

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17324 of 2024

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Rana Umesh Prasad Singh S/o Late rana Jagarnath Prasad Singh, resident of Village-Rasipur Patasia, P.S.-Mohiuddin Nagar, District-Samastipur in the State of Bihar, presently residing at B-137, Kankarbagh Housing Colony, Near Panch Shiv Mandir and Sai Mandir, P.O.-West Lohia Nagar, PS-Kankarbagh, District-Patna.

..... Petitioner/s

Versus

1. The State of Bihar through The Chief Secretary, Government of Bihar, Patna.
2. The Chief Secretary, Government of Bihar, New Secretariat, Patna.
3. The Principal Secretary, Road Construction Department, Government of Bihar, Bishweshwaraiya Bhawan, Bailey Road, Patna.
4. The Engineer in Chief, Road Construction Department, Government of Bihar, Bishweshwaraiya Bhawan, Bailey Road, Patna.
5. The Chief Engineer, Road Construction Department, North Bihar Wing, Darbhanga.
6. The Chief Engineer, Road Construction Department, Ganga Bridge Project Wing, Patna.
7. The Superintending Engineer, Road Construction Department, North Bihar Circle, Muzaffarpur.
8. The Deputy Secretary, Road Construction Department, Government of Bihar, Bishweshwaraiya Bhawan, Bailey Road, Patna.
9. The Executive Engineer, Road Construction Department, Ram Nagar, West Champaran.
10. The Executive Engineer, Road Construction Department, West Champaran.
11. The Executive Engineer, Road Construction Department, Sitamarhi.
12. The Executive Engineer, Road Construction Department, Motihari (East Champaran).
13. The Superintending Engineer, Road Construction Department, Motihari Circle, Muzaffarpur Incharge (East Champaran).

.....Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Gajendra Pratap Singh, Advocate
For the Respondent/s	:	Standing Counsel 26

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
CAV JUDGMENT



Date : 13-02-2025

Heard Mr. Gajendra Pratap Singh, learned counsel appearing on behalf of the petitioner and learned Standing Counsel 26 appearing on behalf of the State.

2. The petitioner in paragraph no. 1 of the present writ petition has sought, *inter alia*, the following relief(s), which is reproduced hereinafter:-

i) For issuance of writ of Certiorari for quashing the Memo No. 1959 dated 21.12.2022 and subsequent Memo No. 257 dated 20.03.2023, whereby petitioner's removal from service was upheld and prayer for payment of full salary for the period undergone during suspension (i.e from 01.12.2000 to 26.02.2003 & again from 04.09.2003 to 31.07.2006) after deducting the subsistence allowance already paid to him, was rejected in an arbitrary manner in complete defiance of the principles of natural justice.

(ii) For issuance of a writ in the nature of a writ of Mandamus commanding and directing the Respondents to pay entire retiral dues to the petitioner until his termination of service, including the amount of salary that was payable during the petitioner's illegal suspension(i.e from 01.12.2000 to 26.02.2003 & again from 04.09.2003 to 31.07.2006) which was later on set aside and quashed by the Hon'ble High Court in C.W.J.C No. 5252 of 2004, after deducting the subsistence allowance paid to the petitioner.

(iii) For directions to respondent authorities to redress the grievances of the petitioner namely illegal suspension, transfer during suspension period and termination of services, in accordance with law.

(iv) For issuance of writ(s) for passing order(s) as your Lordship may deem fit and proper in the facts and circumstances of the present case in hand such as payment of entire retiral dues i.e a) Gratuity b) Provident Fund c) Insurance and everything payable to a superannuated employee.



