

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.65 of 2025

In

Civil Writ Jurisdiction Case No.7533 of 2023

Vijay Kumar Son of Shubhuk Lal Yadav Resident of Village-Adavari,
Maheshkhut, Chautham, P.S.-Chautham, District-Khagaria, PIN-851213.

... .. Appellant

Versus

1. The State of Bihar through the Additional Chief Secretary, Home Police Department, Government of Bihar, Patna.
2. The Additional Chief Secretary, Home (Police) Department, Government of Bihar, Patna.
3. The Deputy Secretary, Home (Police) Department, Government of Bihar, Patna.
4. The Director General of Police, Bihar, Patna.
5. The Inspector General of Police (Headquarter), Bihar, Patna.
6. The Deputy Inspector General of Police (Personnel), Bihar, Patna.
7. The Inspector General of Police, Darbhanga Range, Darbhanga.
8. The Inspector General of Police, Modernization, Bihar, Patna-cum-Enquiry Authority.
9. The Superintendent of Police, Samastipur.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Akshansh Ankit, Advocate
Mr. Monis Ahmod, Advocate

For the State : Mr. P.K. Verma, Sr. Advocate
Mr. Sanjay Kumar Ghosarvey, AC to AAG-3

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 26-02-2026



This Letters Patent Appeal has been filed by the appellant Vijay Kumar, who was the petitioner in the writ petition, challenging the order dated 20.12.2024 passed by the learned Single Judge in C.W.J.C. No. 7533 of 2023.

2. The aforesaid writ petition was filed by the appellant seeking the following relief:

“For issuance of a Writ in the nature of certiorari to quash the Resolution as contained in Memo No. 10819 dated 26.10.2022 issued under the signature of Deputy Secretary, Home (Police) Department, Government of Bihar, Patna whereby and where under the punishment of censure (Nindan) (w.e.f. allegation year) and withholding the two increments with non cumulative effect has been inflicted upon the petitioner and further for quashing the resolution as contained in Memo No.3253 dated 7.3.2023 issued under the signature of same very officer i.e., Deputy Secretary, Home Police Department, Bihar, Patna whereby and where under departmental appeal/ review petition of the petitioner has been rejected on erroneous grounds as well as on wrong facts which has been communicated to the Commandant, Bihar Special Armed Police (hereinafter referred as BSAP) Headquarter. Patna vide letter no.794 dated 16.3.2023 and subsequently same has been communicated to the petitioner by the Commandant, BSAP-9, Jamalpur vide memo no.37 dated 22.03.2023 and further directing the respondent authorities to issue integrity certificate of the petitioner and further for issuance of any other appropriate writ/writs,



*order/orders it may deem fit and proper by this
Hon'ble Court."*

3. It is the case of the petitioner that vide Letter No. 862 dated 28.05.2019, Crime Investigation Department, Bihar, Patna asked the Deputy Inspector General of Police, Darbhanga Range, Darbhanga to submit Performance Report of the S.D.P.Os. of the said range and pursuant thereto, the Deputy Inspector General of Police, Darbhanga Range vide Memo No. 1201 dated 28.05.2019 asked the Superintendent of Police, Samastipur to submit reports regarding performance of S.D.P.Os. of Samastipur District.

From the report of the Superintendent of Police, Samastipur, it revealed that the total number of Special Reported Cases (for brevity 'S.R. Case') on the date of joining of the petitioner was '101' and showed the increasing of pendency as '135', which was corrected by the Superintendent of Police, Samastipur as prosecution witnesses during conduction of the departmental enquiry and disclosed therein that 120 SR cases were pending on the date of joining of the petitioner which became '133', meaning thereby, only thirteen cases were increased and the petitioner had inspected four posts out of five posts in his jurisdiction.

