

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15764 of 2023

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Md. Ahsan, S/O Late Noor Mohammad, Resident of Village- Nazirpur, PS-
Rahika, District- Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary Govt. of Bihar, Patna.
2. D.G. of Police Bihar, Patna.
3. D.I.G Munger Range Munger.
4. S.P. Sheikhpura.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ebrahim Kabir, Advocate
		Ms. Shruti Sinha, Advocate
For the Respondent/s	:	Mr. Ajay Kumar, AC to GP-4

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

2 29-04-2024

1. The petitioner is an Assistant Sub-Inspector of Police, who was posted at Chewara Police Station.

2. It is the case of the petitioner that when he was posted at A.S.I. of Police Station, Chewara, on the date of occurrence (the date has not been stated in the writ petition), he was engaged in night patrolling duty within the jurisdiction of Chewara Police Station. On the allegation that he was stopping the vehicles without any reason for some unlawful and illegal purpose, he faced departmental proceeding, initiated by the Superintendent of Police. In course of departmental enquiry, the petitioner was suspended w.e.f. 25th of February, 2022. He was



directed to show cause as to why departmental enquiry would not be proceeded against him. He gave reply to the said show cause notice, which, however, was not acceptable to the Superintendent of Police, Sheikhpura and he initiated a departmental proceeding against him. It is alleged by the petitioner that the departmental proceeding was conducted against the petitioner violating the principle of natural justice and the process initiated under Rule 17 and 18 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (herein after described as the 'Bihar C.C.A. Rules'). Subsequently, the petitioner was punished in the said departmental enquiry. One year increment of the petitioner was directed to be forfeited with cumulative effect equal to two black marks. The Superintendent of Police, Sheikhpura being a the Disciplinary Authority also directed that the concerned incumbent would not get anything more towards the salary except the subsistence allowance which he got during the suspension period.

3. The petitioner preferred an appeal before the D.I.G., Munger being the Appellate Authority and the said appeal was also dismissed.

4. The Respondent No. 4, Superintendent of Police,



has filed a counter affidavit, stating, inter alia, that during night patrol checking on 24th of February, 2022, the Respondent No. 4 reached near Anaduali More and saw the vehicles were being stopped illegally by the petitioner in his capacity as A.S.I. of Police of Chewara Police Station. Illegal stopping of vehicles not only tarnished the image of the police but also reflected malicious intention of the petitioner at the same time. The action was indicative of his arbitrary and vagrant behaviour and reflected his not being a good police officer, for which he was suspended and following the procedure in accordance with the provisions of Rule 17 of Bihar C.C.A. Rules, charge was framed, departmental proceeding was initiated and he was punished.

5. It is further stated by the Respondent No. 4 that the departmental proceeding was conducted duly by the conducting officer based on allegation made against the petitioner and the charge was found to be true. Thereafter, the petitioner was punished. The order of punishment was scrutinized by the D.I.G. Munger, being the Appellate Authority and he confirmed the order of the Disciplinary Authority.

6. The learned Advocate on behalf of the petitioner, at the outset, submits that the Superintendent of Police, Sheikhpura



is not the Appointing Authority of the petitioner, who was promoted to the post of A.S.I. and he not being an appointment authority, cannot act as Disciplinary Authority. In support of his contention, the learned Advocate on behalf of the petitioner refers to Rule 660 of the Police Manual which runs thus:-

“660. Appointment of Assistant Sub-Inspector:-

(a) Assistant Sub-Inspectors shall be appointed by promotion from the ranks (Rule 729). Promotion of constable to the rank of Assistant Sub-Inspector shall be made by the Deputy Inspector-General. At least 14 days before passing orders of promotion, the Deputy Inspector-General shall publish by range order the names of those, they propose to promote in order that those who are not to be promoted may have an opportunity of representing their cases before the promotions are actually made. Constables having such representations to make should be given interviews and their cases examined with them.

