

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2816 of 2022

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Arjun Kumar, S/o Sri Jawahar Shah, R/o Village and P.O.- Chuhari, P.S.-
Chanpatiya, District- West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Director General of Police, Police Headquarter Sardar Patel Bhawan, Bailey Road Patna.
2. The Additional Director General of Police (Law- Order), Sardar Patel Bhawan, Bailey Road Patna.
3. Inspector General of Police Headquarter Sardar Patel Bhawan, Bailey Road Patna.
4. The Deputy Inspector General of Police, Saran Range (Chapra).
5. The Superintendent of Police, Gopalganj.
6. The Superintendent of Police, Muzaffarpur.
7. The Deputy Superintendent of Police, Headquarter Gopalganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Awadhesh Kumar Mishra, Advocate
For the Respondent/s	:	Mr. Nadim Seraj, GP- 5
		Mr. Birendra Kumar, AC to GP-5

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT

Date : 09-05-2025

This Court has heard Mr. Awadhesh Kumar Mishra, learned Advocate for the petitioner and Mr. Birendra Kumar, learned Advocate for the State.

2. The petitioner is aggrieved with the order, as contained in Memo No. 3431 dated 17.12.2019, passed by the Deputy Inspector General of Police, Saran Range, Chapra whereby he has been dismissed from the post of Sub-Inspector of Police. The appeal preferred against the order of dismissal



also came to be rejected by the Additional Director General of Police (Law & Order), Bihar, Patna vide its order dated 16.07.2020, which is also challenged herein.

3. Shorn of lengthy details, the necessary relevant facts for adjudication of the lis are as follows:

(i) The petitioner was duly appointed on the post of Sub-Inspector of Police in the year 2009 and submitted his joining on 18.02.2009 in BMP-3, Bodh Gaya for training course. Upon completion of training course, the petitioner was posted at Police Line, Gopalganj on 20.03.2010. While the petitioner was rendering his services, in the meantime, one Kanti Devi had approached this Court in C.W.J.C. No. 15500 of 2011 seeking a direction upon the concerned respondent to enquire about the validity of appointment of the petitioner. The writ petition came to be disposed off vide order dated 07.05.2013 directing the petitioner to approach the Director General of Police-cum-Inspector General of Police, Bihar, Patna for disposal of her representation in accordance with law.

(ii) Taking note of the imputation levelled against the petitioner, a show-cause notice was issued to the petitioner vide Memo No. 550 dated 12.03.2014 making it clear that in case no explanation is submitted, a departmental proceeding



shall be initiated. Notwithstanding the show-cause, when no explanation was submitted by the petitioner, departmental proceeding, bearing No. 21 of 2014, was initiated with a categorical charge that the petitioner had fraudulently obtained the appointment by concealing the fact of his being accused of Chanpatiya P.S. Case No. 57 of 2001. Enquiry was conducted and the charge stood proved against the petitioner. After submission of the enquiry report, the file was sent to the Deputy Inspector General of Police, Saran Range, Chapra, who vide its order dated 22.04.2015 (Annexure-3 to the writ petition) inflicted the punishment of dismissal from service.

(iii) Aggrieved with the order of dismissal, the petitioner preferred appeal before the Inspector General of Police, Muzaffarpur Zone. The Appellate Authority on being found the order suffers from infirmity, set aside the same by order dated 27.08.2015 (Annexure-5 to the writ petition) and directed for fresh departmental proceeding, keeping the petitioner under suspension owing to the serious nature of charges.

(iv) Pursuant thereto a fresh departmental proceeding was initiated; in course of enquiry the Conducting Officer found the petitioner as partly guilty and accordingly



submitted enquiry report to the Superintendent of Police, Gopalganj, which has further been referred by the Superintendent of Police, Gopalganj along with his recommendation to the Deputy Inspector General of Police, Saran Range, Chapra. The Deputy Inspector General of Police, Saran, Chapra on being dissatisfied in the manner, in which the departmental proceeding was conducted, again vide its order contained in Memo No. 1413/(C) dated 20.06.2017 relegated the matter for fresh departmental proceeding; this led to another enquiry after appointment of new Conducting Officer and after thorough enquiry, enquiry report as contained in Memo No. 1189 dated 05.07.2017 came to be submitted on being found the petitioner guilty.