3. The brief facts of the case are that the petitioner was appointed as an accounts clerk in the Ramnagar Division of the Public Works Department, Government of Bihar, in the year 1983. On the allegations of financial irregularities, the petitioner was put under suspension vide Memo No. 2444 dated 01.12.2000. A decision was taken to initiate disciplinary proceeding, in which the petitioner was exonerated with a warning contained in Memo No. 494 dated 26.02.2003 (Annexure-4). The petitioner was held entitled to all the benefits of service for the period undergone during suspension. Thereafter, the Engineer-in-Chief revoked suspension vide Memo No. 2891 dated 14.08.2003 (Annexure-5) and a consequential order was issued by the successor of Superintending Engineer vide memo No. 1067 dated 25.08.2003 (Annexure-5) transferring the petitioner from Ramnagar to Bettiah. Being aggrieved by the action, the petitioner challenged the orders dated 14.08.2003 and 25.08.2003 (Annexure-5 Series) in C.W.J.C No. 5252 of 2004. The writ was allowed *vide* order dated 30.01.2006 and the impugned orders dated 14.08.2003 and 25.08.2003 were set aside and quashed with a specific direction to the Engineer-in-Chief to consider the case of the petitioner again. A show cause was again served to the Petitioner, by the



Chief Engineer, (Traffic) North Bihar Wing, Road Construction Division, Darbhanga, on the basis of same set of charges *vide* Memo No. 92 dated 12.03.2007 (Annexure- 8), and the petitioner was removed from service. Aggrieved by the order of removal, petitioner had filed C.W.J.C No. 13616 of 2008 for setting aside the order of removal from service and for reinstating him in service. This Court *vide* order dated 01.09.2016 gave liberty to the petitioner to raise his grievance subject to outcome of the criminal cases. Thereafter, the Petitioner filed C.W.J.C No. 7376 of 2021 wherein *vide* order dated 27.07.2022 the concerned authority was directed to pass an order regularizing suspension period as on duty. Subsequently, impugned orders dated 21.12.2022 contained in Memo No. 1959 and Memo No. 275 dated 20.03.2023 (Annexure - 12 series) were passed, whereby, petitioner's removal from service has been upheld holding that the petitioner is not entitled to payment of full salary for the period of suspension. Aggrieved by the impugned order, the petitioner has filed the present Writ petition.

Submissions on behalf of the Petitioner

4. Learned counsel appearing on behalf of the petitioner submitted that the petitioner was appointed as Accounts Clerk and had joined the service on 28.02.1983. On



the allegations of financial irregularities, the petitioner was put under suspension vide Memo No. 2444 dated 01.12.2000. A charge-sheet containing 8 charges was served to the petitioner. The petitioner filed reply denying all the charges. The Disciplinary Authority, after consideration of the explanation given by the petitioner, revoked the suspension. The inquiry report was submitted on 22.02.2003 in which except one charge, all the other charges were not proved against the petitioner. A censure of warning was given and direction was issued for payment of entire arrears of salary for the suspension period and further proceeded to hold that in case the criminal proceeding initiated against the petitioner for the same set of charges would result in his conviction, then, he shall have to face the consequences. In terms of order dated 22.02.2003, consequential order vide Memo No. 494 dated 26.02.2003 (Annexure- 4) was issued and the petitioner joined his place of posting, was also granted full benefits of service for the suspension period considering it to be the period of duty.

5. Learned counsel further submitted that the order of the Superintending Engineer dated 26.02.2003 was interfered with by the Engineer –in- Chief who vide order dated 14.8.2003 quashed it. The Engineer –in- Chief directed the subsequent



incumbent on the post of Superintending Engineer to furnish his report on the allegation levelled against the petitioner vide Memo no. 1067 dated 25.8.2003 (Annexure-5) and the petitioner was directed to give his joining at Road Division, Bettiah. Learned counsel emphatically submitted that the Engineer-in-Chief has proceeded to review which is not provided under the Bihar CCA Rules, 2005. The petitioner being aggrieved by the order dated 14.08.2003 and the order dated 25.08.2003 passed by the Superintending Engineer, preferred CWJC No.5252 of 2004. This Court vide order dated 30.1.2006 quashed the *ex-parte* orders and directed the Engineer –in- Chief to pass a fresh order in accordance with law.

