

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7492 of 2018

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Rabindra Paswan, S/o late Genda Paswan Resident of Village P.O.- Raily,
P.S.- N.T.P.C. Barh, District- Patna, at Present Posted as S.I. of Police,
Tariyani Police Station, District- Sheohar.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The District Magistrate, Muzaffarpur.
3. The Deputy Inspector General of Police, Tirhut Division, Muzaffarpur,
Bihar.
4. The Senior Superintendent of Police, Muzaffarpur.
5. The Deputy Superintendent of Police, Muzaffarpur.
6. The Additional Superintendent of Police-cum-Monitoring Officer,
Muzaffarpur.
7. The Accountant, Officer of Senior Superintendent of Police, Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Diwakar Pd. Karn, Advocate
		Mr. Chandra Shekhar Anand, Adv.
For the Respondent/s	:	Mr. Prabhat Kumar, A.C. to G.A.-11.

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

5 03-09-2024 Heard learned counsel for the petitioner and learned
counsel for the State.

2. The petitioner has challenged the order dated
15.09.2017 passed by SSP, Muzaffarpur, by which he has been
awarded the punishment of withholding of two increments for
two years which is equivalent to 3 times period and stopped the
departmental proceeding and further prayer has been made to
set aside the order dated 01.02.2018 contained in Memo
No.2611/confidential, by which the order passed by the



Disciplinary Authority has been confirmed and Appeal of the petitioner has been dismissed.

3. Learned counsel for the petitioner submits that the entire departmental proceeding has been conducted in gross violation of statutory provisions under which a disciplinary proceeding has to be conducted in presence of the Presenting Officer. Learned counsel for the petitioner further submits that from the order passed by the disciplinary authority as well as the inquiry officer, it transpired that the said order has been passed behind the back of Presenting Officer. He further submits that the Appellate Authority has also not considered the same. Learned counsel for the petitioner submits that on Judgment of **Imeteyaz Jhankar vs. State of Bihar dated 21.02.2017** passed in **C.W.J.C. No.15089 of 2016** in which it has been held that an order which has been passed violating the CCA Rules is not sustainable in the eye of law.

4. Learned counsel for the State submits that order is well reasoned and due opportunity has been provided to the petitioner prior to passing the disciplinary order passed by disciplinary authority as well as all the points have been considered by the appellate authority.

5. After hearing the parties, it transpired to this Court



that this proceeding has been conducted in the absence of Presenting Officer and in the recent decision passed in the case of **Upendra Pandit vs. State of Bihar**, dated 05.09.2023 passed in **L.P.A. No.507 of 2017**, it has been categorically held by Hon'ble Division Bench that the order which has been passed in absence of presenting officer is not sustainable in the eye of law. Hence, the order of punishment of dismissal is not sustainable and hence the order impugned of disciplinary authority, i.e., SSP, Muzaffarpur dated 15.09.2014 and Appellate Authority, i.e., DIG, Tirhut Division, Muzaffarpur, dated 01.02.2018, are hereby set aside.

6. It is made clear that disciplinary authority shall be at liberty to pass order afresh on the charge memo granting opportunity to the Presenting Officer, if required so within 90 days from the production of a copy of this order in accordance with law.

(Dr. Anshuman, J)

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