

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.819 of 2021

Sanjay Kumar No. 2, Son of Shri Keshav Mahto, Resident of village-Khutkhat, P.S. - Sikandara, District- Jamui (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar through the Home Secretary, Government of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The ADG, (Law and Order), Bihar, Patna.
4. The DIG (Central Range), Gaya.
5. The Superintendent of Police, Nawada.
6. The ASP (Abhiyan), Nawada.
7. The DSP (Reserve), Police Line, Nawada.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Subodh Kumar Jha, Advocate Mr. Pranav Kumar Jha, Advocate
For the Respondent/s	:	Mr. Suman Kumar Jha, AC to AAG- 3

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT

Date : 06-03-2025

Heard Mr. Subodh Kumar Jha, learned Advocate for the petitioner and Mr. Suman Kumar Jha, learned Advocate for the State.

2. The petitioner is aggrieved with the order issued under the signature of the Superintendent of Police, Nawada, as contained in Memo No. 3344 dated 05.08.2019, whereby the services of the petitioner from the post of Sub-Inspector of Police came to be dismissed. The petitioner also assailed the order dated 16.04.2020, passed by the Additional Deputy General of Police (Law and Order), Bihar, Patna by which the



appeal preferred by the petitioner before the Director General of Police, Bihar, Patna also stood rejected. During the pendency of the writ petition, the Memorial preferred by the petitioner also came to be rejected vide order dated 28.07.2022, which also put to challenge by filing an interlocutory application, bearing I.A. No. 1 of 2022.

3. Shorn of lengthy details, the materials available on record disclosed that while the petitioner was posted as Sub-Inspector of Police, Sirdala Police Station, Nawada, he was made incharge of Station House Officer of Sirdala Police Station on 21.12.2018. On 22.12.2018, a Special raid was conducted with the help of Special Team at village Bithia, in course of special drive to implement complete prohibition of liquor. In course of raid, two persons were apprehended with their respective motorcycles, carrying illicit liquor, and brought to the police station. Later on, both the apprehended persons were released by the petitioner, this led to issuance of a show-cause notice, containing Memo of Charge alleging therein that during the course of raid by a Special Team, two persons were apprehended with their respective motorcycles and from their possession 25-30 litres of illicit liquor was recovered from a sack, which was destroyed by the Special Team. 3-4 litres of



illicit liquor, was also recovered from the dickey of the motorcycles, that was seized along with the motorcycles. Both the accused persons and the motorcycles were brought to the police station, but the petitioner, who was holding the post of officer-in-charge of the concerned police station released the apprehended persons without institution of the F.I.R. and the preparation of seizure list, only on their personal bond. The Memo of Charge (प्रपत्र 'क') contains the list of documents as well as list of witnesses. By the said letter itself, the Conducting Officer as well as Presenting Officer were appointed.

4. On receipt of Memo of Charge, the petitioner submitted his show-cause before the Conducting Officer and while refuting all the imputations, pleaded to exonerate him from the charges. During the enquiry, the Conducting Officer has recorded evidence of all the witnesses and after completing the enquiry submitted its report finding all the charges proved against the petitioner. The Superintendent of Police, Nawada agreeing with the finding of the conducting officer recommended for dismissal of the petitioner from the services to the Deputy Inspector General of Police and directed the petitioner to submit his explanation within a period of ten days. Pursuant thereto, the petitioner submitted his detailed



explanation/reply, but the same did not find any favour and the petitioner is inflicted with the punishment of dismissal.

5. Aggrieved, the petitioner preferred appeal, bearing Appeal No. 19 of 2020, before the Appellate Authority (Director General of Police, Patna) on 04.04.2019. The said appeal was transferred to Additional Director General (Law and Order), Bihar, Patna to consider and pass an order; accordingly, the appeal came to be heard and rejected vide order dated 16.04.2020.

6. Learned Advocate for the petitioner assailing the impugned orders contended that the Superintendent of Police, Nawada was neither the appointing authority nor the disciplinary authority of the petitioner and thus not the competent authority, had the jurisdiction to issue Memo of Charge as well as to make recommendation for dismissal of the petitioner from service. It was only the respondent no.3, Deputy Inspector General of Police, Magadh Range, Gaya, who was the competent authority. The petitioner had never been asked to participate in the entire departmental proceeding, except on the date of evidence of one police Inspector and two other witnesses. The Conducting Officer has recorded the evidence of all the constables behind the back of the petitioner and he has



not been allowed any opportunity to cross-examine the witnesses. The Conducting Officer did not follow the prescription for imposing major penalty, as enumerated under Sub-Rule 11 to 15 of Rule 17 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Rules, 2005'), apart from complete transgression to Rule 18 and 26 of the Bihar Police Manual.

