings or delay in concluding the proceedings, the court/ tribunal may quash the charge- sheet after considering the gravity of the charge and all relevant factors involved in the case weighing all the facts both for and against the delinquent employee and must reach the conclusion which is just and proper in the circumstance.

19. Further, the Apex Court in case of **Chairman-Cum-M.D., Coal India Ltd. and Others Vs. Ananta Saha and Others** reported in **(2011) 5 SCC 142** held that the charge memo cannot be issued in a casual or routine manner and the disciplinary authority is required to apply his mind before its issuance. In the aforesaid case the legal maxim "*sub lato*



fundamento cadit opus” has been referred and it was held that, where initial action is not in consonance with law subsequent proceeding would not sanctify the same. However, in light of the law laid down by the Apex Court in the case of **Bharat Singh (supra)**, I don’t want to interfere in any manner.

20. The petitioner, if so advised, may file his representation before the appropriate authority having jurisdiction for taking corrective measures, if required, to be carried out in accordance with the provision of Bihar CCA Rules, 2005, the manner prescribed under Article 311(2) of the Constitution of India and in accordance with the law laid down by the Apex Court referred hereinabove.

21. The writ petition stands disposed of.

22. There shall be no order as to costs.

(Purnendu Singh, J)

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AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	20.11.2024
Transmission Date	N.A.

