

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6524 of 2023

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Shankar Kumar Jha @ Shankar Jha Son of Late Uday Nandan Jha Resident of Mohalla- Shiv Shankar Path, Mithanpura, P.S.- Mithanpura, Dist.- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Director General of Police, Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Additional Director General of Police, Headquarter, Bihar, Patna.
4. The Inspector General of Police, Headquarter, Bihar, Patna.
5. The Inspector General of Police, Muzaffarpur Range, Muzaffarpur.
6. The Superintendent of Police, Vaishali.
7. The Principal Secretary, Home Department, Bihar, Patna.
8. The Joint Secretary, Home (Police) Department, Bihar, Patna.

... .. Respondent/s

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with

Civil Writ Jurisdiction Case No. 17097 of 2019

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Shankar Kumar Jha Son of Uday Nandan Jha Resident of Mohalla- Shiv Shankar Path, Mithanpura, P.S.- Mithanpura, Dist.- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Director General of Police, Bihar, Patna.
2. The Director General of Police Bihar, Patna.
3. The Additional Director General of Police Crime Investigation Department, Bihar, Patna.
4. The Director General of Police State Crime Record Bureau cum Modernization cum Technical Services, Bihar, Patna.
5. The Inspector General of Police (Budget/Appeal/ Welfare) Bihar, Patna.
6. The Inspector General of Police Muzaffarpur Zone, Muzaffarpur.
7. The Deputy Inspector General of Police Muzaffarpur Range, Muzaffarpur.
8. The Superintendent of Police Vaishali.
9. The Principal Secretary Home Department, Bihar, Patna.
10. The Joint Secretary Home (Police) Department, Bihar, Patna.

... .. Respondent/s

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with

Civil Writ Jurisdiction Case No. 7335 of 2023



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Shankar Kumar Jha Son of Late Uday Nandan Jha, Resident of Mohalla- Shiv
Shankar Path, Mithanpura, P.S.- Mithanpura, Dist- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Director General of Police, Bihar, Patna.
2. The Director General of Police, Patna.
3. The Additinal Director General of Police, Headquarter, Bihar, Patna.
4. The Inspector General of Police, Headquarter, Bihar, Patna.
5. The Principal Secretary, Home Department, Bihar, Patna.
6. The Joint Secretary, Home (Police) Department, Bihar, Patna.
7. The Commandant, Bihar Special Armed Force, Bhimnagar, Supaul.

... .. Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 6524 of 2023)

For the Petitioner/s : Mr. Vinay Ranjan, Adv.
Mr. Prashant Shekhar, Adv.
Mr. Raju Kumar, Adv.
For the Respondent/s : Mr. P.K. Verma, AAG-3
Ms. Divya Verma, AC to AAG-3
Mr. Mankeshwar Tiwari, AC to AAG-3

(In Civil Writ Jurisdiction Case No. 17097 of 2019)

For the Petitioner/s : Mr. Vinay Ranjan, Adv.
For the Respondent/s : Mr. Md. Nadim Seraj, GP-5
Ms. Shalini, AC to GP-5

(In Civil Writ Jurisdiction Case No. 7335 of 2023)

For the Petitioner/s : Mr. Vinay Ranjan, Adv.
For the Respondent/s : Mr. Sheo Shankar Prasad, SC-8
Mr. Sanjay Kumar, AC to SC-8

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT

Date : 11-09-2025

All these three writ petitions filed by the petitioner are
inextricably linked with each other, hence they are being heard
together and disposed off by this common order.

2. The writ petition bearing CWJC No. 6524 of 2023
was filed seeking issuance of writ in the nature of mandamus,
directing the concerned respondents to grant promotion to the



petitioner in the rank of Deputy Superintendent of Police (hereinafter referred to as, “DSP”) from the rank of Police Inspector on the ground of his exoneration in the Departmental Proceeding No. 33 of 2016, with all consequential benefits with effect from the date when it was found due.