(b) Assistant Sub-Inspectors promoted from the ranks shall be on probation for one year.

(c) No constable shall be



promoted to the rank of Assistant Sub-Inspector unless he has passed the examination for Assistant Sub-Inspector's course at the Police Training College, (Rule 684).

(d) A Havildar or Niai desirous of being considered for promotion to the rank of Assistant Sub-Inspector must also appear at the qualifying examination in rule 685 and on being declared to have passed shall undergo a promotion course of Assistant Sub-Inspector.

(e) The rules for promotion in other branches which are closed cadres like armourers, Havildar drivers, wireless, etc., are given in the Chapters concerned.”

7. Thus, it is contended on behalf of the petitioner that the A.S.I. is appointed by promotion by the D.I.G. and he being the Appointing Authority, the disciplinary proceeding against the petitioner ought not to have been initiated and conducted by the Superintendent of Police. Therefore, the disciplinary proceeding and consequent punishment is not only bad in law but *void ab initio* because of the fact that the Disciplinary Authority had no power to conduct disciplinary proceeding.

8. It is also submitted by the learned Advocate for the petitioner, relying on Rule 30 of Bihar C.C.A. Rules that



notwithstanding contained anything contrary to these Rules in any other Rules, the provisions of these Rules shall have overriding effect.

9. Therefore, it is submitted by the learned counsel for the petitioner that Bihar C.C.A. Rules is applicable with regard to disciplinary proceeding, penalties and the Disciplinary Authority in view of Rule 3 of Bihar C.C.A. Rules.

10. The learned Advocate for the petitioner then refers to Rule 14 regarding the minor and major penalties which can be inflicted upon a delinquent employee and Rules 17 and 18 of the Bihar C.C.A. Rules. It is specifically submitted by the learned Advocate for the petitioner that Sub-Rule (3) of Rule 17 states:-

“Where it is proposed to hold an enquiry against a government servant under this Rule, the disciplinary authority shall draw up or cause to be drawn up-

(i) the substance of the imputations of misconduct or misbehaviour as a definite and distinct article of charge;

(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain-



(a) a statement of all relevant facts including any admission or confession made by the Government Servant;

(b) a list of such document by which, and a list of such witnesses by whom, the articles of charge are proposed to be sustained.”

11. Thus, Sub-rule 3 of Rule 17 stipulates the detailed provision as to how the articles of charge in a disciplinary proceeding shall be submitted and what should be the contents of the charge.

11. Placing reliance on the above mentioned provisions, it is submitted by the learned Advocate for the petitioner that the Superintendent of Police himself apprehended the incumbent. He is the alleged eye witness of the occurrence. He himself suspended the petitioner. He directed the petitioner to submit show cause notice. Then he framed the charge, appointed presenting officer and himself conducted the disciplinary proceeding. The specific act on the part of Superintendent of Police is violation of the basic principle of natural justice on the issue that he could not be a judge for his own cause. Therefore, according to the, learned counsel for the petitioner entire disciplinary proceeding and consequent



punishment is bad. The Appellate Authority failed to consider those aspects of the matter.

12. In support of his contention, he refers to a unreported decision of a Co-ordinate Bench of this Court passed in C.W.J.C. No. 7027 of 2018 on 28th of July, 2021.

13. The learned Advocate on behalf of the State, on the other hand, takes me to Rule 825(d) of the Bihar Police Manual. Rule 825(d), finds place in chapter 25 relating to departmental punishment . Clause (d) of Rule 825 state:-

“A Superintendent may impose on any police officer sub-ordinate to him and of and below the rank of Sub-Inspector any or more of the punishments in rule 824 except dismissal, removal and compulsory retirement in the case of Sub-Inspector or Assistant Sub-Inspector. It shall be kept in mind that if any enquiry has been initiated by the District Magistrate, a report of the result shall be sent to him for information. If required, the file of departmental proceeding shall also be sent with it.”

