

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 18845 of 2021

Rakesh Kumar Yadav Son of Prasadi Yadav, Resident of S.L. Colony, Near
Government Bus Depot, Barari Road, P.S.- Tilkamanjhi, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Director General of Police, Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Inspector General of Police, Central Range, Patna, Bihar.
4. The Senior Superintendent of Police, Patna, Bihar.
5. The Superintendent of Police, Excise, Bihar, Patna.

... .. Respondent/s

Appearance:

For the Petitioner/s	:	Mr. Mrigank Mauli, Sr. Advocate Mr. Prince Kumar Mishra, Advocate
For the Respondent/s	:	Mr. Manish Kumar (GP-4) Mr. Ajay Kumar, A.C. to G.P.-4

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 16-04-2024

The present writ petition has been filed for quashing the order dt. 27.09.2021 passed by the Director General of Police, Bihar, Patna, whereby and whereunder, in purported exercise of power of review under Rule 853A of the Bihar Police Manual, the original order of punishment dated 14.12.2020 passed by the Inspector General of Police, Central Range, Patna has been annulled and instead the petitioner has been inflicted with the punishment of compulsory retirement under Rule 14 (ix) of the



Bihar Govt. Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as the 'Rules, 2005') and it has been further postulated that for the period of suspension, the petitioner shall not be entitled to anything else apart from what he has already received and the said period shall be adjusted as half earned leave.

2. The brief facts of the case, according to the petitioner, are that the petitioner joined the services of the respondents as Sub-Inspector on 05.09.1994 and since then he has been discharging his duties to the satisfaction of one and all. Subsequently, the petitioner was promoted to the post of Inspector in the year 2014. It is stated that while the petitioner was posted as Station House Officer, Beur Police Station, a trap is stated to have been laid, on the basis of a complaint made by one Amrendra Kumar and a raid was conducted on 29.06.2017, wherein the petitioner was caught red handed taking bribe from the complainant namely, Amrendra Kumar to the tune of a sum of Rs. 1,25,000/- whereafter Vigilance P.S. Case No. 50 of



2017 was registered under Sections 7/13(2) read with Section 13(1)D of the Prevention of Corruption Act, 1988. The petitioner was then suspended vide order dated 29.06.2017 and a departmental proceeding was initiated vide Departmental Proceeding Case No. 146/2017, whereafter, the petitioner was served with a memo of charge vide memo dated 14.07.2017, issued by the Deputy Inspector General of Police, Central Range, Patna. In the meantime, the Ld. Special Judge, Vigilance (Trap Cases), Patna had acquitted the petitioner in the aforesaid vigilance case vide judgment dated 11.01.2019, passed in Special Case No. 42 of 2017 (arising out of Vigilance Case No. 50 of 2017), since none of the witnesses including the complainant had supported the case of the prosecution except one witness i.e. P.W. 6, namely, Suresh Tiwari, who is stated to be the verifier, however, he had stated in his examination-in-chief/cross-examination that he had neither seen the petitioner taking bribe nor he had seen him keeping money in his drawer.



3. Nonetheless, the Enquiry Officer had conducted the enquiry and submitted his enquiry report dated 20.10.2020, finding the charges levelled against the petitioner to have been proved on the ground that on account of several procedural formalities required to be followed during the course of pendency of a criminal case, before the Hon'ble Court, the witnesses turn hostile, hence no benefit can be granted to the petitioner in view of his acquittal in the criminal case. Thereafter, the Inspector General of Police, Central Range, Patna had passed the order of punishment dated 14.12.2020, inflicting the punishment of withholding of one annual wage increment with non-cumulative effect equivalent to two black marks as well as it was postulated that for the suspension period, the petitioner would not be entitled to anything else apart from what he has already been paid on the head of subsistence allowance.