3. During the pendency of the writ petition, vide Memo No. 112 dated 12.02.2024, issued under the signature of Director General of Police, Bihar, Patna the order passed by the Disciplinary Authority-cum-Inspector General of Police, Tirhut Range, Muzaffarpur exonerating the petitioner in Disciplinary Proceeding No. 33 of 2016 has been reviewed, by exercising the power under Rule 853 A of the Bihar Police Manual and further directed the Inspector General of Police, Tirhut Range, Muzaffarpur to re-conduct the departmental proceeding against the petitioner. The petitioner being aggrieved with the order, aforementioned, to the extent it affects the right and entitlement of the petitioner has questioned the same by filing an interlocutory application bearing I.A. No. 01 of 2024, which came to be allowed on 26.11.2024.

4. Whereas, the CWJC No. 17097 of 2019, came to be filed seeking quashing of the resolution dated 12.03.2019, issued by the Director General’s Board (in short, “DG Board”),



whereby the recommendation made by the Police Headquarter, Bihar, Patna in Letter No. 4841/XP dated 30.06.2016 for promotion to the petitioner from the post of Police Inspector to the rank of DSP, which has been acted upon, has been recalled. Further the Memo No. 626 dated 14.10.2022, issued by the Police Headquarter under the signature of Inspector General of Police (Headquarter), Bihar, Patna whereby, the petitioner was placed under suspension retrospectively with effect from 28.07.2022, is put to challenge by filing CWJC No. 7335 of 2023.

5. The relevant facts leading to institution of all these writ petitions, in brief, are that, while the petitioner was working as an Inspector and as per the gradation list of Inspector cadre, the promotion to the rank of DSP was due; the Zonal Board headed by Zonal Inspector General of Police, Tirhut Zone, scrutinized the service particulars of those Inspectors, whose promotion was under zone of consideration, including the petitioner. A meeting of the Board of Director General was convened for promotion from the post of Police Inspector to the rank of DSP on 27.06.2016. The petitioner was found fit for promotion and accordingly, a recommendation was sent to the Home (Police) Department, Bihar, Patna vide Letter No.



4841/XP dated 30.06.2016. In pursuant, thereto, a DPC was convened on 17.11.2016, and consequently, promotion was granted to the petitioner in the rank of DSP. A notification to this effect under Memo No. 9399 dated 30.11.2016 was issued under the signature of Deputy Secretary to the Government. Later on, the services to the post of DSP was also confirmed with effect from 30.11.2017.

6. Shortly after promotion to the post of DSP, on 04.05.2017, the concerned Superintendent of Police communicated and sent a memo of charge to the Enquiry Officer for conducting departmental proceeding and accordingly, the Enquiry Officer served the charged memo to the petitioner on 11.05.2017 vide Annexure-8/P-41.

7. The Enquiry Officer after conclusion of the proceeding, sent the file to the disciplinary authority vide Annexure-9 dated 12.07.2018. Since at the point of time, the petitioner was working as the DSP, so the file was sent to the Home Department. On receipt of the file, a query was made vide order as contained in Memo No. 7583 dated 29.08.2018, from the Director General of Police (hereinafter referred to as, "DGP") Bihar, Patna with respect to the initiation of the date of the departmental proceeding and the recommendation for his



promotion. On 04.10.2018, the Joint Secretary to the Government in the Department of Home vide Letter No. 8688 took notice of the fact that despite a pending Departmental Proceeding bearing No. 33 of 2016 against the petitioner, the DG Board has made recommendation for promotion of the petitioner for the post of DSP and accordingly, the Departmental Promotion Committee took a decision to promote him on 17.11.2016. Hence, requested the DGP, Bihar to take a decision to revert the petitioner on his earlier post by making an appropriate recommendation, so that the matter can be pressed further before the Departmental Promotion Committee. The petitioner having come to know about the subsequent development, filed a representation before the Principal Secretary, Home Department, Government of Bihar on 24.10.2018, however, to no respite. Finally on 13.03.2019, a meeting of DG Board was called and they took a decision for reverting the petitioner to the post of Inspector after recalling the earlier decision of the DG Board for promotion.