(v) The Superintendent of Police, Gopalganj agreed with the enquiry report that the petitioner fraudulently obtained his appointment as Sub-Inspector of Police by concealing his criminal antecedent and, as such, committed fraud, vide Memo No. 2473 dated 27.11.2023 sent the file to the Deputy Inspector General of Police, Saran with its recommendation to dismiss the petitioner from service. The petitioner had further been served with the show-cause notice under the signature of Superintendent of Police, Gopalganj and finally the Deputy



Inspector General of Police, Saran range vide its order as contained in Memo No. 3431/C dated 17.12.2019 inflicted punishment of dismissal with immediate effect. Aggrieved, the petitioner preferred appeal before the Additional Director General of Police (Law & Order), Bihar, Patna. Since the appeal could not be disposed off, in the meantime, the petitioner approached this Court in C.W.J.C. No. 4388 of 2021, which stood disposed of by this Court on 30.11.2021 directing the appellate authority to dispose of the same within a period of three months. However, later on, the petitioner came to know that the appeal has already been rejected vide order dated 16.07.2020.

4. Mr. Awadhesh Kumar Mishra, learned Advocate for the petitioner assailing the impugned orders has contended that on account of a land dispute, a *gotiya* of the petitioner, who had been carrying grudge against the petitioner and his family members, lodged an F.I.R., bearing Chanpatia P.S. Case No. 57 of 2001 for the offences under Sections 147, 149, 447, 323, 325, 379 and 504 of the Indian Penal Code to wreck vengeance and mount undue pressure upon the father of the petitioner, who had filed Title Suit No. 85 of 2001 against the informant and her family members. Since the charge-sheet was submitted under



bailable sections and the petitioner had never remained in custody, the petitioner could not realise the gravity of the matter, hence failed to mention at the time of selection about the factum of his being accused in the aforementioned case. The petitioner had never played any fraud to obtain the service, but on account of family feud and to take revenge with the petitioner and his family, a criminal case with a false and fabricated allegation has been instituted. It is further contended that the nature of offence, even if considered, the same was trivial; and in such circumstances, the Hon'ble Supreme Court in the case of **Avtar Singh v. The Union of India & Ors.**, reported in **(2016) 8 SCC 471** has mandated the authorities concerned to take liberal view because the punishment of dismissal is harsh and disproportionate to the charges.

5. Reliance has also been placed on a decision rendered by the Apex Court in the case of **Pawan Kumar v. Union of India & Anr.**, reported in **(2023) 12 SCC 317**.

6. It is also contended that in identical situation a coordinate Bench of this Court in the case of **Krishnakant Upadhyay Vs. The State of Bihar & Ors.**, (C.W.J.C. No. **2868 of 2023**) reiterating the decision of the Hon'ble Supreme Court directed the Senior Superintendent of Police, Gaya to



consider the representation of the petitioner in the light of the judgment of the Hon'ble Supreme Court in the case of **Pawan Kumar** (Supra).

7. Dispelling the contention aforementioned, learned Advocate for the State vehemently contended that the petitioner was a charge-sheeted accused of Chanpatiya P.S. Case No. 57 of 2001, in which he was also convicted vide judgment dated 04.04.2013 passed by the learned Judicial Magistrate, 1st Class, West Champaran, Bettiah in Trial No. 1837 of 2013 for the offences under Sections 323 and 447 of the Indian Penal Code. The appeal against the judgment of conviction preferred by the petitioner was only modified by the learned Additional District & Sessions Judge-III, West Champaran, Bettiah vide judgment dated 22.04.2015 in Cr. Appeal No. 46 of 2013 and the petitioner was released after due admonition under Section 3 of the Probation of Offenders Act, which also amounts to conviction, the copy of the judgment dated 22.04.2015 has been placed on record as Annexure-F to the counter affidavit.

8. Learned Advocate for the State further contended that the order passed by the Deputy Inspector General of Police, Saran inflicting punishment of dismissal and its affirmance by the appellate authority is in accordance with law after giving



proper opportunity of hearing to the petitioner. Moreover, the petitioner has committed serious fraud by way of concealment of fact during verification and thus got his appointment as Sub-Inspector of police. Heavy reliance has been placed on a decision rendered by the Hon'ble Supreme Court in the case of **Rajasthan Rajya Vidyut Prasaran Nigam Ltd. & Anr. vs. Anil Kanwariya, (2021) 10 SCC 136** wherein the Hon'ble Supreme Court in identical situation held the order of termination as justified, irrespective of the fact that the employee was accorded the benefit of Section 12 of the Probation of Offenders Act, 1958.