It is the further case of the petitioner that said report



of the S.P., Samastipur was sent to the Inspector General of Police, Darbhanga Zone, Darbhanga upon which vide Letter No. 2621 dated 17.06.2019, S.P., Samastipur was asked to identify worst performers S.D.P.O. of Samastipur and submit a report against them. In pursuance of the said order of the I.G., the appellant was asked to submit his defence by the S.P., Samastipur vide Memo No. 4660 dated 22.06.2019, but without awaiting for the reply of the petitioner, the S.P., Samastipur sent report to D.I.G., Darbhanga vide Letter No.4673 dated 23.06.2019 i.e. on next day giving wrong fact which would be evident from the statement of cited witness. It has been mentioned in the report of S.P., Samastipur that the petitioner was asked to submit his explanation but no such explanation was received from him and subsequently same was sent to the I.G., Darbhanga by the D.I.G., Darbhanga.

In compliance of the said order of I.G., Darbhanga and subsequent order of S.P, Samastipur regarding submission of explanation, the petitioner submitted his explanation in which he had mentioned correct data of disposal of cases, besides he also specifically pointed out that he had done supervision of eight cases of other Sub-Division pursuant to order of the S.P. with detail and also mentioned therein that he had submitted that



he had sent forty five proposals under CCA-03 and two proposals under CCA-12, besides he had also inspected four posts out of five posts which was more than the other S.D.P.Os.

It is the further case of the petitioner that without considering and without reverting the points/data submitted by him, the I.G., Darbhanga made recommendation for initiation of departmental action against him to the Police Headquarter and subsequently, same was sent to the Home (Police) Department, Bihar, Patna.

It is further case of the petitioner that without considering the fact, the Home (Police) department vides Memo No.6551 dated 09.08.2019 asked the petitioner to submit his defence. The petitioner submitted his defence on 13.09.2019 before the Home (Police) Department and reiterated the same as he had submitted before the I.G., Darbhanga, however, without considering the defence of the petitioner, the Home (Police) Department vide resolution as contained in Memo No.676 dated 21.01.2020 declared the said reply to be unsatisfactory and started the departmental proceeding, which was communicated to the petitioner by the Police Headquarter vide Memo No.388 dated 06.02.2020.

It is the further case of the petitioner that during the



departmental proceeding, the petitioner submitted his preliminary defence on 03.03.2021 and thereafter supplementary defence. He had given data of supervision which was done by him, apart from that he had also given data of supervision in other Sub-Division which was done by him in pursuance of order of the Superintendent of Police, Samastipur and such fact would be evident from explanation dated 24.08.2021.

It is the further case of the petitioner that after conclusion of enquiry, the Enquiry Authority -cum- Inspector General of Police (Modernization) Bihar, Patna submitted enquiry report before the Special Secretary, Home (Police), Department, Bihar, Patna vide Letter No. 16 dated 17.03.2022 holding the petitioner guilty of charge nos. 1 and 2 out of seven charges, upon which petitioner was asked to submit his defence by the Home (Police) Department, Bihar, Patna. The Enquiry Authority had compiled all documents in her enquiry report viz. article of charges, preliminary explanation of the petitioner correspondent to the witnesses as well as the Presenting Officer and also reply of Presenting Officer and the last defence of the appellant etc. Pursuant to that, the petitioner submitted his defence vide his office Letter No.1828 dated 04.06.2022 before



the Home Department in which he had categorically highlighted the statement of the S.P., Samastipur recorded in course of conducting departmental enquiry, besides other relevant and correct facts supported by documentary evidence.

It is the further case of the petitioner that without considering the defence of the petitioner as well as material on record, resolution as contained in Memo No.10819 dated 26.10.2022 was issued under the signature of Deputy Secretary, Home (Police) Department, whereby and whereunder punishment of censure with effect from allegation year and withholding of two increments of salary has been inflicted upon him.

4. Being aggrieved with the punishment order, the petitioner preferred departmental appeal/review petition before the Government, but the same was rejected in a cryptic manner by the same very officer vide resolution as contained in Memo No.3253 dated 07.03.2023 which was communicated through the Commandant, BSAP-9 vide Memo No.37 dated 22.03.2023 and for fulfilling empty formality, only mentioned therein that approval has been taken from the competent authority on the said order.