6. Learned Counsel next submitted that the petitioner without any disturbance was posted on the vacant post of Junior Accounts Clerk in Motihari Road Division from Ramnagar Road Division, vide Memo no. 2331 dated 12.08.2006, issued by the office of the Superintending Engineer (Annexure-7). The Chief Engineer of the North Bihar Division, Darbhanga without jurisdiction, again served a show cause to the petitioner vide Memo No. 1470 dated 19.10.2006, as to why the petitioner be not removed from service on the basis of the same set of charges, from which the petitioner was exonerated. The



Petitioner was removed from service vide Memo No. 92 dated 12.03.2007 by the Chief Engineer, Ganga Bridge Project on the same grounds that led to his previous suspension. The petitioner filed C.W.J.C No. 13616 of 2008, wherein vide order dated 01.09.2016, the petitioner was directed to wait for the outcome of the criminal cases.

7. In above background learned counsel submitted that the petitioner sought information regarding the status of criminal cases and had also visited the office of the Superintendent of Police, Motihari but no information was provided to him. The petitioner also filed an application under the R.T.I., Act before the office of the Director General of Police but no information was provided to him. He further submitted that even in the Counter Affidavit filed by the respondents neither any information has been provided regarding the status of the alleged criminal case said to be pending against the petitioner nor the respondents have controverted any submissions of the Petitioner.

8. Learned counsel submitted that aggrieved by the inaction on the part of the respondents, the petitioner filed C.W.J.C No. 7376 of 2021, praying therein for payment of full salary for the period he was kept under suspension after



deducting the subsistence allowances already paid. This Court vide order dated 27.07.2022 directed the authority concerned to pass an order regularizing the suspension period, as on duty and communicate the petitioner. Learned counsel further submitted that vide Memo No. 1959 dated 21.12.2022 issued by the Superintending Engineer, Muzaffarpur and a subsequent Memo No. 275 dated 20.03.2023 (Annexure- 12 series) issued by the Superintending Engineer, Road Zone, Motihari, in the most mechanical manner without assigning any reason.

9. Learned counsel in above background submitted that the petitioner is entitled to the payment of full salary for the period undergone during suspension in light of Rule 97 Sub-Rules 3 and 5 of the Bihar Service Code. (Annexure-12 and 12'A). In these background, learned counsel submitted that the period of suspension of the petitioner is required to be considered as period spent on duty and to hold that the petitioner is entitled to full pay and all the consequential benefits for the period undergone during suspension, because the action of the Engineer-in-Chief being in teeth of the order/direction passed in CWJC No. 7376 of 2021, the impugned order contained in Memo No. 1959 dated 21.12.2022 and the consequential order contained in Memo No. 275 dated



20.03.2023 are therefore void in the eyes of law and upon quashing of the same, the petitioner becomes entitled to all the benefits accrued to him for the period of suspension undergone with interest and compensation and is accordingly entitled for all the retiral dues.

Submissions on behalf of the Respondent

10. *Per contra*, Learned counsel appearing on behalf of the respondent submitted that in compliance of the Hon'ble Court order in CWJC No.- 5252/2004, a show cause was served to the petitioner and after considering the reply filed by the petitioner, order of termination from service was passed vide Memo No.- 92 dated 12.03.2007 and the representation of the petitioner for payment of full salary for the period of suspension from 01.12.2000 to 26.02.2003 and again from 04.09.2002 to 31.07.2006 was rejected by a reasoned order issued vide Memo no.- 2367 dated 19.10.2011. Learned counsel further submitted that the petitioner challenged the order of punishment by filling C.W.J.C No. 13616 of 2008, and vide order dated 01.09.2016, the petitioner was directed to raise his grievance subject to the outcome of the criminal cases in view of the communication dated 17.04.2008.