4. Though the petitioner had thought it proper not to file any appeal against the aforesaid order of



punishment dated 14.12.2020, however, the Deputy Inspector General of Police (Personnel), Bihar, Patna had issued a show cause notice dated 27.07.2021, calling upon the petitioner to file his clarification within 15 days, in view of the fact that a decision has been taken to review the punishment inflicted upon him vide order dated 14.12.2020, in exercise of the powers conferred under Rule 853A of the Bihar Police Manual. The petitioner had then filed his reply on 09.08.2021, nonetheless, the Director General of Police, Bihar, Patna by the impugned order dated 23.09.2021 contained in Memo dated 27.09.2021 has annulled the punishment inflicted by the respondent no. 3 vide order dated 14.12.2020 and has instead inflicted the punishment of compulsory retirement upon the petitioner, under Rule 14(ix) of the Rules, 2005. This is how the petitioner is before this Court.

5. The learned senior counsel for the petitioner has, at the outset, submitted that a bare perusal of the enquiry report dated 20.10.2020 would show that there is no evidence whatsoever, for coming to



a conclusion that the petitioner is guilty of the charges levelled against him especially in view of the fact that the complainant himself has stated before the Enquiry Officer that neither he had ever gone to the police station nor anybody had demanded any money from him nor he had given any money to any police personnel nor he has ever filed any case in any police station, apart from deposing that the Officer of the Vigilance Department namely Sri Suresh Tiwari had forcibly taken his signature on 3-4 blank papers. It is submitted that as far as witnesses no. 2 to 4 are concerned, they are formal witnesses and have only proved the signature put on various documents. As far as witness no. 5 is concerned, i.e. Shri Suresh Tiwari, Sub-Inspector of Police (Retired), Vigilance Investigation Bureau, he is stated to be the verifier, who had prepared the pre-trap and post-trap memorandum. However, it is pointed out by the learned senior counsel for the petitioner that in his Examination-in-Chief before the learned Trial Court as P.W. 6, though he has



identified his signature on the pre-trap and post-trap memo but has clearly stated that he did not see the petitioner either taking bribe from the complainant or keeping money in the drawer of his table. Thus, the learned senior counsel for the petitioner has submitted that the present case is a case of no evidence, hence relying upon such an enquiry report dated 20.10.2020, the reviewing authority could not have annulled the original order of punishment dated 14.12.2020 and passed the impugned order dt. 23/27.09.2021, inflicting the punishment of compulsory retirement. Moreover, the Director General of Police, Bihar, Patna in his order dated 23/27.09.2021 has merely rejected the show cause reply submitted by the petitioner on 09.08.2021 by stating that no new facts have been stated and has inflicted the punishment of compulsory retirement upon the petitioner without assigning any reason muchless dealing with the show cause reply submitted by the petitioner so as to warrant taking a divergent view i.e. other than the one taken by the disciplinary authority in its



order of punishment dated 14.12.2020, apart from no clear, cogent and succinct reasons having been furnished therein so as to warrant enhancement of the punishment already inflicted upon the petitioner vide order dated 14.12.2020. It is submitted that it is a trite law that furnishing of clear, cogent and succinct reasons in support of the impugned order is an indispensable component of the decision making process. Reference in this connection has been made to a judgment rendered by this Court dated 21.09.2023, passed in **CWJC No. 17189 of 2015 (Smt. Abha Kumari vs. The State of Bihar & Ors.)** as also the one dated 05.01.2024 passed in **CWJC No. 16616 of 2021 (Sunil Kumar vs. The State of Bihar & Ors.)**. Reference has also been made to a judgment rendered by the Hon'ble Apex Court in the case of **Oryx Fisheries Pvt. Ltd. vs. Union of India**, reported in **(2010) 13 SCC 427**.

