

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.13295 of 2016**

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Shashi Ranjan Kumar S/o Late Kedar Nath Prasad resident of Village- Jakki,  
P.S.- Bind, District-Nalanda

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Joint Secretary Department of Home, Govt. of Bihar Secretariate Patna
3. The Director General of Police, Bihar, Secretariat, Patna
4. The Inspector General of Police Bhagalpur Division
5. The Deputy Inspector General of Police, Munger
6. The Superintendent of Police, Sheikhpura
7. The Additional Superintendent of Police, Lakhisarai

... .. Respondent/s

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**Appearance :**

|                      |   |                                    |
|----------------------|---|------------------------------------|
| For the Petitioner/s | : | Mr. Sanjay Sinha, Advocate         |
|                      |   | Mr. Md. Fazle Karim, Adv.          |
|                      |   | Mr. Ashutosh Kumar Upadhyaya, Adv. |
| For the Respondent/s | : | Mr. Sunil Kumar Mandal, SC-3       |
|                      |   | Mr. Bipin Kumar, AC to SC- 3       |

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**CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN**

**ORAL JUDGMENT**

**Date : 15-04-2025**

Heard learned counsel for the petitioner and learned  
counsel for the State.

2. The present writ petition has been filed for the  
following reliefs:-

*(i) For issuance of writ in the  
nature of certiorari for quashing the order  
dated 10.06.2016 issued under the  
signature of Joint Secretary Department of*



*Home by which by which he has dismissed the memorial petition dated 24.02.2015 affirming the dismissal order passed by the disciplinary authorities against this petitioner.*

*(ii) For issuance of writ in the nature of certiorari for quashing the memo no. 2258 dated 31.12.2014 issued under the signature of Inspector General of Police, Bhagalpur Division by which he has dismissed the appeal as filed by the petitioner affirming the order of dismissal as passed by Deputy Inspector General of Police, Munger.*

*(iii) For issuance of writ in the nature of certiorari for quashing the memo no. 1553 dated 23.07.2014 by which petitioner has been dismissed from the service from immediate effect.*

*(iv) For issuance of writ in the nature of command directing the authority concerned to reinstate the petition in his service forth with and give all consequential benefit to him without any delay.*

*(v) For issuance of any other writ/writs, order/orders for which petitioner deemed entitled to.*

3. Learned counsel for the petitioner submits that the



departmental proceeding, the punishment order, the appellate order, and the revisional order were all passed in complete violation of the procedure established under the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as the "CCA Rules, 2005"). He further submits that the disciplinary proceeding is full of bias, as the Additional Superintendent of Police was shown as one of the witnesses in the charge memo, yet the same officer was appointed as the Enquiry Officer. Counsel further submits that from the perusal of the enquiry report, the punishment order, as well as the appellate and revisional orders, it becomes clear that the entire proceeding was conducted in the absence of the Presenting Officer, which is in gross violation of Rule 17(5) of the CCA Rules, 2005. It is also submitted that the points raised by the petitioner were not duly considered, and certain matters which were not part of the explanation were taken into account while imposing the punishment. Therefore, the petitioner seeks the indulgence of this Hon'ble Court to set aside the punishment order, along with the subsequent orders passed in appeal and revision. A copy of the Hon'ble Division Bench's order as well as the enquiry report, appellate, and revisional orders have also been



annexed in the present writ petition for perusal.

4. Learned counsel for the State vehemently opposes the submissions made by the counsel for the petitioner and submits that, vide order dated 18.04.2022, this Hon'ble Court was pleased to direct that the original records be called for. Counsel further submits that the petitioner's claim, that in this case, the Presenting Officer has not been appointed is not correct as from the original record, which he has read before this Court, it is clear that a separate order was passed to appoint the Enquiry Officer. Counsel further submits that from the charge memo, it transpires that in the list of witnesses, the Additional Superintendent of Police has been listed as witness No. 3. It also transpires from the enquiry report that the said report was submitted by the Additional Superintendent of Police. However, he firmly submits that the said witness was never produced before the Enquiry Authority. Therefore, the plea, which has been taken by the counsel for the petitioner that the enquiry was biased is absolutely unsustainable and this argument may not be accepted by this Hon'ble Court.

5. Counsel further submits that, in response to a specific query by this Hon'ble Court as to whether a Presenting Officer had been appointed or not, it is admitted



that no such appointment was made. However, he submits that this issue has been specifically addressed in the supplementary counter affidavit filed in the present writ petition, wherein it has been pleaded that the absence of a Presenting Officer does not vitiate the proceeding particularly in a case where the delinquent has himself accepted the wrong. He further submits that none of the points raised by the counsel for the petitioner are sustainable, and therefore, the writ petition is liable to be dismissed.