11. Learned counsel next submitted that the



petitioner preferred CWJC No. 7376 of 2021 and this Court, vide order dated 27.07.2022 had directed the Disciplinary Authority to pass a reasoned order regularizing the suspension period as on duty or suspension and it should be in accordance with law within a period of three months from the date of the receipt of the order dated 27.07.2022. The order was duly complied with by the Disciplinary Authority, who has passed an order rejecting the prayer of the petitioner for regularizing the suspension period to be on duty as contained in Memo No. 1959 dated 21.12.2022 and a consequential order was passed by the Executive Engineer, Road Division, Motihari, on 20.03.2023 contained in Memo No. 275.

Analysis and Conclusion: -

12. Heard the parties.

13. The admitted facts are that the petitioner was appointed as Junior Division Clerk on 03.02.1983 and he was considered to be promoted to the post of Upper Division Clerk for which gradation list was prepared for all the Junior Division Clerk on 01.01.1994, in which, the petitioner found his position at Serial No. 35. Before the petitioner attained the age of superannuation, disciplinary action was taken against him. The petitioner came before this Court time and again by filing CWJC



No. 5252 of 2004, CWJC No. 13616 of 2008 and CWJC No. 7376 of 2021. In view of the direction issued by this Court vide order dated 01.09.2016 in CWJC No. 13616 of 2008, by which the petitioner was directed to raise his grievance subject to the outcome of the criminal proceeding pending against him. The petitioner has given information that he sought information about the pending criminal cases under Right to Information Act, but no information in respect of the criminal cases pending against him for which two FIRs were lodged was provided to the petitioner. In counter affidavit also, no information has been given in respect of the outcome of the criminal cases pending against the petitioner. However, the petitioner waiting for the information for sometime, filed CWJC No. 7376 of 2021 for regularization of the suspension period, in which, this Court vide order dated 27.07.2022 observed that the petitioner should approach the official respondent to regularize the suspension period in accordance with law by passing *inter alia* following order:

"One of the question for consideration in the present petition is regularization of suspension period. When this Court posed the question as to what is the outcome of the enquiry it is stated that services were terminated and it was subject-matter of another litigation. In other words, termination as on today holds good. Petitioner's counsel is not in a position to apprise this Court against the order of the learned single Judge whether petitioner had preferred appeal in so far as termination issue is concerned.



In the light of these facts and circumstances, the petitioner should have sought for direction to the official respondents to regulate the suspension period in accordance with law. Such prayer has not been arrayed in the present petition. While exercising Article 226 of the Constitution, the concerned authority/disciplinary authority is hereby directed to pass an order regularizing the suspension period as duty or suspension and it should be in accordance with law. Such decision shall be taken and communicated to the petitioner within a period of three months from the date of receipt of this order. If the official respondents have not already regularized the suspension period by passing any order, in the event of passing any order regularizing the suspension period in that event copy of the order relating to regularization of suspension shall be communicated to the petitioner at the earliest.

Accordingly, the present petition stands disposed of."

14. Thereafter, a notice was given to the petitioner contained in memo no. 1959 dated 21.12.2022 that after examining the records relating to the petitioner in respect of his claim for regularization of his suspension period, it was found that the claim of the petitioner after his superannuation have been found to be true holding that the petitioner is not entitled for payment of his salary or his regularization for the period of suspension from 01.12.2000 to 26.02.2003 and again from 04.09.2003 to 31.07.2006, as per the provision contained in Sub-Rule 3 and 5 of Rule 97 of the Bihar Service Code. Thereafter, two orders were communicated by the Superintending Engineer, North Bihar, Road Division, Muzaffarpur. The petitioner has now retired. The Provision of Rule 97 provides that in respect of



a Government Servant, who has been dismissed or removed from the service, seize from or including the date of such dismissal or removal, the petitioner is only entitled during his service period for subsistence allowance. I find it apt to reproduce Rule 97 of Bihar Service Code, which is *inter alia* reproduced:-