7. The Conducting Officer failed to record any reason and finding based upon which the allegation against the petitioner said to be proved; the entire enquiry was conducted in a mechanical manner. The impugned order of dismissal also reflects no application of mind and only reiterated and re-affirms the enquiry report. There is no consideration of the show-cause reply of the petitioner. The appeal preferred by the petitioner before the respondent no.2 was to be decided by him only and the transfer of appeal to respondent no.4 and rejection thereof by respondent no.4 is wholly without jurisdiction. The petitioner in his written defence statement and explanation has categorically stated that he had never been informed of keeping 3-4 litres of illicit liquor in the dicky of the motorcycle and the enquiry officer as well as disciplinary authority proceeded only on presumption and hypothesis.



8. The order passed on the Memorial of the petitioner is also nothing, but a mere formality and thus came to be rejected in a most mechanical manner. There is no discussion as to how the allegation made against the petitioner stands proved, apart from no consideration of the grounds raised by the petitioner.

9. To support the aforementioned contention, learned Advocate for the petitioner also placed reliance upon the relevant provisions of Rules, 2005 as well as Bihar Police Manual, 1978 as well as various decisions of the Hon'ble Supreme Court.

10. Dispelling the aforementioned contention, learned Advocate for the State has contended that in respect to the charges, specifically mentioned, hereinabove, an enquiry was conducted at the level of Circle Inspector, Rajauli, who submitted his report on being found the petitioner guilty under Memo No. 1824/18 dated 23.12.2018, which led to suspension of the petitioner and issuance of Memo of Charge (प्रपत्र 'क'). The Superintendent of Police, being the disciplinary authority was the competent authority to issue Memo of Charge and on receipt of the enquiry report, having found the charges proved, he rightly recommended for dismissal of the petitioner. The order



of dismissal had been passed by the Deputy Inspector General of Police, Magadh Range, Gaya vide Memo No. 1498 dated 01.08.2019, which was later on communicated to the petitioner by the Superintendent of Police, Nawada vide Memo No. 3344 dated 05.08.2019. The Appeal as well as Memorial preferred by the petitioner also did not find any favour and came to be rejected. During enquiry, the witnesses were examined by the Conducting Officer in presence of the petitioner, but the delinquent petitioner refused to cross-examine the witnesses and he acknowledged this fact by putting his signature in the deposition of the witnesses. The petitioner was accorded sufficient opportunity of hearing at all the stages and the impugned order of dismissal has been passed considering the show-cause explanation of the petitioner and after all deliberation and discussions of the materials available on record.

11. This Court has heard the learned Advocate for the respective parties and also meticulously perused the materials available on record. Certain facts are admitted that on the alleged date of incidence, the petitioner was working as incharge SHO of Sirdala police station. The petitioner was not the party to the raid, the two accused persons and the motorcycles were apprehended and seized by the raiding party,



who are the witnesses to the enquiry. After going through their depositions, all of them have reiterated and re-affirmed their statement that on 22.12.2018 in course of raid two persons, who were moving on motorcycles were chased and apprehended; from their possession 25-30 litres of illicit liquor was recovered from a sack, which was destroyed in the forest itself. 3-4 litres of illicit liquor was also found in the dicky of one of the motorcycle. The apprehended persons were brought to Sirdala police station through a Police Van, whereafter both the apprehended persons and the motorcycles along with the liquor kept in the dicky were handed over to the Munshi of the Police Station, where ASI Devendra Kumar was also present. None of the witnesses examined by the Conducting Officer has whispered about the presence of the petitioner either at the time of raid or handing over of the accused persons with their motorcycle and illicit liquor. Neither the Munshi of the Sirdala Police Station nor the ASI Devendra Kumar were examined in support of the charges or to controvert the explanation of the petitioner that when he returned back to Sirdala Police Station at around 7.30 P.M. after attending a crime meeting, headed by the Superintendent of Police, Nawada, it was only told by the raiding party that liquor recovered has been destroyed and



moreover even the seizure list dated 22.12.2018 does not disclose any recovery of liquor from the dickey of the motorcycle. Since the petitioner was having no knowledge about the liquor seized from the dickey of the motorcycle; in the said premise, he sought an opinion from the Superintendent of Police, Nawada and ASP Abhiyan, Nawada and on their instruction, the apprehended persons were released.

12. Admittedly the petitioner was holding the post of Sub-Inspector of Police and thus it is the Deputy Inspector General of Police, who is the appointing authority as well as disciplinary authority of the petitioner. Rule 17(2) of the Rules, 2005 clearly postulates that wherever the disciplinary authority is of the opinion that there are grounds for inquiring about the truth of any imputation of misconduct or misbehaviour against a government servant, he may himself inquire into it, or appoint under these Rules an authority to inquire about the truth thereof.

13. Sub-Rule 3 thereof obligates the disciplinary authority to draw up or cause to be drawn up, the substance of the imputations of misconduct or misbehaviour as a definite and distinct article of charge; a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contains a list of such document by which, and a list



of such witnesses by whom, the articles of charge are proposed to be sustained by him.