5. It is the case of the petitioner that altogether three



witnesses were cited by the prosecution in the departmental proceeding, out of them one witness, who happened to be Superintendent of Police was the main witness though the Superintendent of Police namely Mr. Vikash Verman who made the complaint and submitted review report to the D.I.G., Darbhanga was not made a witness rather successor Superintendent of Police, namely Mr. Manaw Singh Dhillon was examined as witness who negated the charges levelled against the petitioner despite the Enquiry Authority held the petitioner guilty of two charges, which was evidently based upon wrong data. There was non-consideration of the explanation of the petitioner and the finding of the Enquiry Officer was only based upon the reply of the Presenting Officer, ignoring the documentary evidence, and thus the enquiry report itself is perverse.

It is the further case of the petitioner that the S.P., Samastipur namely Mr. Vikash Verman submitted a report to the D.I.G., Darbhanga vide his Letter No.4673 dated 23.06.2019 which was made Exhibit No.2 giving wrong data as he had mentioned in his report that no proposal for taking action against the criminal under Crime Control Act was submitted by the petitioner and the inspection report was received only of



four posts out of five posts. He had further mentioned in his report that explanation of the petitioner had not been received whereas, conversely he had never asked any explanation from the petitioner. According to the petitioner, the article of charges were framed on the basis of wrong data and facts and since the explanation of the appellant was not considered, even not perused by the authority who prepared article of charge, the charge memo *prima facie* appears to be perverse.

According to the petitioner, the S.P., Samastipur submitted comparative chart of performance of four S.D.P.Os., including the petitioner and on perusal of the same, it would appear that though Sri Prithish Kumar was found to be most worst performer as per work done by him, but departmental proceeding was initiated only against the petitioner and one Arun Kumar Dubey whose period was very less than all others, however, no proceeding was initiated against Prithish Kumar and Kundan Kumar, and thus such action of the I.G., Darbhanga appeared to be *mala fide* and his report was based upon pick & choose method.

It is the case of the petitioner that the Disciplinary Authority had not taken proper account of the petitioner's performance during the period under review i.e from 02.05.2018



to 01.05.2019, whereas the petitioner has categorically mentioned the details of supervision which would show that the petitioner had not only done supervision of his Sub-Divisional territory, but also supervised the case in other Sub-Division of the district pursuant to the order of S.P., but such facts were ignored by the respondent authorities, which would be evident from the explanation of the petitioner which is part of the enquiry report. Apparent discriminatory action of the disciplinary authority got transpired from the fact that vide Letter No. 2438 dated 05.06.2019 issued by the Inspector General of Police, Darbhanga Zone, Darbhanga, by which so-called eight worst performer S.D.P.Os. were identified in Darbhanga Zone, but departmental proceeding was initiated only against four officers including the petitioner and no proceeding was initiated against the remaining four S.D.P.Os. From perusal of statement of S.P., Samastipur, who was cited as a witness, though he was not the author of report, it would be evident that petitioner was the best performer and the reason of marginal increment in pendency of cases was the commencement of general election and deployment of police officer in election duty and though there was no fault on the part of the petitioner; proceeding was initiated against him ignoring



the compelling circumstances, despite the correct data placed by the petitioner with supportive evidence.

According to the petitioner, the Enquiry Officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during course of investigation by the Enquiry Officer by itself could not be treated as evidence in the disciplinary proceeding. Further, the Police Headquarter (Personnel and Welfare Wing), Bihar, Patna issued specific mandatory guideline with respect to conduction of departmental proceeding, which were not followed by the enquiry authority as well as the disciplinary authority and the same had also been overlooked by the appellate authority as well.

6. Counter affidavit was filed on behalf of the Respondent Nos. 1 to 3 so also Respondent No.9.

7. The learned Single Judge in the impugned order has been pleased to take note of the submissions of the parties, but even though the petitioner challenged the imposition of the minor penalty of censure and withholding of two increments, no finding was given on the same. However, taking into account the submission of the learned counsel for the State and the provision of Rule 14 of the Bihar CCA Rules, 2005, it has been



observed as follows:

“7. In view of the fact that petitioner has suffered already two increments, he becomes entitled for being promoted after expiry of the penalty and the adverse effect will amount to lose its force making the petitioner entitled for being considered for promotion by the Departmental Promotion Committee (DPC) soon so that the petitioner may not further demoralize, as junior to him have been promoted.”