Rule 97 provides that when a Government Servant, who has been dismissed, removed or suspended, reinstated, the authority competent to order the reinstatement shall consider and make specific order-

(a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty, and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Where the authority mentioned in sub-rule (1), is of opinion that the Government servant has been fully exonerated, or in the case of suspension, that it was wholly unjustified, the Government servant shall be given full pay and allowance to which he would have been entitled has he not been dismissed, removed or suspended, as the case may be

(3) In other cases, the Government servant shall be given such proportion of such pay and allowances as such competent authority may prescribe:

Provided that the payment of allowances under clause (2) or clause (3) shall be subject to all other conditions under which such allowance are admissible.

(4) In a case falling under clause (2) the period of absence from duty shall be treated as a period spent on duty for all purposes.

(5) In a case falling under clause (3) the period of absence from duty shall not be treated as a period spent on duty, unless such competent authority specifically directs that it shall be so treated for any specified purpose:

Provided that if the Government servant so desires such authority may direct that the period of



absence from duty shall be converted into leave of any kind due and admissible to the Government servant.

15. The petitioner has prayed for making payment of his salary during the period of suspension after deducting the subsistence allowance.

16. The Apex Court in case of ***M. Paul Anthony v. Bharat Gold Mines Ltd.***, reported in, ***(1999) 3 SCC 679***, has held that if the criminal case does not proceed or its disposal is being unduly delayed, the Departmental Proceeding can be resumed and proceeded to conclude at an early date. I find it gainful to reproduce paragraph 22 of the aforesaid judgment:-

22. The conclusions which are deducible from various decisions of this Court referred to above are:

- (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, the administration may get rid of him at the earliest.

17. Now the question arises whether the petitioner is entitled for the relief as claimed for in the present writ petition till the period of the disciplinary authority proceeded to take disciplinary action against the petitioner afresh. In view of the above law laid down by the Apex Court, I find that the records reveals that Chief Engineer proceeded to pass order No. 12 dated 12.03.2007 (Annexure-8) dealing with all the charges. All the charges were allegedly found proved against the petitioner, he was removed from the service by the Executive Engineer, Ganga Priyojna. The said order was communicated to the petitioner vide Memo No. 92 dated 12.03.2007, against which the petitioner preferred CWJC No. 13616 of 2008 in which, vide order dated 01.09.2016, this Court has observed that the petitioner had already filed appeal before the Commissioner-cum-Secretary on 20.04.2007 and the petitioner was not aware of the outcome of the said appeal, however, the petitioner had also filed review on 22.02.2008. It was communicated on 17.04.2008



that the State Government in review has directed the petitioner to await the outcome of the criminal proceeding and counsel appearing on behalf of the petitioner chose to not to press the said writ petition for the present with a liberty to raise the same subject to the outcome of criminal proceeding. Thereafter, the petitioner filed an application before the Director General of Police seeking information under Right to Information Act for getting present status of Ram Nagar P.S. Case No. 198 of 2000 dated 30.11.2001 and P.S. Case No. 210 of 2000 dated 04.12.2000 (West Champaran) along with the requisite fee submitted vide postal order amounting Rs. 10. The petitioner though was granted liberty to raise issue and he had approached this Court in view of the criminal cases pending against him, in absence of the development in the trial. The counter affidavit is also silent in this regard. The petitioner had preferred CWJC No. 7376 of 2021, during which period, the entire globe was facing Covid-19 Pandemic, for grant of salary during the suspension period.

18. During the pendency of the writ petition, the concerned respondent passed *ex-parte* order contained in Memo No. 1959 dated 21.12.2022 without waiting for the result of the appeal preferred by the petitioner before the Additional Chief



Secretary or giving reference of the status of the Appeal, rejecting the claim of the petitioner for payment of remaining amount payable to the petitioner during the suspension period from 01.12.2000 to 26.02.2003 and again from 04.09.2003 to 31.07.2006. I find that the authorities, who are well aware of the entire facts of the case and the development, which took place, have altogether ignored to provide even opportunity of hearing to the petitioner and also have not taken note of the status of appeal and the status of the criminal case pending against the petitioner.

