

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9570 of 2021

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Deokant Sinha, Son of Shri Ramdhar Singh, resident of Village-Murarchak,
P.O.-Sehra, P.S.-Sigodi, Paliganj, District-Patna, Pin Code-801110.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary (Home) Police Department, Bihar, Patna.
2. Director General of Police, Bihar, Patna.
3. Additional Director General of Police (Law and Order), Bihar, Patna.
4. Deputy Inspector General of Police, Shahabad Zone at Dehri at Sone.
5. Superintendent of Police, Kaimur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abhinav Srivastava, Advocate
For the Respondent/s : Mr. G.P.-5

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT

Date : 07-01-2025

Heard Mr. Abhinav Srivastava, learned Advocate for the petitioner and the learned Government Pleader-5 for the State.

2. The petitioner is aggrieved with the order dated 16.09.2020 passed by the Deputy Inspector General of Police, Shahabad Zone at Dehri-on-Sone by which the petitioner has been inflicted with the punishment of dismissal from service. The petitioner also sought quashing of the Arwal District Order No. 758/2020 dated 30.09.2020 by which the name of the petitioner has been directed to strike out from the register of the force of the Arwal district. The petitioner also assailed the order



dated 28.01.2021 passed by the Additional Director General of Police (Law & Order), Bihar, Patna by which the appeal preferred by the petitioner came to be rejected.

3. The short matrix of the case as culled out from the materials available on record are summarized hereinbelow:

(i) The petitioner on being selected, was appointed against the post of Sub Inspector in the services of Bihar Police vide Annexure-1 to the writ petition. While the petitioner was posted as the Officer-in-charge of Kudhani Police Station in the district of Kaimur, the petitioner was caught red handed while accepting bribe of Rs.50,000/- by a trap team duly constituted by the Vigilance Investigation Bureau on 18.08.2017 resulting into institution of Vigilance Case No. 64/2017 for the alleged offences under Sections 7/13(2) read with Section 13(1) (d) of the Prevention of Corruption Act. Upon institution of the Vigilance Case as aforementioned, the petitioner was taken into judicial custody and while he was in custody, vide letter dated 14.10.2017 issued by the Superintendent of Police, Kaimur (Bhabhua), he was directed to show cause as to why a departmental proceeding be not initiated against him as his conduct has lowered down the reputation of the police force.

(ii) The Superintendent of Police, Kaimur vide District



Order No. 1973/2017 dated 31.10.2017 directed for initiation of a departmental proceeding and accordingly the Proceeding No. 46/2017 was initiated and memo of charges were also drawn against the petitioner. In response thereto, the petitioner submitted his explanations in relation to the charges levelled against him. In the meantime, the petitioner was ordered to be released on bail vide order dated 01.12.2017 passed by the learned Special Judge, Vigilance (Trap), Patna. Seemingly the enquiry was conducted by the Sub Divisional Police Officer, Bhabhua, who was the enquiry officer in relation to the proceeding being conducted against the petitioner, and finally the enquiry report was submitted vide Memo No. 80/2019 dated 17.01.2019 with a finding to the effect that the petitioner was guilty of the charges levelled against him.

(iii) Subsequently, vide letter dated 08.03.2019, the Superintendent of Police, Kaimur by enclosing copy of the enquiry report directed the petitioner to submit his explanation as to why punishment of dismissal from service be not passed against him. The petitioner had further been served with the letter dated 12.03.2019 by the Superintendent of Police, Arwal with a similar direction to submit his explanation within a period of 15 days. In response to the aforementioned letter, the



petitioner submitted his detailed explanation in relation to the finding recorded by the Enquiry Officer in his enquiry report. Taking note of the explanation furnished by the petitioner, the Deputy Inspector General of Police, Shahabad Zone at Dehri-on-Sone vide his letter dated 11.07.2019, copy of which is marked as Annexure-10 to the writ petition directed that since for the same set of charge a Vigilance Case had been instituted against the petitioner, till the time the aforesaid Vigilance Case is pending consideration the departmental proceeding being sought to be conducted against the petitioner would be kept in abeyance. It had also been indicated that in course of the departmental proceeding the delinquent be also afforded an opportunity of cross examining the witnesses and thus directed the procedure be followed during conduct of any proceeding.