6. The learned senior counsel for the petitioner has further submitted, by referring to letter dated 25.01.2018, issued by the Inspector General of



Police (Budget, Appeal & Welfare), Bihar, Patna, that it has been clarified that while imposing major penalties, as prescribed in Rule 14(vi) to (xi) of the Rules, 2005, the procedure mentioned in Rule 17 of the Rules, 2005 shall be followed and no order imposing such penalties shall be passed without holding an enquiry. The said order dt. 25.1.2018 also postulates that the procedure laid down under Rule 18 of the Rules, 2005 shall be followed and appeals shall be dealt with as per the procedure mentioned under Rule 23 to 27 of the Rules, 2005. It is further submitted that the procedure to be followed for the purposes of conducting the departmental proceeding against a delinquent employee has also been elaborated in a letter dated 30.04.2019, issued by the Inspector General of Police (Budget, Appeal & Welfare), Bihar, Patna wherein it has been stipulated that as per Rule 30 of the Rules, 2005, the said Rules, 2005 shall have an overriding effect over all other rules, hence the departmental proceeding is to be conducted and the final order inflicting punishment has to be



passed as per the mandate of the Rules, 2005. The said circular dated 30.04.2019 further postulates that for all purposes i.e in matters of departmental proceedings and matters incidental thereto, the provisions contained in Rules, 2005 are to be followed without any error. Thus, it is submitted that since the respondents have already adopted the Rules, 2005 and made it mandatory for adhering with the provisions contained therein, it was/is incumbent upon the revisional authority to comply with Rule 28 of the Rules, 2005 which stipulates that no order imposing or enhancing any penalty shall be made by any revising authority after lapse of six months of the order proposed to be revised. However, in the present case though the original order of punishment was passed on 14.12.2020, the revisional order has been passed only on 23/27.09.2021 i.e. after a lapse of nine months. Thus, on this ground alone, the impugned order dated 23.09.2021, as contained in Memo dated 27.09.2021 is fit to be set aside. Reference in this connection has been made to a judgment



rendered by this Court on 08.01.2024, passed in **CWJC No. 14339 of 2022 (Anjani Kumar Singh vs. The State of Bihar & Ors.)**, as also the one rendered by a coordinate Bench of this Court on 06.01.2021 in **CWJC No. 7906 of 2020 (Ananjay Singh @ Ananjay Kumar Singh vs. The State of Bihar & Ors.)**, reported in **2021(1) PLJR 473**.

7. *Per contra*, the learned counsel for the respondent-State has submitted that there is no procedural irregularities in conduct of the departmental proceeding qua the petitioner, hence this Court would not sit in appeal and re-appreciate the evidence. Reference in this connection has been made to a judgment rendered by the Hon'ble Apex Court in the case of **Management of State Bank of India vs. Smita Sharad Deshmukh & Anr.**, reported in **(2017)4 SCC 75**. The learned counsel for the respondent-State has further submitted that the Full Bench of this Court in the case of **Kashi Nath Singh vs. State of Bihar**, by a judgment dated 29.03.2019, reported in **(2019) 2 PLJR 293**, has held that till statutory rules are



framed with regard to the procedure of recruitment, appointment etc. by the Government under proviso to Article 309 of the Constitution of India, the State Government can definitely issue administrative/ executive instructions/guidelines regarding the principles to be followed in matters of recruitment, appointment, promotion, punishment, transfer, leave, retirement etc., hence the Bihar Police Manual will govern the field, till by legislative enactment, statutory rules are framed by the State Government pertaining to the aforesaid matters. Thus, it is submitted that Rule 853A of the Bihar Police Manual will override the provision contained in Rule 28 of the Rules, 2005, hence the bar of six months would not be an impediment in passing the revisional order by the Director General of Police, Bihar, Patna since no time limit has been prescribed under Rule 853A of the Bihar Police Manual. The learned counsel for the respondent-State has further relied on a judgment rendered by the Hon'ble Apex Court in the case of ***Samar Bahadur Singh vs. State of Uttar Pradesh &***



Ors., reported in **(2011)9 SCC 94** to submit that acquittal in the criminal case shall have no bearing or relevance to the facts of the departmental proceeding as the standard of proof in both the cases are totally different. In this connection, reference has also been made to a judgment rendered by the Hon'ble Apex Court in the case of **Karnataka Power Transmission Corporation Limited vs. C. Nagaraju & Anr.**, reported in **(2019) 10 SCC 367**. Thus, it is submitted by the Ld. counsel appearing for the respondents that considering the aforesaid facts and circumstances of the case as also the well settled law referred to herein above, the present writ petition is bereft of any merit, hence is fit to be dismissed.