29. The law is also well settled that in absence of any action taken to continue the departmental proceeding, which was pending against the petitioner by resorting to the provision of Rule 43(b) of the Bihar Pension Rules, 1950, within time, the impugned order contained in Memo No. 1959 dated 21.12.2022 and the order contained in Memo No. 275 dated 20.03.2023, can not be sustained in the eye of law. Rule 43(b) of the Bihar Pension Rules, 1950 is reproduced hereinafter:

"43(b) The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the pensioner is found in departmental or judicial proceeding to have been guilty of grave misconduct; or to have caused pecuniary loss to Government by misconduct or negligence, during his service



including service rendered after retirement: on re-employment

Provided that

(a) such departmental proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment;

(i) shall not be instituted save with the sanction of the State Government;

(ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and

(iii) shall be conducted by such authority and at such place or places as the State Government may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made;

(b) judicial proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment, shall have been instituted in accordance with sub-clause (ii) of clause (a); and

(c) the Bihar Public Service Commission, shall be consulted before final orders are passed.

Explanation.

For the purposes of the rule-

(a) departmental proceeding shall be deemed to have been instituted when the charges framed, against the pensioner are issued to him or, if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to have been instituted: -

(i) in the case of criminal proceedings, on the date on which a complaint is made or a charge-sheet is submitted, to a criminal court; and

(ii) in the case of civil proceedings, on the date on which the complaint is presented, or as the case may be, an application is made to a civil Court."

20. The impugned order contained in Memo No.

1959 dated 21.12.2022 and the order contained in Memo No.

275 dated 20.03.2023 also cannot be sustained which ended with



the imposition of punishment in view of the fact that disciplinary proceeding cannot be permitted to be held in succession for the same misconduct for which the petitioner had suffered warning. It is profitable to refer the judgment of the Apex Court in the case of ***Lt. Governor, Delhi and others vs. HC Narinder Singh*** reported in ***(2004) 13 SCC 342***, wherein it has been held that:-

"4. Reading of the show-cause notice suggests as if it is in continuation of the departmental proceedings. Lack of devotion to duty is mentioned as the reason for the proposed action which was the subject-matter of the earlier proceedings as well. The second proposed action based on the same cause of action proposing to deny promotion or reversion is contemplated under the impugned show-cause notice. Second penalty based on the same cause of action would amount to double jeopardy. The Tribunal was, therefore, right in law in annulling such an action. We are not expressing any opinion on the ambit or scope of any rule."
(Emphasis supplied)

21. *Ratio decidendi* of above judgment was followed in the case of ***Union of India and another vs. Kunisetty Satyanarayana*** reported in ***(2006) 12 SCC 28*** by holding thus :-

"18. We agree with the learned counsel for the respondent that if the charge which has been levelled under the memo dated 23-12-2003 had earlier been enquired into in a regular enquiry by a competent authority, and if the respondent had been exonerated on that very charge, a second enquiry would not be maintainable."

22. Accordingly, I set-aside and quash the impugned order contained in Memo No. 1959 dated 21.12.2022



and the order contained in Memo No. 275 dated 20.03.2023, the petitioner becomes entitled for entire salary due to him for the period from 01.12.2000 to 26.02.2003 and again from 04.09.2003 to 31.07.2006 and also becomes entitled for the consequential relief which requires fixation of his pension on the basis of pay-scale applicable to him in accordance with law.

23. The above exercise is directed to be completed well within a period of three months from the date of production of a copy of this order.

24. Accordingly, the present writ petition stands disposed of.

25. There shall be no order as to cost.

(Purnendu Singh, J.)

Ashishsingh/-

AFR/NAFR	NAFR
CAV DATE	20.12.2024
Uploading Date	13.02.2025
Transmission Date	NA

