

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1846 of 2021

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Rashmi Rekha Daughter of Raj Nath Prasad Choudhary Resident of Village-
Bari Yusufpur, P.O. and P.S. Industrial Ara, Hajipur, District- Vaishali, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Department of Home, Government of Bihar, Patna.
3. The Director- General of Police, Sardar Patel Bhawan, Government of Bihar, Patna.
4. The Director General of Police (Training), Sardar Patel Bhawan, Government of Bihar, Patna.
5. The Additional Director General of Police (Special Branch), Sardar Patel Bhawan, Government of Bihar, Patna.
6. The Inspector General of Police (Training) Sardar Patel Bhawan, Government of Bihar, Patna.
7. The Superintendent of Police (A) Special Branch, Sardar Patel Bhawan, Government of Bihar, Patna.
8. The Commandant, Bihar Military Police- 5, Patna.
9. The Dy. Superintendent of Police (A), Muzaffarpur.
10. The District Special Branch Officer (D.S.B.O.), Vaishali presently posted as Dy. Superintendent of Police (Special Branch), Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Vinay Ranjan, Adv. Mr. Prashant Shekhar, Adv.
For the Respondent/s	:	Mr. Sheo Shankar Prasad, SC 8

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 08-07-2025

Heard the parties.

2. The petitioner is aggrieved with the order contained in Memo no. 1983 dated 31.05.2019 (Annexure-14) by which the petitioner was inflicted with the punishment of forfeiture of two increments, equivalent to three black marks. The appeal preferred against the impugned order also came to be rejected



vide order dated 16.07.2019 contained in Memo No. 2553 issued by the Deputy Inspector General of Police. The aforesaid order is also put to challenge.

3. The short facts which led to filing of the present writ petition are in a limited bound. The petitioner while working as Railway Intelligence Officer, she was subjected to a departmental enquiry by issuance of a show cause notice. The petitioner was also placed under suspension in contemplation of a departmental proceeding. A show cause notice was further served upon her to file her reply, however, without any memo of charge and, in the meanwhile, the Enquiry Officer and the Presenting Officer were also appointed. On request made by the petitioner, the conducting officer has made available the memo of charge to the petitioner. It is alleged that despite her transfer order being passed and on being relieved from the Special Branch, Hajipur to Muzaffarpur, she did not join on the transfer place and, thus, the aforesaid fact shows her deliberate disobedience to the order of the superior officials.

4. The petitioner fully participated in the departmental proceeding and submitted her detailed explanation denying all the charges. The Enquiry Officer finally submitted the enquiry report on being found the charge stands proved. The petitioner



was served with second show cause notice along with the enquiry report, which was duly responded by the petitioner, however, the same did not find favour. Accordingly, the impugned order came to be passed. The appeal preferred by the petitioner also came to be rejected by the appellate authority.

5. Mr. Vinay Ranjan, learned Advocate for the petitioner, assailing the impugned order has straightaway taken this Court through the enquiry report and submitted that the show cause explanation of the petitioner was duly accepted by the Enquiry Officer that she had never been served with the transfer and the relieving order but surprisingly the Enquiry Officer has returned the finding of guilt. The report is also based on incorrect facts that the petitioner has failed to bring to the knowledge of the superior officials regarding her illness. However, the fact is that she has submitted two medical certificates regarding her illness; firstly on 03.07.2018 and further on 21.07.2018 which was duly received in the office of the Special Branch Office, Hajipur. The impugned order suffers from manifest illegality, besides the same is non speaking and based upon no evidence. It is further contended that the initiation of the departmental proceeding is also actuated with *malafide* as is evident from the Special Branch Order No.



610/2018, whereby the petitioner has been relieved, copy of which has been sent to the Deputy Superintendent of Police, Special Branch, Darbhanga/Vaishali, where there is no such post. The grounds taken in the appeal have also not been considered by the appellate authority, in its right perspective and again a cryptic and non speaking order is passed.

6. Referring to the decision rendered by the Apex Court in the case of *M.V. Bijlani vs Union Of India & Ors [(2006) 5 SCC 88]*, it is contended that it is true that in judicial proceeding, the guilt can be based on the preponderance of probabilities, but a quasi judicial authorities are expected to consider only the relevant evidence available on record and cannot take into consideration any irrelevant evidence.

7. On the other hand, learned Advocate for the State, Mr. Sheo Shankar Prasad, Standing Counsel No. 8, dispelling the afore noted contention has submitted that there is no error in the departmental proceeding; which led to submission of the enquiry report. The Enquiry Officer, after considering the materials placed during the course of enquiry, has returned the finding of guilt based upon which the petitioner was served with second show cause notice. The explanation of the petitioner did not find satisfactory and accordingly, the impugned order came



to be passed. The challenge to the impugned order also did not find favour and the appeal preferred by the petitioner came to be rejected.

8. It is urged before this Court that while exercising power of judicial review the Court ought not re-appreciate the evidences and taking a view different from that of the disciplinary authority, which was based on the findings of the Enquiry Officer. Furthermore, the punishment imposed upon the petitioner is minor in nature and the period has already gone over.

9. Having considered the submissions set forth by the learned Advocates for the respective parties and the materials available on record, this Court before proceeding any further reminds the limited scope of power of judicial review, which is precisely confined to decision making process and not the decision itself. It would be worth benefiting to encapsulate relevant extract of the decision rendered by the Hon'ble Supreme Court in the case of **SBI Vs. Ajai Kumar Srivastava**, reported in **(2021) 2 SCC 612**, which reads 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. When the disciplinary enquiry is conducted for the alleged misconduct against the public servant, the Court is to examine and determine:

- (i) whether the enquiry was held by the competent authority;*
- (ii) whether rules of natural justice are*



complied with;

(iii) whether the findings or conclusions are based on some evidence and authority has power and jurisdiction to reach finding of fact or conclusion.”

10. The Apex Court in **M. V. Bijlani** (supra) while defining the jurisdiction of the Court in exercising the power of judicial review, also underscore the impartial and crucial role of the Enquiry Officer, who acts as a quasi judicial authority. It would be worth benefitting to quote para-25 thereof:

“25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had



not been charged with.”

11. Now coming to the facts of the case, the Enquiry Officer, after conclusion of the enquiry, has specifically given his finding that the petitioner has never been served with the transfer as well as relieving order however his misconduct has been said to be proved only on account of the fact that she failed to bring on record any of the sick leave certificate or prescription showing that she was ill and further she has not taken any action despite oral information given by the Incharge of the District Special Branch Officer. The aforesaid fact also did not find support in view of Anneuxres-P/2 and P/3 wherein this Court *prima facie* finds that the petitioner has already submitted her application for medical leave along with medical prescriptions of the doctor which facts also stood corroborated with the deposition of Vinay Kumar Ray.

12. In view of the discussions above noted, *prima facie*, it appears, necessary facts have been overlooked by the disciplinary authority as well as the appellate authority, which clearly shows non application of mind, on their part. The quasi judicial authorities are expected to consider relevant evidence and to ignore irrelevant materials. In the interest of justice, this Court finds that the necessary facts, including the sick leave certificates, are



required to be looked into afresh. Accordingly, both the impugned orders dated 31.05.2019 contained in Memo no. 1983 (Annexure-14) and dated 16.07.2019 contained in Memo No. 2553 stand set aside. The matter is relegated to the authority concerned to proceed afresh, if so desire.

13. The writ petition stands allowed.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	
CAV DATE	
Uploading Date	15.07.2025
Transmission Date	