6. Upon hearing the parties and perusing the materials available on record, this Court finds two aspects which are very much relevant. Firstly, from the charge memo (Annexure-5), contained in Memo No. 1843 dated 29.11.2013, issued by the Superintendent of Police, Sheikhpura, it is evident that the name of the third witness listed therein is the Additional Superintendent of Police, Sheikhpura. Secondly, from Annexure-13, which is the enquiry report, it transpires that the said enquiry report was submitted by the Enquiry Officer-cum-Additional Superintendent of Police, Sheikhpura, vide Memo No. 1056/14 dated 27.05.2014.

7. Upon perusal of the aforementioned two documents, and particularly in light of the provisions of the



Bihar Police Manual, it transpires to this Court that the disciplinary authority had rightly issued the charge memo. It is the intention of the disciplinary authority by virtue of the charge memo, that the Additional Superintendent of Police shall be one of the witnesses and this charge memo is become public but subsequently, the said witness has been appointed as Enquiry Officer shall definitely create a situation of bias in view of this Court which is not acceptable. As such, this situation is a gross example of bias and procedural mistake, which this Court shall not permit. Though, it is true that the said witness has not been examined in the departmental proceeding and precaution has been taken by the said Enquiry Officer but in the opinion of the Court, the said precaution shall not help the State in any manner.

8. It further transpires to this Court, upon examination of the enquiry report, that no Presenting Officer was appointed during the conduct of the enquiry, which is also a violation of the procedural law and Rules 17(5) & 17(6) of the CCA Rules, 2005. The effect of enquiry in absence of Presenting Officer has been discussed by the Division Bench of this Hon'ble Court in the case of *Upendra Pandit Vs. The State of Bihar & Ors.* decided in *LPA No. 507 of 2017*,



reported in **2023(4) PLJR 568**. Relevant paragraphs 10, 11 & 12 whereof are reproduced as under :-

*10. So far as the facts of the instant case are concerned, on perusal of the charge-sheet in Form-'ka', this Court finds that the same mentions about the charges levelled against the appellant, which are ten in number. It also transpires from the records that as many as fourteen witnesses were examined in support of the charges. However, so far as the contents of the charge-sheet and/or the covering letter dated 27.11.2004 is concerned, the same neither contains the list of documents nor the list of witnesses by which the articles of charges were proposed to be sustained.*

*11. In the opinion of the Court, Rule 17 (3) and (4) of the Rules of 2005 are very clear when they provide that where it is proposed to hold an inquiry against the government servant under the said Rules, the disciplinary authority shall draw up or cause to be drawn up the substance of the imputation of misconduct or misbehaviour in support of each article of charge, the same shall contain a statement of relevant facts, list of documents and list of witnesses by which the articles of charges are proposed to be sustained. Thus, non supply*



*of the list of documents and the list of witnesses to the appellant in the instant case on which the disciplinary authority proposed to sustain the charges levelled against the appellant in the disciplinary proceeding as also the proceeding being conducted without appointment of a Presenting Officer was a clear and serious lapse of the provisions of Rule 17 of the Act of 2005. The requirement of Rule 17 (3) and (4) not having been fulfilled, the order of punishment of dismissal from service of the appellant cannot be sustained. Both the orders of dismissal dated 29.12.2005 and the order dated 30.04.2008 rejecting the appeal preferred by the appellant are both set aside. The order of the learned Single Judge also cannot be sustained and is hereby set aside.*

*12. The appeal is allowed with all consequential benefits. There cannot be a resumption of the enquiry proceedings, from the stage at which the defect is noticed, since by virtue of the appellant having crossed the age of superannuation there exists no employer-employee relationship. In view of the order of dismissal having been passed on 29.12.2005 and the appellant having*



*superannuated from service with the passage of time, although the appellant has not worked, in the facts of the case, it is directed that the appellant will be entitled for 50 percent of his arrears of salary which will be paid to the appellant within a period of four months. The appellant will also be entitled for pension admissible to him as per law and arrears, if any, under this head shall also be paid, fully within four months. It is made clear that in computation of pension, the full salary due to the appellant shall be reckoned as the last pay drawn, despite our limiting disbursement of salary to 50% for the remaining period of service. In case of the petitioner not being paid the amount under any head, for no fault of his, he will be entitled for interest on the total unpaid amount at the rate of 8% p.a. from the date of this order.*

9. In light of the discussion and particularly on those two aspects highlighted above, this Court finds that the entire departmental proceeding has been conducted in gross violation of the procedural law as well as the provisions of the CCA Rules, 2005. Accordingly, the punishment order dated 23.07.2014, the appellate order dated 31.12.2014, and the revisional order dated 10.06.2016 are hereby quashed and set



aside.

10. It is, however, made clear that the respondent authorities are free to conclude the departmental proceeding afresh from the stage issuance of the charge memo by following the due procedure, within six months from the date of receipt/communication of this order.

**(Dr. Anshuman, J.)**

Aman Kumar/-

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| AFR/NAFR          |            |
| CAV DATE          | NA         |
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