(iv) However, even without referring to the afore noted letter dated 11.07.2019, almost after 10 months vide letter dated 07.06.2020, the Deputy Inspector General of Police, Shahabad Zone once again sent the file pertaining to the departmental proceeding requested to issue necessary direction in the said respect. Accordingly, the petitioner was directed to submit his explanation within a period of seven days, failing which it was indicated that it would be presumed that the petitioner did not



have anything to say and the Superintendent of Police, Kaimur would pass final order in the departmental proceeding. In furtherance of the direction contained under letter aforenoted, the petitioner submitted his detailed explanation dated 17.07.2020 indicating various infirmities and illegalities. Finally the impugned order dated 16.09.2020 bearing Memo No. 2228 was passed by the Deputy Inspector General of Police, Shahabad Zone at Dehri-on-Sone upholding the allegations levelled against the petitioner to be proved and he was dismissed from service.

(v) The order of dismissal was put to challenge before the Additional Director General of Police (Law & Order), copy of the memo of appeal has been marked as Anneuxre-17 to the writ petition containing the facts and circumstances pertaining to his case as to how the departmental proceeding conducted against the petitioner was in blatant disregard and violation of the principles of natural justice as well as the provision contained under Rule 17 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as the 'Rules, 2005'). The appeal preferred by the petitioner also came to be rejected by the Appellate Authority vide order dated 28.01.2021. Both the order of punishment as



well as the appellate order affirming the order of dismissal as also the consequential order are put to challenge before this Court.

4. Mr. Abhinav Srivastava, learned Counsel for the petitioner, referring to the provisions contained in Rule 16(1) of Rules, 2005, contended that the appointing authority/disciplinary authority of the petitioner is the Deputy Inspector General of Police, Shahabad Zone; hence action of the Superintendent of Police, Kaimur directing for initiation of departmental proceeding vide Kaimur District Order No. 1973/2017 dated 31.10.2017 was clearly untenable in the eyes of law. Drawing the attention of this Court to the Kaimur District Order No. 1973/2017 it is further contended that the said letter demonstrates that the explanation submitted by the petitioner has not been received whereas in Clause 10 of the order containing charges drawn against the petitioner, it had been stated that the explanation submitted by the petitioner had been received on 27.10.2017 which had not been accepted by the Superintendent of Police, Kaimur and thus the allegation levelled against the petitioner had been found to be *prima facie* proved and accordingly it was directed to initiate departmental proceeding. These facts clearly demonstrate complete lack of



application of mind on the part of the concerned respondent, while deciding to initiate the departmental proceeding.

5. Mr. Srivastava, learned Advocate for the petitioner further contended that the memo of charge drawn against the petitioner would clearly demonstrate that only allegation against the petitioner was to the effect that the questioned vigilance case had been instituted against him on the charges of demand of illegal gratification to extend undue cooperation in favour of one of the parties in Kudhani P.S. Case No. 24/2015 instituted under Section 135 of the Electricity Act. The entire departmental proceeding was conducted against the petitioner primarily for the same set of charges and on the basis of the same evidence as was involved in the questioned vigilance case. Thus, in any circumstances the departmental proceeding was required to be kept in abeyance till conclusion of the criminal case instituted against the petitioner. In this regard, reliance has also been placed on the decisions rendered by the Apex Court in the case of *Kusheshwar Dubey vs. M/s Bharat Coking Coal Ltd. & Others [AIR 1988 SC 2118]* as also in *M. Paul Anthony v. Bharat Gold Mines Ltd. & Anr [(1999) 3 SCC 679]*.

6. Irrespective of the aforesaid facts and the settled



legal position, the departmental proceeding was initiated against the petitioner and concluded in the most mechanical, illegal and arbitrary manner. Nonetheless the Deputy Inspector General of Police, Shahabad Zone vide its letter dated 11.07.2019 bearing Memo No. 1596 has directed to keep the departmental proceeding in abeyance; with a further clarification that in course of departmental proceeding the petitioner be also afforded an opportunity to cross examine the witnesses. It is the case of the petitioner that none of the witnesses had been produced during the course of enquiry before the petitioner in order to enable him to cross examine. The petitioner had also indicated as to how the Enquiry Officer had only reproduced the depositions of the prosecution witnesses from post-trap memorandum and pre-trap memorandum pertaining to Vigilance Case No. 64/2017 and thus the entire proceeding against the petitioner had been conducted in a blatant disregard and violation of the principles of natural justice as well as the provisions contained under Rule 17 of the Rules, 2005.