9. This Court has meticulously heard the learned Advocate for the respective parties and also perused the materials available on record.

10. Before parting with this case, it would be apt and proper to apprise the settled legal proposition, in the light of which, the question posed before this Court shall be dealt with.

11. The Hon'ble Supreme Court in the case of **Jainendra Singh v. State of U.P. Tr. Prinl.Sec.Home and Others [(2012) 8 SCC 748]**, while emphasizing the need of character verification has held that *“the purpose of calling for information regarding involvement in any criminal case or*



detention or conviction is for the purpose of verification of the character/antecedents at the time of recruitment and suppression of such material information will have clear bearing on the character and antecedents of the candidate in relation to his continuity in service. Verification of the character and the antecedent is important criteria to test whether the selected candidate is suitable to the post under the State and on account of his antecedents, the appointing authority if finds it not desirable to appoint a person to a disciplined force can it be said to be unwarranted.”

12. In the case of **Avtar Singh** (supra), the Apex Court enunciated a guideline to be followed by the Courts while considering the identical nature of challenge. The Court after reconciling all the situation summarized and concluded in para-38 of the decision, *inter alia*, that while passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information. The Court has given a leeway in cases only where there is suppression or false information of involvement in a criminal case, where conviction or acquittal had already been recorded before filling of the application/verification form and such fact



later comes to knowledge of employer, any of the following recourse appropriate to the case may be adopted. In a case trivial in nature in which conviction had been recorded, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapses. The emphasis has been given where the fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion may appoint the candidate subject to decision of such case.

13. Notwithstanding the principles laid down in **Avtar Singh** (supra) by a three Judge Bench of the Hon'ble Supreme Court, when divergent views were expressed, the Apex Court in the case of **Satish Chandra Yadav v. Union of India and Others [(2023) 7 SCC 536]**, taking into consideration the inconsistent views in the cases of **Union of India and Others v. Methu Meda [(2022) 1 SCC 1]**, **Union of India and Others v. Dilip Kumar Mallick [(2023) 12 SCC 331]**, **Pawan Kumar v. Union of India and Anr. [(2023) 12 SCC 317]**, **Rajasthan Rajya Vidyut Prasaran Nigam Ltd. v. Anil Kanwariya [(2021) 10 SCC 136]** and **Mohammed Imran vs. State of Maharashtra and Others [(2019) 17 SCC 696]**, further laid



down the following principles:-

“92. The only reason to refer to and look into the various decisions rendered by this Court as above over a period of time is that the principles of law laid therein governing the subject are bit inconsistent. Even after, the larger Bench decision in the case of Avtar Singh (supra) different courts have enunciated different principles:-

“93. In such circumstances, we undertook some exercise to shortlist the broad principles of law which should be made applicable to the litigations of the present nature. The principles are as follows:

93.1. Each case should be scrutinised thoroughly by the public employer concerned, through its designated officials-more so, in the case of recruitment for the police force, who are under a duty to maintain order, and tackle lawlessness, since their ability to inspire public confidence is a bulwark to society's security.

93.2. Even in a case where the employee has made declaration truthfully and correctly of a concluded criminal case, the employer still has the right to consider the antecedents, and cannot be compelled to appoint the candidate. The acquittal in a criminal case would not automatically entitle a candidate for appointment to the post. It would



be still open to the employer to consider the antecedents and examine whether the candidate concerned is suitable and fit for appointment to the post.

93.3. The suppression of material information and making a false statement in the verification Form relating to arrest, prosecution, conviction etc., has a clear bearing on the character, conduct and antecedents of the employee. If it is found that the employee had suppressed or given false information in regard to the matters having a bearing on his fitness or suitability to the post, he can be terminated from service.

93.4. The generalisations about the youth, career prospects and age of the candidates leading to condonation of the offenders' conduct, should not enter the judicial verdict and should be avoided.

93.5. The Court should inquire whether the Authority concerned whose action is being challenged acted mala fide.

93.6. Is there any element of bias in the decision of the Authority?

93.7. Whether the procedure of inquiry adopted by the Authority concerned was fair and reasonable?"

14. After going through the afore-noted ruling, it is obvious that the Court held in no uncertain terms that even in



case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate. The acquittal in a criminal case would not automatically entitle a candidate for appointment to the post. It would be still open to the employer to consider the antecedents and examine whether the candidate concerned is suitable and fit for appointment to the post. If it is found that the employee had suppressed or given false information in regard to the matters having a bearing on his fitness or suitability to the post, he can be terminated from service.