14. A careful perusal of the above provision shows that the Superintendent of Police can impose punishment to a police officer below and of the rank of the Sub-Inspector when the enquiry was initiated by the District Magistrate. Thus, it is



absolutely justified to say that a Superintendent of Police cannot be the Disciplinary Authority where he himself apprehended incumbent officer for his misdeed, collected the evidence, issued the charge-sheet initiated and concluded the departmental proceeding imposing punishment.

15. In Bhushan Kumar Singh v. State of Bihar, passed in C.W.J.C 7027 of 2018, decided on 28th of July 2021, a Co-ordinate Bench has observed in paragraph 8 as hereunder:-

“8. I have heard the learned counsel for the parties and gone through the materials on record. The facts are not in dispute and even the respondent-State has not disputed the fact that no Presenting Officer was appointed either to lead or to prove the evidence that had been collected against the petitioner and infact, the enquiry Officer had committed a grave error by himself presenting the case on behalf of the department and also taking unto himself the duty of enquiring the correctness or otherwise of the said case as also examining the evidence himself and upholding the guilt of the petitioner, which clearly shows that the enquiry officer, in the instant case, has failed to discharge his duty as a fair and impartial enquiry authority, hence such conduct of the enquiry Officer is not only contrary to Rule 17(5)(C) and Rule 17(14) of



the Bihar Government Servants (Classification, control and Appeal) Rules, 2005 but also in teeth of the law laid down by the Hon'ble Apex Court in the case of Saroj Kr. Sinha (supra). Hence, on this ground alone, the petitioner is liable to succeed, although it is another matter that the petitioner being Assistant Sub-Inspector at the relevant time, his appointing authority is the Deputy Inspector General of Police, however the punishment order dated 17.08.2017 has been passed by an officer below the rank of Deputy Inspector General, thus on this ground as well, the order of punishment dated 17.08.2017 stands vitiated”

16. The decision of the Hon'ble Co-ordinate Bench is binding upon this Court so long this Court does not hold any contrary view in the instant matter. The Co-ordinate Bench clearly held that the petitioner being Assistant Sub-Inspector at the relevant point of time, his Appointing Authority is Deputy Inspector General of Police. However, the punishment order, dated 17th of August, 2017, has been passed by an officer below the rank of the D.I.G, thus, on this ground also the order of punishment, dated 17th of August, 2017 stands vitiated.

17. Having heard the learned counsels for the parties and on careful perusal of the facts and circumstances of the case



as well as the grounds mentioned in the instant writ petition, this Court finds that the punishment order, dated 22nd of November, 2022, issued by the Superintendent of Police, Sheikhpura, whereby he has inflicted punishment of forfeiture of one year increment of the petitioner with cumulative effect to two black marks and also ordering that the petitioner will get nothing more than what he has already received during the suspension period, which was affirmed by the D.I.G., Munger Range on 6th of March, 2023, do not have any leg to stand and the orders are liable to be set aside.

18. Accordingly, the above-mentioned orders are quashed and set aside.

19. The matter is remitted to the Disciplinary Authority with liberty to hold a fresh enquiry and proceed afresh from the stage of appointment of the Presenting Officer.

20. It is needless to say that the payment of consequential benefits to the petitioner shall abide by the final outcome of the fresh disciplinary proceedings, to be conducted by the Disciplinary Authority, as aforesaid, nonetheless, the same shall be completed within a period of 6 months from the date of communication of this order, failing which the petitioner shall become entitled to payment of all consequential benefits,



as a result of quashing of the impugned orders, dated 22nd of November, 2022 and 6th of March, 2023.

21. The petitioner is directed to cooperate with the Disciplinary Authority in the fresh disciplinary proceedings, to be conducted by the Competent Authority as per Rule 660 of the Police Manual, failing which the Disciplinary Authority shall be free to proceed *ex parte* against the petitioner.

22. The instant writ petition stands allowed on contest.

(Bibek Chaudhuri, J)

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