7. While highlighting the infirmities in the disciplinary proceeding, learned Advocate for the petitioner further contended that the highhandedness on the part of the concerned respondent would also manifest from the very fact that no



Presenting Officer had been appointed and despite this fact the Enquiry Officer proceeded in the enquiry and submitted its report by only referring to the written depositions of the members of the raiding team of the Vigilance Investigation Bureau and in fact on the basis of the said deposition statement alone the charges levelled against the petitioner had been stated to be proved whereas there is no discussion of the evidence or any other material as well as the explanation of the petitioner which manifestly demonstrates the complete lack of application of mind. The action on the part of the Enquiry Officer in not allowing the petitioner to examine or to cross examine any of the witnesses clearly goes to the root of the matter and vitiates the entire proceeding, is the contention of the learned Advocate for the petitioner.

8. Learned Advocate further drew the attention of this Court to the impugned order of inflicting punishment of dismissal and vehemently contended that there had been absolute no consideration of the explanations submitted by the petitioner in relation to the charges levelled against him. The petitioner was neither the Investigating Officer nor the Supervising Officer in relation to Kudhani P.S. Case No. 24/2015 and, as such, he had no role to play but these facts were



not taken note of while passing the final order. The order of the Appellate Authority in rejecting the appeal preferred by the petitioner against the order of punishment of dismissal from service is also completely untenable as the same has been passed without taking note of the points raised by the petitioner in the appeal preferred by him. On these counts alone, both the impugned order of dismissal as well as the appellate order are fit to be quashed by this Court.

9. *Per contra*, the learned Government Pleader while refuting the submissions advanced on behalf of the petitioner has submitted that the petitioner was caught red handed while accepting illegal graft of Rs.50,000/- leading to institution of Vigilance P.S. Case No. 64/2017. After the arrest of the petitioner, he was immediately suspended in contemplation of departmental proceeding. Mr. Ajay Prasad, the Deputy Superintendent of Police was made the Conducting Officer whereas the ASI, Vinit Jha was appointed as Presenting Officer vide Memo No. 3252 dated 31.1.2017. In course of the departmental enquiry, the Enquiry Officer recorded the statement of all the witnesses who have fully supported the charge of accepting bribe. The petitioner has submitted his show cause explanation and on consideration of all the materials, the



Enquiry Officer has found the charges levelled against the petitioner are true.

10. It is the contention of the learned Advocate for the State that the departmental proceeding and the judicial proceeding are separate in nature and both can run separately. Thus, there was no reason or occasion to stay the departmental proceeding. After careful perusal of the materials available in the departmental proceeding and on being found the charges proved in the enquiry, the disciplinary authority i.e., the Deputy Inspector General of Police rightly passed the order of dismissal of the petitioner from police service. The order of dismissal of the petitioner was also affirmed by the Appellate Authority. Moreover, there is no infirmity in the departmental proceeding and the order of dismissal is based upon the statement of the witnesses and the documentary evidence and, as such, the impugned orders do not require any interference.

11. This Court has given anxious consideration to the submissions advanced on behalf of the learned Advocates for the parties and also perused the materials available on record.

12. Indisputably, the petitioner was holding the post of Sub Inspector of Police in the services of the Bihar Police and, as such, it is the Deputy Inspector General of Police, Shahabad



Zone, who was the disciplinary authority in the case of the petitioner. The prescription contained under Rule 16(1) of the Rules, 2005 prescribes that the Government or appointing authority or any authority to which the appointing authority is subordinate or any other authority empowered by the general or special order of the government may institute a departmental proceeding against any government servant. The issue as raised before this Court has been elaborately dealt with by a Bench of this Court in the case of ***Uday Pratap Singh vs. The State of Bihar and Others [2017(4) PLJR 195]*** wherein the learned Court taking note of the relevant prescriptions of the the Rule 16(1) of the Rules, 2005 has summarized that a disciplinary proceeding can only be initiated by an authority competent to do so. Referring to rule 2(f) and 2(j) qua rule 16 of the Rules, 2005 held as follows:-

“29. A careful reading of the three provisions leaves no room for confusion that it is either the appointing authority or any authority authorized by it or an authority authorized by special or general order, who would be competent to initiate a disciplinary proceeding against a Government servant.

30. In so far as the case in hand is concerned it is the Senior Superintendent of Police, Patna who has initiated the proceeding against the petitioner by service of charge memo placed at Annexure-6 and which also directs the



petitioner to file his reply before the Senior Superintendent of Police but then in absence of any authorization given to the Senior Superintendent of Police either under the Bihar Police Manual or by the Inspector General of Police being the appointing authority or the Deputy Inspector General of Police being the Disciplinary Authority to initiate the process, the very initiation is without jurisdiction.