8. Learned counsel for the appellant argued that in the writ petition, the appellant had taken various grounds as to how the punishment of the imposition of minor penalty of censure and withholding of two increments are not sustainable in the eyes of law, but the learned Single Judge without adjudicating the same on the basis of available materials on record, held that since the appellant had suffered with two increments, he became entitled for being promoted after the expiry of the penalty, although the civil consequences and stigma still remains. He placed reliance on the ratio laid down in the case of ***Union of India & Ors. -Vrs.- P. Gunashekhra, reported in (2015) 2 SCC 610,*** wherein it was held that the High Court, in exercise of its powers under Article 226/227 of the Constitution of India can see whether the conclusions, on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion and that finding of fact is based



on no evidence.

It is argued that even though the re-appreciation of evidence is not permissible but the learned Single Judge should have appreciated the points raised that the findings of the disciplinary authority on charges nos. 1 and 2 are wholly arbitrary and based on no evidence.

He further placed reliance in the case of *United Bank of India -Vrs.- Biswanath Bhattacharjee, reported in (2022) 13 SCC 329*, wherein the Hon'ble Court has been pleased to hold in Paragraph no.21 that if the finding of the disciplinary authority is beyond record i.e. no evidence or based on irrelevant or extraneous factors or by ignoring material evidence, some amount of scrutiny is necessary. A finding of no evidence or perversity cannot be rendered sans such basic scrutiny of the materials and the findings of the disciplinary authority.

The learned counsel for the appellant further argued that even though out of seven charges framed against the appellant, two charges were stated to have been proved, but the materials available on record justifies that the disciplinary authority had erred in holding that the two charges had been proved and therefore, there was perversity in the finding of the



disciplinary authority imposing the minor punishment. It is further argued that the appellant has been seriously prejudiced, inasmuch as even though he had challenged the imposition of such penalty on merits, but the same was not considered.

9. The learned Senior Counsel appearing for the State, however, supports the impugned order.

10. After going through the impugned order and hearing the learned counsel for the respective parties and going through the pleadings, we are of the humble view that since specific challenges were made to quash the imposition of punishment vide resolution dated 26.10.2022 as well as the orders passed under departmental appeal/review, the learned Single Judge should have considered the grounds taken in the writ petition as to whether it is a fit case for quashing the resolution of imposing punishment of censure and withholding of two interments with non-cumulative effect or not and should not have disposed of the writ petition holding that since the appellant had already suffered two increments, therefore, he was entitled for being promoted after the expiry of the penalty. When it is the case of the appellant that there being no evidence whatsoever available on record to arrive at a conclusion that the appellant is guilty of the two charges, it should have been examined. If the



conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of record or based on no evidence at all, a writ of certiorari could be issued. Of course, adequacy and reliability of the evidence should not be gone into and the High Court should not interfere, if there be some legal evidence on which findings can be based. Needless to say that infliction of punishment of withholding two increments with non-cumulative effect along with censure casts stigma on the Government servant, visit the Officer with civil consequences, affecting his future career, and therefore, the contentions raised by the learned counsel for the appellant that the learned Single Judge should have considered the matter on its merits, has got substantial force.

11. In view of the forgoing discussions, we find that there is perversity in the impugned order and hence, we feel it proper to set aside the same and remit the matter to the learned Single Judge for fresh adjudication of the case on merits.

12. Accordingly, the impugned order is set aside and the matter is remitted back for reconsideration of the matter and be placed before the Hon'ble Judge dealing with such matters as per roaster.



13. It is made clear that we have not expressed any opinion on the merits of the accusation leveled against the appellant, the punishment imposed and whether the same would be legally sustainable on the basis of the materials available on record, as was produced before the disciplinary authority. It is open to the learned Single Judge to consider the same on its own merits.
14. In the result, the Letters Patent Appeal is allowed to the extent indicated, hereinabove.
15. The parties shall bear their own cost.

(Sangam Kumar Sahoo, CJ)

(Harish Kumar, J)

shailendra/-

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