15. The impeccable character and integrity has given primacy and mandatorily required to be inducted in a disciplined force, which is the very mandate of Rule 673 of the Bihar Police Manual, which reads as follows:-

"673.(a) Verification roll.-- A verification roll shall be prepared in P.M. Form no.101 and sent for verification to the home district of every candidate, for the post of Sub Inspector, Reserve Sub-Inspector and Constable or any ministerial post.

(b) In the case of semi-literate men such as those recruited under relaxation of minimum educational qualification in rule 663 the questions on the roll shall be put to the candidate by the



reserve officer or an officer nominated for the purpose by the Superintendent, and that officer shall write down the answers, sign these with his full signature and produce these, together with the candidate, before the Superintendent. Literate persons shall fill in and sign the answers themselves. The Superintendent, if satisfied with the answers, will sign the roll, have the impression of the man's left thumb taken in the space provided and pass an order for his enlistment.

(c) Enlistment orders.--The order for enlistments shall then be entered in the order book, the service book shall be prepared and the verification roll dispatched to the Superintendent of the district in which the recruits home is situated. The number and date of dispatch shall be noted in the proper place in the service-book, and on the return of the roll with a report that the man bears a good character and has made a truthful statement as to his antecedents, the Superintendent shall initial this entry, have the necessary entry made in the service-book and order the verification roll to be filed. If the character of the man is reported to be bad or his statement false, he shall be removed from the force."

16. Further, Rule 668 of the Bihar Police Manual also mandates character verification with a clear stipulation that in case any false declaration regarding criminal antecedent is



made, the same shall render a candidate ineligible for appointment.

17. Bare reading of the prescriptions noted and discussed hereinabove, it is imperative to observe that any suppression or misrepresentation of facts during the recruitment process, particularly in matters related to criminal antecedent is considered as grave misconduct and if a candidate failed to meet the higher standard of integrity and honesty during the recruitment process cannot be considered suitable for service in the police force.

18. The Apex Court in the case of **Anil Kanwariya** (supra), while considering the submissions on behalf of the employee, whose services were terminated on the ground of filing a false declaration to the effect that neither any criminal case is pending against him, nor has he been convicted by any court of law, in view of the fact that he has subsequently been granted benefit of Section 12 of the Probation of Offenders Act and thus his service ought not to have been terminated, has observed in paras-13 and 14 as under:-

"13. Even otherwise, subsequently getting the benefit of Section 12 of the 1958 Act shall not be helpful to the respondent inasmuch as the question is about filing a false declaration on 14-4-



2015 that neither any criminal case is pending against him nor has he been convicted by any court of law, which was much prior to the order passed by the learned Sessions Court granting the benefit of Section 12 of the 1958 Act. As observed hereinabove, even in case of subsequent acquittal, the employee once made a false declaration and/or suppressed the material fact of pending criminal case shall not be entitled to an appointment as a matter of right.

14. The issue/question may be considered from another angle, from the employer's point of view. The question is not about whether an employee was involved in a dispute of trivial nature and whether he has been subsequently acquitted or not. The question is about the credibility and/or trustworthiness of such an employee who at the initial stage of the employment i.e. while submitting the declaration/verification and/or applying for a post made false declaration and/or not disclosing and/or suppressing material fact of having been involved in a criminal case. If the correct facts would have been disclosed, the employer might not have appointed him. Then the question is of TRUST. Therefore, in such a situation, where the employer feels that an employee who at the initial stage itself has made a false statement and/or not disclosed the material facts and/or suppressed the material facts and therefore he cannot be



continued in service because such an employee cannot be relied upon even in future, the employer cannot be forced to continue such an employee. The choice/option whether to continue or not to continue such an employee always must be given to the employer. At the cost of repetition, it is observed and as observed hereinabove in a catena of decisions such an employee cannot claim the appointment and/or continue to be in service as a matter of right."