31. The judgment of the Supreme Court rendered in the case of B.V. Gopinath (supra) lays down the law on the issue of initiation of a disciplinary proceeding by a competent authority. Mr. Anjani Kumar though made reference to an unreported judgment rendered by a Coordinate Bench of this Court in CWJC No. 15687 of 2015 (Shailendra Kumar vs. The State of Bihar) to submit that a clear distinction has been made by the Bench in between the provisions of Rules 14 and 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 which fell for consideration before the Supreme Court qua the provisions of "the Disciplinary Rules" which are in consideration before this Court as well as on the judgment of the Supreme Court rendered in the case of Prabhash Chandra Mirdha (supra), to canvass that a proceeding can be initiated by an authority other than the Disciplinary Authority but in my opinion the reliance would be of no help to the respondents."

13. In the case in hand, the very decision taken by the Superintendent of Police, Kaimur to initiate the departmental proceeding against the petitioner without getting any approval of the disciplinary authority/appointing authority as also the



issuance of show cause notice, in the opinion of this Court, is certainly in transgression of Rule 16(1) of the Rules, 2005 which has been discussed hereinabove.

14. Further, Rule 17 of the Rules, 2005 prescribed the procedure for imposing major penalties. Rule 17(4) of the Rules, 2005 obligates the disciplinary authority to deliver the Government Servant a copy of the articles of charge, such statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the Government Servant to submit a written statement of his defence. Rule 17(5) (a) clearly stipulates that on receipt of the written statement of the defence, the disciplinary authority may himself enquire into such of the articles of charge which are not admitted, or, if it thinks necessary to appoint under sub-rule (2) of this Rule, an enquiry authority for the purpose he may do so. Rule 17(5)(c) clearly says that where the disciplinary authority itself enquires into any article of charge or appoints an inquiring authority for holding an enquiry about such charge, it may, by an order, appoint a government servant or a legal practitioner to be known as the Presenting Officer to present on his behalf the case in support of the articles of charge.



15. This Court has gone through the impugned order of punishment of dismissal, however save and except the averments in the counter affidavit that a Presenting Officer was appointed vide Memo No. 3252 dated 31.10.2017 (Annexure-D to the counter affidavit), there is nothing on record which demonstrates, what role he played in the disciplinary proceeding. This Court is conscious of the fact that mere non-appointment of the Presenting Officer is no ground to set aside the enquiry but it is true that in absence of Presenting Officer if the enquiry authority plays role of the Presenting Officer, the enquiry would be certainly invalid, as has been held by the Hon'ble Supreme Court in the case of ***Union of India vs. Ram Lakhan Sharma, (2018) 7 SCC 670***. With utmost regard to the aforementioned proposition of law, it would be pertinent to observe that in the case in hand the disciplinary proceeding was conducted under Rules, 2005 which categorically prescribes the provision for appointment of Presenting Officer and its role. An empty formality of appointment of Presenting Officer would definitely akin to non appointment of the Presenting Officer as this Court does not find any opinion of the Presenting Officer and his role to prove the articles of charge. Time without number the highest Court of the land in catena of judgments has



highlighted the role of an Enquiry Officer.

16. The Enquiry Officer is a *quasi* judicial authority; he, therefore, must perform his functions fairly and reasonably which is otherwise the requirement of principles of natural justice. The Hon'ble Supreme Court in the case of ***State of Uttar Pradesh vs. Saroj Kumar Sinha, [(2010) 2 SCC 772]*** while highlighting the role of the Enquiry Officer has held that being a quasi judicial authority in the position of an independent adjudicature the Enquiry Officer is not supposed to be a representative of the Departmental/disciplinary authority/ Government. His function is to examine the evidence presented by the Department even in the absence of the delinquent official to see as to whether un rebutted evidence is sufficient to hold that the charges are proved. The very object of the rules of natural justice which are required to be observed to ensure not only that justice is done but is manifestly seen to be done, is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.