8. The petitioner was asked to submit his defence against the decision of the DG Board, which was duly responded. In the meanwhile, the Departmental Proceeding No. 33 of 2016 culminated into exoneration of the petitioner vide



order as contained in Memo No. 1137 dated 22.05.2020, issued under the signature of Inspector General of Police, Tirhut Range, Muzaffarpur (Annexure-18). On being strengthened by the aforesaid facts, especially the order of exoneration, as aforenoted, the petitioner preferred the writ petition seeking a direction for restoration of his promotion in the rank of DSP.

9. Notwithstanding the aforesaid fact, the Home Department vide its resolution contained in Memo No. 7324 dated 21.07.2022, cancelled the promotion of the petitioner. The aforesaid order led to issuance of Memo No. 626 dated 14.10.2022, issued by the Police Headquarter under the signature of Inspector General of Police, putting the petitioner under suspension retrospectively with effect from 28.07.2022. Subsequent, thereto, during the pendency of the writ petition, the DGP, Bihar, Patna has reviewed the order passed by the Disciplinary Authority-cum-Inspector General of Police while exercising the power under Rule 853 A of the Bihar Police Manual and directed to reconduct the departmental proceeding against the petitioner. However, it would be worth noting that after the challenge being made to the order of the DGP, Bihar legal opinion was sought for by the learned Advocate General, Bihar, Patna and on receipt of his opinion, the DGP, Bihar



cancelled the impugned order contained in Memo No. 112 dated 12.02.2024 on being found the procedural fault, which cannot be countenanced in law.

10. Mr. Vinay Ranjan, learned Advocate for the petitioner taking this Court through the various annexures appended to the writ petitions has submitted that for the first time on 23.10.2016, the Superintendent of Police, Vaishali sent a draft of charged memo against the petitioner to the DIG, Muzaffarpur for approval. However, the same was returned to the Superintendent of Police, Vaishali on the same date with observation and direction that an explanation is required to be asked before initiation of a departmental proceeding. On 14.11.2016, vide Annexure-3 at page 34, the DIG, Muzaffarpur again sent a reminder to the Superintendent of Police, with a direction to send the explanation within three days. In pursuant, thereto, on 16.11.2016, vide Memo No. 10744 dated 16.11.2016, the petitioner was asked to submit his defence within 24 hours against the memo of charge, which was duly responded by the petitioner by filing his defence on 17.11.2016.

11. The defence of the petitioner was sent to the office of the DIG, Muzaffarpur by the Superintendent of Police with the recommendation of censure vide Letter No. 10999 dated



20.11.2016, but, surprisingly, the DIG, Muzaffarpur signed the charge memo on 16.11.2016 and thus, it is apparently an antedated charge memo, which was later on issued by the Superintendent of Police on 18.11.2016. Clarifying the facts, learned Advocate for the petitioner thus submitted that the date on which the DG Board had convened the meeting i.e. on 27.06.2016 for granting promotion from the post of Police Inspector to the post of DSP, as also the date when the DPC was convened i.e. on 17.11.2016, as there was no departmental proceeding pending against the petitioner, hence the decision taken by Home Department or the subsequent recommendation made by the DG Board for reverting the petitioner from the post of DSP to the post of Inspector is wholly illegal, arbitrary and *mala fide*.

12. Mr. Vinay Ranjan, learned Advocate further urged before this Court that the learned DGP, Bihar and the Home Department failed to consider that besides the aforesaid fact, the Conducting Officer has not found the charges proved against the petitioner. These findings have been duly accepted by the disciplinary authority and the petitioner has been exonerated. Hence, in no circumstances, the question would have been arisen to revert the petitioner from the post of DSP. It is further