14. The issue regarding initiation of a disciplinary proceeding under the order of the Superintendent of Police, while the disciplinary authority of the Sub-Inspector is the Inspector General of Police and thus the very initiation of proceeding by an authority, who is not competent to do so and illegal has come up for consideration before a learned Bench of this Court in the case of **Uday Pratap Singh Vs. The State of Bihar & Ors.**, reported in **2017(4) PLJR 195**. The learned Court having considered the Rule 2 (f) and 2 (j) and 16 of the Rules has been pleased to observed that it is only 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. The learned Bench of this Court while holding the aforesaid proposition has reiterated the ratio laid down by the Apex Court in the case of **Secretary, Ministry of Defence Vs. Prabhask Chandra Mirdha**, reported in **AIR 2012 SC 2250** whereby the Hon'ble Court held in no uncertain terms "that charge-sheet cannot generally be a subject-matter of challenge as it does not adversely affect the rights of the



delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings.” Referring to the facts of the case, the learned Court has crystallized that 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.

15. In the case in hand, the position is identical to that of Uday Pratap Singh, to the extent there is no authorization given to the Superintendent of Police, Nawada under the Bihar Police Manual nor any direction of the disciplinary or appointing authority to initiate process.

16. Now coming to the impugned order, this Court finds that although explicitly all the charges, defence statement of the petitioner, opinion of the Presenting Officer and the report of the Conducting Officer, but unfortunately there is no



discussion of the show-cause reply filed by the petitioner, all the more no reason has been assigned as to why the show-cause explanation filed by the petitioner did not find favour. The Superintendent of Police, Nawada while communicating the order of punishment under Memo No. 3344 dated 05.08.2019 has informed the decision of the Deputy Inspector General of Police. The said order only states that after thorough examination and analysis of the materials as well as recommendation of the Superintendent of Police, the disciplinary authority finds that the charges against the petitioner is of serious in nature, which stood proved by the Conducting Officer, hence inflicted the punishment of dismissal from service, basing upon the enquiry report and the recommendation. The similar is the order of the Appellate Authority, who only narrated the original order of punishment and rejected the Memo of Appeal and the Memorial also came to be rejected without assigning any reason as to why the grounds raised therein did not find favour.

17. A quasi judicial order passed by a quasi judicial authority after giving a show-cause notice must display complete application of mind to the grounds mentioned in the show-cause notice. The importance of giving reason has been



emphasized and explained by the Apex Court in ***Kranti Associates (P) Ltd. v. Masood Ahmed Khan***, (2010) 9 SCC 496. it would be worth benefiting to encapsulate paragraph 47 thereof.

“47. Summarising the above discussion, this Court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually



become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then



it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or “rubber-stamp reasons” is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor [(1987) 100 Harvard Law Review 731-37].)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain [(1994) 19 EHRR 553] EHRR, at 562 para 29 and Anya v. University of Oxford [2001 EWCA Civ 405 (CA)], wherein the Court referred to Article 6 of the European Convention of Human Rights which



requires, “adequate and intelligent reasons must be given for judicial decisions”.

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of “due process”

18. Time without number, the Apex Court as well as this Court has held that the reasons are heart and soul of an order giving insight to the mind of the maker of the order, and that he considered all relevant aspect and eschewed irrelevant aspects. This Court tempted to quote the relevant paragraph of the decision of the learned Division bench of this Court in the case of ***Kems Services Private Limited v. State of Bihar, (2014) 1 PLJR 622***, which reads as follows:

“11. Natural justice is a word of very wide connotation. It cannot be put in any straight jacket formula. Its applicability shall depend on facts of each case. It cannot mean only fulfillment of the formality for giving of a show cause notice and acceptance of a reply. The final order must display complete application of mind to the grounds mentioned in the show cause notice, the defence taken in reply,



followed by at least a brief analysis of the defence supported by reasons why it was not acceptable. To hold that the cause shown can be cursorily rejected in one line by saying that it was not satisfactory or acceptable in our opinion shall be vesting completely arbitrary and uncanalised powers in the authority. In a given situation if the authority concerned finds the cause shown to be difficult to deal and reject, it shall be very convenient for him not to discuss the matter and reject it by simply stating that it was not acceptable. The giving of reasons in such a situation is an absolute imperative and a facet of natural justice. Reasons have been held to be the heart and soul of an order giving insight to the mind of the maker of the order, and that he considered all relevant aspect and eschewed irrelevant aspects.”

19. In view of the discussions made hereinabove, this Court is of the view that the impugned order of dismissal passed by the disciplinary authority as well as the order passed in the Appeal and the Memorial are wholly perverse, cryptic and without application of mind in complete violation of the fair play and principles of natural justice, Accordingly, the order issued under the signature of the Superintendent of Police,



Nawada, as contained in Memo No. 3344 dated 05.08.2019, the order dated 16.04.2020, passed by the Additional Deputy General of Police (Law and Order), Bihar, Patna and order dated 28.07.2022 passed in Memorial, are hereby set aside.

20. On account of setting aside all the impugned orders, the consequences shall follow:

21. The writ petition stands allowed. There shall be no order as to cost.

22. The pending application, if any, also stands disposed of.

(Harish Kumar, J)

uday/-

AFR/NAFR	NAFR
CAV DATE	04.02.2025
Uploading Date	07.03.2025
Transmission Date	NA