17. Though the impugned order inflicting punishment of dismissal places reliance upon statement of pre and post trap memorandum witnesses but the facts admittedly demonstrate



that the petitioner has never been afforded an opportunity to cross examine the witnesses. Notwithstanding, the fact, the Deputy Inspector General of Police, Shahabad Zone vide its letter dated 11.07.2019, copy of which is marked as Anneuxre-10 to the writ petition, has directed to keep the departmental proceeding in abeyance, since for the same set of charges, Vigilance Case had been instituted against the petitioner. Furthermore, the Deputy Inspector General of Police, Shahabad Zone taking note of the explanation furnished by the petitioner has indicated in the said letter that in course of departmental proceeding the delinquent be also afforded an opportunity to cross examine the witnesses but the direction of the disciplinary authority has not been adhered to. It would also be relevant to take note of Rule 17(14) which obliges the Enquiry Officer that after examination of the witnesses by or Presenting Officer he or they may be cross examined or on behalf of the Government Servant.

18. This Court also finds force in the submission of the learned Advocate for the petitioner that depositions of the examination of the witnesses in the enquiry were verbatim from the post and pre Vigilance Case No. 64/2017 instituted against the petitioner; thus in the opinion of this Court in not allowing



the petitioner to examine or to cross examine the witnesses would certainly goes to the root of the matter and invalidate the entire proceeding. There is no conflict with the settled position that for the same cause of action, both the departmental as well as criminal proceeding may continue simultaneously. Nonetheless, if the departmental proceeding and the criminal case are based on identical and similar set of facts and charges in the criminal case against the delinquent employee is of a grave nature which involves complicated question of law and fact it would be desirable to stay the departmental proceeding till conclusion of the criminal case. The Hon'ble Supreme Court in the case of ***Kusheshwar Dubey*** (*supra*) has observed that if the criminal trial as well as the disciplinary proceeding are based upon the same set of facts and/or it can very well said that imputation in the disciplinary proceeding as well as in the criminal trial are similar if not identical, the departmental proceeding are liable to be stayed. Reiterating the aforesaid proposition of law, the Hon'ble Supreme Court in the case of ***Capt. M. Paul Anthony*** (*supra*) has ruled as follows:

“(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the



criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the Departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest."



19. However, this Court will not go into the issue of continuance of the proceeding on the same set of facts and the evidence for the simple reason that once the very initiation of the departmental proceeding is questioned and held to be bad since its inception, it does not get sanctified at a later stage. There is no quarrel to the settled legal proposition that a subsequent action cannot validate an action which was not lawful at its inception for the reason that illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironic to permit a person to rely upon a law, in violation of which he has obtained the benefits.[vide: *State of Orissa vs. Mamta Mohanty, (2011) 3 SCC 436*]

20. In the cases of *U.P. State Road Transport Corporation vs. Vinod Kumar, [(2008) 1 SCC 115]* and in *Union of India vs. Gyan Chand Chattar [(2009) 12 SCC 78]*, the highest Court of the land has observed that charge of corruption in a disciplinary proceeding requires to be proved to the hilt as it brings civil as well as criminal consequences upon the employee concerned. He would be liable to be prosecuted and would also be liable to suffer severest penalty awardable in such cases. Therefore, such a grave charge of quasi criminal



nature was required to be proved beyond any shadow of doubt and to the hilt. In a case of such nature, there cannot be any other punishment than dismissal.

21. This Court has also gone through the impugned order of dismissal as well as the appellate order. There is absolutely no consideration of the explanations submitted by the petitioner in relation to the charges levelled against him and his submission indicating various infirmities and illegalities in defiance with the provisions contained in Rule 17 of the Rules, 2005 as well as the judicial pronouncements of the Hon'ble Supreme Court. Moreover, the discussion, hereinabove, would manifestly confirm that the orders impugned are based on a proceeding which suffers from multiple statutory violation where the orders put to challenge, were founded on the proceeding which defaults on the mandatory prescribed procedure, the entire proceeding stands vitiated for once the foundation on which the orders are resting is removed, the edifice built thereon has to collapse [vide; ***Uday Pratap Singh (supra)***].

22. In view of the aforesaid settled legal proposition and the discussions made hereinabove, this Court has no hesitation to set aside both the orders passed by the disciplinary



authority as well as the appellate order as contained in Memo No. 2228 dated 16.09.2020 as also the order dated 28.01.2021 and other consequential order and remit the matter to the Competent Authority to take a fresh decision in terms with the relevant prescriptions of the Rules, 2005, if so advised. On account of the impugned orders having been set aside, the necessary consequences shall follow with reinstatement of the petitioner along with other benefits.

23. The writ petition stands allowed with the aforesaid observations.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	
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