argued that the order of the DGP, Bihar contained in Memo No. 112 dated 12.02.2024 to the extent whereby, the order of the Disciplinary Authority-cum-Inspector General of Police, Tirhut Range, Muzaffarpur in Disciplinary Proceeding No. 33 of 2016 has been suo moto reviewed after about four years of the said order clearly suggest that the entire disciplinary proceeding had suffered with serious illegalities and the manifest infraction of mandatory prescriptions of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005, (hereinafter referred to as, "Rules, 2005"). Realizing, such mistake, the earlier memo of charge was quashed and directed for a fresh departmental proceeding with the stage of framing of charge. The aforesaid facts make it axiomatic that even the charge memo based upon which the proceeding was initiated has been held to be not in accordance with law. Though subsequently, on the opinion of the Advocate General, Bihar as also in the light of the decision of this Court in the case of *Anjan Kumar Singh Vs. State of Bihar & Ors., (2001) 3 BLJR 1903*, good sense prevailed and the DGP, Bihar cancelled the Memo No. 112 dated 12.02.2024.

13. Learned Advocate for the petitioner further contended that the retrospective suspension in contemplation of



the departmental proceeding is also bad and illegal in absence of any provision under the Bihar Police Manual and the Rules, 2005. The entire action of the respondents, *prima facie*, appears to be *mala fide* and with a view to spit the petitioner and put him under harassment.

14. Per contra, learned Advocate for the State submitted that the date on which, Departmental Promotion Committee has granted promotion to the petitioner on the rank of DSP, a Departmental Proceeding bearing No. 33 of 2016 was lying pending against him. This fact could not be brought to the knowledge of the DPC and thus, the DG Board in its meeting held on 12.03.2019 under the Chairmanship of DGP, Bihar reviewed the earlier decision and withdrew the recommendation for promotion granted to the petitioner, in accordance with law. It is the policy decision of the Department of Personnel and Administrative Reforms, Government of Bihar vide Resolution No. 7457 dated 11.09.2002 not to promote any Government servant eligible for promotion in the case, if any departmental proceeding is pending or effect of punishment is in existence or any criminal matter is pending.

15. It is further urged that admittedly the date on which the petitioner was facing departmental proceeding, he had



been illegally promoted to the post of DSP and, as such, the entire matter ought to be referred before the competent authority, i.e. Home Department for passing necessary order in the said departmental proceeding, hence it was decided by the DGP, Bihar, Patna to review the order of exoneration passed in Departmental Proceeding No. 33 of 2016 and directed for a fresh departmental proceeding by the competent authority. Referring to the order of the DGP, it is further contended that since an erroneous order was passed in the said departmental proceeding, it cannot be considered legal and valid order, hence the petitioner cannot get the benefit of exoneration and accordingly, the DG Board has rightly resolved to revert the petitioner from the post of DSP to the post of Inspector, based upon which the Government of Bihar in the Department of Home has passed the order cancelling the promotion of the petitioner vide order dated 21.07.2022.

16. This Court has bestowed anxious consideration to the submissions advanced by the learned Advocate for the respective parties and meticulously perused the materials available on record.

17. When a power is exercised for an ulterior or with an oblique motive, it amount to *mala fide* and a colourable



exercise of power making the action illegal and void. The Hon'ble Supreme Court in the case of ***Shrisht Dhawan (SMT) Vs. M/s Shaw Brothers, (1992) 1 SCC 534*** observed that; abuse of power or *mala fide* exercise of power, may arise due to overstepping the limits of power or defeating the provisions of statute by adopting subterfuge or the power may be exercised for extraneous or irrelevant considerations. It would be worth noting that; Constitution Bench of the Supreme Court while interpreting the expression "abuse" has observed that it means as misuse, i.e. using his position for something for which it is not intended. That abuse may be by corrupt or illegal means or otherwise than those means. When the action smacks of arbitrariness, which is an abuse of power.

18. Now coming to the case at hand, the question for consideration posed before this Court as to whether the date on which the DG Board had recommended the name of the petitioner for termination and the DPC had taken a decision for promotion as to whether there was a departmental proceeding lying/pending against the petitioner, and thereby justified the impugned order reverting the petitioner from the post of DSP to the post of Inspector.