8. I have heard the learned counsel for the parties and perused the materials on record. The facts lie in a narrow encompass inasmuch as a trap is stated to have been laid, whereafter a raid was conducted on 29.06.2017 and the petitioner was caught red handed taking bribe of a sum of Rs. 1,25,000/- from the complainant, namely,



Amrendra Kumar, whereupon a Vigilance P.S. Case No. 50 of 2017 was registered under Sections 7/13(2) read with Section 13(1) D of the Prevention of Corruption Act, 1988. The petitioner was then suspended vide order dated 29.06.2017 and a memo of charge dated 14.07.2017 was issued by the Deputy Inspector General of Police, Central Range, Patna, qua the petitioner herein. However, in the meantime, the petitioner was acquitted in the aforesaid criminal case by a judgment dated 11.01.2019. Nonetheless, the Enquiry Officer had continued with the enquiry and submitted his enquiry report dated 20.10.2020, finding the charges levelled against the petitioner to have been proved on a strange analogy to the effect that since several procedural formalities are required to be followed during the course of a criminal trial, the witnesses generally turn hostile, hence no benefit can be granted to the petitioner in view of his acquittal in the criminal case. Thereafter, the Inspector General of Police, Central Range, Patna had passed the order of punishment dated



14.12.2020, inflicting the punishment of withholding of one annual wage increment with non-cumulative effect equivalent to two black marks as well as it was postulated that for the suspension period, the petitioner would not be entitled to anything else apart from what he has already been paid on the head of subsistence allowance. The petitioner had then thought it proper to be satisfied with the said order of punishment dated 14.12.2020 and had not filed any appeal. Nonetheless, the revisional authority took a decision to review the punishment, hence a show cause dated 27.07.2021 was issued to the petitioner, to which the petitioner had submitted a detailed reply dt. 09.08.2021 and then the Director General of Police, Bihar, Patna by an order dt. 23/27.09.2021 had inflicted the punishment of compulsory retirement upon the petitioner.

9. This Court finds that the enquiry report dated 20.10.2020 is based on no evidence inasmuch as the complainant himself has turned hostile and has stated before the Enquiry Officer that neither he



had ever gone to the police station nor anybody had demanded any money from him nor he had given any money to any police personnel nor he has ever filed any case in any police station, apart from deposing that the Officer of the Vigilance Department namely Sri Suresh Tiwari had forcibly taken his signature on 3-4 blank papers. Moreover, no witness has been led by the Presenting Officer who is stated to have either seen the petitioner taking bribe or keeping the bribe money in his drawer. Nonetheless, this Court finds that on the same set of facts, the revisional authority has passed an order dated 23/27.09.2021, inflicting the punishment of compulsory retirement upon the petitioner which is also based on no evidence as also does not deal with the reply filed by the petitioner on 09.08.2021, is cryptic and an unreasoned order, depicting complete non-application of mind, apart from the fact that the same does not reveal much less specify any reason for the revisional authority to have taken a divergent view i.e. other than the one taken by the



disciplinary authority in its order of punishment dated 14.12.2020 and moreover, no clear, cogent or succinct reasons have been furnished therein, which is an indispensable component of a decision making process, so as to warrant enhancement of the punishment already inflicted upon the petitioner, hence the impugned order dated 23/27.09.2021 is fit to be set aside on the said ground alone. Reference, in this connection be had to the judgment rendered by the Hon'ble Apex Court in the case of **Oryx Fisheries Pvt. Ltd.** (supra) and the judgments rendered by this Court in the case of **Abha Kumari** (supra) and **Sunil Kumar** (supra).