19. In view of the settled proposition, as discussed hereinabove, now coming to the facts of the case, which are admitted that the petitioner was duly appointed to the post of Sub-Inspector in the year 2009 and after completing training course, he was posted in District Police Force, Gopalganj and submitted his joining on 20.03.2010. The date on which the petitioner was appointed, there was a criminal case pending against him along with others bearing Chanpatia P.S. Case No.57 of 2001 registered for the offences punishable under Sections 147, 149, 447, 323, 325, 379 and 504 of the Indian Penal Code, but this fact has not been disclosed.

20. The aforesaid criminal case finally ended with the conviction of the petitioner and others vide judgment dated 04.04.2013 passed by the learned Judicial Magistrate, 1st Class,



West Champaran, Bettiah in Trial No.1837 of 2013. The petitioner has been found guilty for the offences punishable under Sections 323 and 447 of the Indian Penal Code, which judgment of conviction was challenged by the petitioner before the learned District and Sessions Judge, Bettiah and finally the learned Additional District and Sessions Judge-III, West Champaran, Bettiah, modified the judgment and the petitioner was released after due admonition under Section 3 of the Probation of Offenders Act.

21. In the aforesaid premise, the petitioner was subjected to departmental proceedings bearing no. 21 of 2014. During the course of enquiry, the charge, especially with regard to the concealment of fact of he being accused of Chanpatiya P.S. Case No. 57 of 2001 came to be proved and the petitioner was served with the second show-cause notice. On being found the explanation of the petitioner not satisfactory, the impugned order of dismissal came to be passed, which was also affirmed in the appeal by the Appellate Authority.

22. The petitioner has not questioned the legality and the procedural defect of the disciplinary proceedings, save and except the punishment of dismissal is disproportionate to the charges and institution of the criminal case at the behest of one



Kanti Devi, who is said to be one of his *gotiyas*, is wholly *mala fide* and; all the more, subjected offences were trivial in nature; hence, liberal view should be taken in the case of the petitioner.

23. It would be worth noting here that judicial review is not an appeal from a decision but a review of the manner in which decision has been made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eyes of law. It is settled proposition of law that in case of disciplinary enquiry, the Court is only concerned with the validity of enquiry procedure and not the merit of the decision.

24. Emphasizing the afore-noted settled proposition, a three Judge Bench of the Hon'ble Supreme Court in the case of **Deputy General Manager (Appellate Authority) and Ors. v. Ajai Kumar Srivastava [(2021) 2 SCC 612]**, has held in paras- 24 and 28 as follows:-

"24. It is thus settled that the power of judicial review, of the constitutional courts, is an evaluation of the decision-making process and not the merits of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion. The court/tribunal may interfere in the proceedings held against the delinquent if it is, in



any manner, inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached or where the conclusions upon consideration of the evidence reached by the disciplinary authority are perverse or suffer from patent error on the face of record or based on no evidence at all, a writ of certiorari could be issued. To sum up, the scope of judicial review cannot be extended to the examination of correctness or reasonableness of a decision of authority as a matter of fact.

25.27. * * *

28. The constitutional court while exercising its jurisdiction of judicial review under Article 226 or Article 136 of the Constitution would not interfere with the findings of fact arrived at in the departmental enquiry proceedings except in a case of mala fides or perversity i.e. where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at those findings and so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained."



25. It is also need to be emphasized herein that the question of quantum of punishment in disciplinary matter is primarily for the disciplinary authority, and the jurisdiction of the High Court under Article 226 of the Constitution is limited and is confined to the applicability of one or the other of the well-known principles known as Wednesbury principles, namely, whether the order was contrary to law or whether the relevant factors were not considered or whether irrelevant factors were considered or whether the decision was one which no reasonable person could have taken [vide **Om Kumar and Others v. Union of India (2001) 2 SCC 386**].

26. Having considered the gamut of the entire facts, in the premise of the settled legal position, the impugned order passed by the Disciplinary Authority and duly affirmed by the Appellate Authority do not require any interference. However, as this Court has been apprised that during the short period of service of the petitioner, he has been rewarded on 22 occasions and received various awards by his superior officers and the order of conviction, which has finally been modified by the learned Additional District and Sessions Judge-III, West Champaran, Bettiah with due admonition under Section 3 of the Probation of Offenders Act on being found the offence trivial in



nature, this Court is hereby observed that dismissal of the writ petition would not preclude the petitioner to approach the Director General of Police, Government of Bihar with a review application/memorandum, in terms of the prescriptions of the Bihar Police Manual.

27. The writ petition stands closed with the liberty and observations made hereinabove.

(Harish Kumar, J)

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