19. The facts as are manifest from the record and it



has not even been controverted by the respondents that on 23.10.2016, the Superintendent of Police, Vaishali sent a draft of charge memo to the DIG, Muzaffarpur for its approval. However, it was returned by the DIG to the Superintendent of Police, Vaishali with an observation that an explanation is required to be asked for initiation of departmental proceeding against the petitioner. The letter contained in Memo No. 2141 dated 14.11.2016 issued by the DIG, Tirhut Division, Muzaffarpur addressed to the Superintendent of Police, Vaishali clearly reveals that direction has been given to him to send the report with the explanation of the petitioner within three days.

20. In pursuant to the above noted direction, the Superintendent of Police, Vaishali vide Memo No. 10744 dated 16.11.2016 directed the petitioner to submit his explanation within 24 hours against the charges levelled against him. It is categorically averred by the petitioner that in compliance with the said order, he submitted his defence explanation on 17.11.2016 before the Superintendent of Police, Vaishali which was sent to the office of the DIG along with the report of the Superintendent of Police vide Memo No. 10999 dated 20.11.2016 with his recommendation for awarding the punishment of censure.



21. The aforesaid facts clearly persuaded this Court to conclude that till 20.11.2016, the charge memo was not approved at the level of the DIG, Tirhut Division, Muzaffarpur, but surprisingly, the draft of charge memo was approved by putting anti dated signature on 16.11.2016 and sent the copy of the same to the Superintendent of Police, Vaishali vide Memo No. 2153 dated 16.11.2016 and accordingly, got the charge memo issued vide Vaishali District Order No. 1634/16 dated 18.11.2016. The iniquitous move of the DIG, Tirhut Range, Muzaffarpur is nothing but, *prima facie*, actuated with malice, knowing very well the date of DPC was undertaken on 17.11.2016 and thus to, disentitling the petitioner from promotion to the post of DSP, approved the memo of charge by putting anti dated signature on 16.11.2016.

22. There is no confrontation to the settled position that a departmental proceeding is said to have been initiated when a charge memo in a disciplinary proceeding or the charge-sheet in a criminal prosecution is issued to the employee. This issue was duly considered by the Apex Court in the case of ***Union of India & Ors. Vs. K V Jankiraman & Ors. , (1991) 4 SCC 109***, where the Court in paragraph no. 8 formulated the question as to what would be the date, it can be said that



disciplinary/criminal proceeding are pending against an employee, besides other questions. While answering this question, the Court in paragraph no. 16 has unequivocally held that it is only when a charge memo in the disciplinary proceeding or a charge-sheet in a criminal prosecution is issued to the employee, that it can be said that a departmental proceeding/criminal proceeding is initiated against the employee. The Court observed in paragraph no. 17 that the promotion, etc. cannot be withheld merely because some disciplinary/criminal proceeding are pending against the employees. To deny the said benefit, they must be at the relevant time pending at the stage when charge memo/charge-sheet has already been issued to the employee. However, even in that case, the seal covered procedure was to be resorted.

23. The aforesaid proposition has been reiterated in subsequent decisions in the case of ***Coal India Ltd. & Ors. Vs. Saroj Kumar Mishra, (2007) 9 SCC 625***; further in ***Chairman-cum-Managing Director, Coal India Limited & Ors. Vs. Ananta Saha & Ors., (2011) 5 SCC 142*** and ***Union of India & Ors. Vs. Anil Kumar Sarkar, (2013) 4 SCC 161***, where this Court held that there can be no quarrel with the settled legal proposition that the disciplinary proceedings commenced only



when a charge-memo is issued to the delinquent employee.

24. Before moving further, it would also be relevant to recapitulate that the Hon'ble Supreme Court in a judgment reiterated as *State of Punjab Vs. Khemi Ram, (1969) 3 SCC 28* held that, once the order is issued and sent out to the concerned Government servant, it must be held to have been communicated to him, no matter whether he actually received it or not. Hence, the service of the memo of charge to the delinquent, would not relevant consideration.