10. Yet another aspect of the matter is as to whether the order dated 23/27.09.2021, passed by the Director General of Police, Bihar, Patna, enhancing the punishment inflicted vide order dated 14.12.2020, passed by the Inspector General of Police, Central Range, Patna could have been passed after lapse of six months in terms of Rule 28 of the Rules, 2005 or there is no time limit for



passing the revisional order in terms of Rule 853A of the Bihar Police Manual. This Court finds that the respondents have themselves issued circulars dated 25.01.2018 and 30.4.2019 respectively, which postulate that the procedure prescribed in the Rules, 2005 would be applicable to the employees/police personnel of the respondents as far as disciplinary proceedings and the matters incidental thereto are concerned, apart from the fact that the Rules, 2005 would have an overriding effect in terms of Rule 30 thereof, hence this Court is of the view that the Rules, 2005 would govern the field and the provisions contained in Bihar Police Manual would have no application in the present case or cases alike the present one.

11. In such view of the matter, the law laid down by the learned Full Bench of this Court in the case of Kashi Nath Singh (supra) is not applicable in the present case, inasmuch as the facts and circumstances of the present case are clearly distinguishable from that of the said case. This aspect of the matter is squarely covered by the



judgment rendered by a coordinate Bench of this Court in the case of **Ananjay Singh @ Ananjay Kumar Singh** (supra) as also by the one rendered by this Court in the case of **Avinash Chandra** (supra). Yet another aspect of the matter is that the respondents cannot be permitted to maintain double standards inasmuch as on the one hand the Director General of Police, Bihar, Patna, has passed the order dated 27.09.2021, inflicting punishment of compulsory retirement, under Rule 14 (ix) of the Rules, 2005, whereas in order to justify the said order, reliance is being placed on Rule 853A of the Bihar Police Manual to submit that no time limit has been prescribed for passing the revisional order, which is patently illegal and the present case would definitely be governed by the provisions contained in Rule 28 of the Rules, 2005, which stipulates that no order imposing or enhancing any penalty shall be made by any revising authority after lapse of six months of the order proposed to be revised.

12. Therefore, since the revisional order dated 23/27.09.2021 has been passed by the Director



General of Police, Bihar, Patna after a lapse of about nine months of passing of the order of punishment dated 14.12.2020, by the disciplinary authority, this Court holds that the Director General of Police, Bihar, Patna could not have revised the punishment inflicted upon the petitioner by the disciplinary authority vide order dated 14.12.2020, in terms of Rule 28 of the Rules, 2005, after lapse of a period of six months of passing of the same. Thus, the revisional order dated 23/27.09.2021, passed after nine months of passing of the order of punishment by the disciplinary authority, being contrary to Rule 28 of the Rules, 2005, is set aside. As a result of quashing of the revisional order dated 23.09.2021, as contained in Memo dated 27.09.2021, passed by the Director General of Police, Bihar, Patna the order of punishment dated 14.12.2020, passed by the Inspector General of Police, Central Range, Patna stands revived/restored. Consequently, the petitioner is directed to be reinstated back in service. This Court further finds that since the disciplinary proceedings



especially from the stage subsequent to passing of the punishment order dt. 14.12.2020, by the Inspector General of Police, Central Range, Patna is on the very face of it attended with mala-fides and since the action of the revisional authority reeks of a design to somehow enhance the punishment and inflict punishment of compulsory retirement qua the petitioner, this Court deems it fit and proper to direct the respondents to grant 100% back wages to the petitioner along with other consequential benefits, as are admissible under the law.

13. At this juncture, it would suffice to state that the judgments referred to by the learned counsel for the respondent-State, rendered by the Hon'ble Apex Court in the case of **C. Nagaraju & Anr.** (supra), **Samar Bahadur Singh** (supra) and **Smita Sharad Deshmukh & Anr.** (supra), lay down a settled proposition of law, which are not in dispute, however the same are not applicable in the facts and circumstances of the present case, inasmuch as the issues under consideration in the present case, as aforesaid, are quite distinctive.



14. Having regard to the facts and circumstances of the case and for the foregoing reasons, the writ petition stands allowed to the aforesaid extent.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	N/A
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