25. Now coming to the subsequent aspect of the case. The petitioner was subjected to a Departmental Proceeding No. 33 of 2016, which led to initiation of a departmental enquiry and on being found the charges not proved, culminated into his exoneration by the Inspector General of Police, Tirhut Range, Muzaffarpur vide order contained in Memo No. 1137 dated 22.05.2020. Knowing fully well that the charges have not been proved, even though a decision has been taken by the Home Department to revert him from the post of DSP to the post of Inspector, after cancelling the order of promotion in the opinion of this Court further smacks *mala fide* and arbitrariness on the part of the concerned respondents. Even if it is accepted for a moment that the date on which the charge memo was issued, a



departmental proceeding was lying against the petitioner, in such circumstances, the recommendation of the DG Board and the DPC was required to be kept in sealed cover and the moment the petitioner exonerated, he should be extended the promotion with effect from the due date, hence, there was no question for passing the impugned order reverting the petitioner from the post of DSP to the post of Inspector, much after the order of exoneration.

26. This Court also cannot lose sight of the order contained in Memo No. 112 dated 12.02.2024, issued under the signature of DGP, Bihar, Patna to the extent whereby the order passed by the Disciplinary Authority-cum-Inspector General of Police, Tirhut Division, Muzaffarpur in Disciplinary Proceeding No. 33 of 2016, has been suo moto reviewed but fairly admitted the infirmities in the departmental proceeding, including the clear violation of the mandatory prescriptions of Rules, 2005 and thereby, quashed the memo of charge and directed for initiation of fresh departmental proceeding commencing with effect from the issuance of a fresh memo of charge.

27. However, the good sense prevailed upon the DGP, Bihar who sought a legal opinion from the learned Advocate General, Bihar and on being satisfied with the legal opinion,



based upon the mandate of this Court, cancelled the order contained in Memo No. 112 dated 12.02.2024.

28. Thus, this Court has no hesitation to come to the conclusion that at present neither the order of the DGP, Bihar reviewing the earlier order passed by the Disciplinary Authority-cum-Inspector General of Police, Tirhut Range, Muzaffarpur in Disciplinary Proceeding No. 33 of 2016, is in existence nor there is any departmental proceeding pending against the petitioner and, moreover, on account of quashing of the impugned order, contained in Memo No. 112 dated 12.02.2024 by the order of the DGP, Bihar under Memo No. 443 dated 24.06.2025, again revives the order of exoneration passed in favour of the petitioner, in the departmental proceeding.

29. All the more, this Court has observed that the date on which the DG Board had considered the case of the petitioner for promotion to the post of DSP and the DPC had taken a decision to promote him on the said post, there was no departmental proceeding and later on an anti dated memo of charge has got issued purposely in order to deprive the petitioner from his promotion. The act of the respondents especially, the Inspector General of Police, Tirhut Division, Muzaffarpur, is highly reprehensible and condemnable.



30. It is also to be noted here that the *mala fide* of the respondent authorities are also writ large in issuing the Memo No. 626 dated 14.10.2022, under the signature of Inspector General of Police (Headquarter), Bihar, Patna and thereby putting the petitioner under suspension retrospectively with effect from 28.07.2022. Neither there is any provision under Rule 9 of the Rules, 2005, for retrospective suspension in contemplation of a departmental proceeding nor the subjected suspension can be held to be justified, in view of the fact that no charge-sheet was framed by the disciplinary authority within three months, from the date of issuance of the suspension order and/or suspension order has been renewed; thus, in any view of the matter, the suspension order is also bad, illegal and *mala fide*.

31. On all the aforesaid counts, this Court is hereby set-aside the order of reversion as contained in Memo No. 7324 dated 21.07.2022 and directed the concerned authorities to restore the promotion of the petitioner as was granted under notification contained in Memo No. 9399 dated 30.11.2016, with all consequential benefits, preferably within a period of eight weeks, from the date of receipt/production of a copy of this order.



- 32. All these writ petitions are hereby allowed.
- 33. Pending application(s), if any, stands disposed off.
- 34. There shall be no order as to cost.

(Harish Kumar, J)

shivank/-

AFR/NAFR	NAFR
CAV DATE	01.08.2025
Uploading Date	12.09.2025
Transmission Date	NA

