

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2755 of 2017

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Girish Chandra Kumar son of Late Subodh Chandra Kumar, resident of Village Kumar Bajitpur, P.S.- Patepur, District- Vaishali, at present- residing at Mohalla- Indrapuri, Mithila Colony, Quarters No. 4/73, P.S.- Keshari Nagar, Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Director General of Police, Bihar, Patna.
3. The Deputy Superintendent of Police Transport, HQ, Patna.
4. The Deputy Inspector General of Police (Personnel), Bihar, Patna.
5. The Deputy Inspector General of Police, Tirhut Division, Muzaffarpur.
6. The Senior Superintendent of Police, Muzaffarpur.
7. The Superintendent of Police, Muzaffarpur.
8. The Inquiry Officer-cum-Deputy Superintendent of Police (headquarters), Muzaffarpur, District- Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Chitranjan Sinha, Sr. Advocate Mr. Kripa Nand Jha, Advocate Ms. Sandhya Kumari Sinha, Advocate
For the Respondent/s	:	Mr. Md. Nadeem Seraj, GP-5 Mr. Shailesh Kumar, AC to GP-5

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
CAV JUDGMENT

Date : 09-04-2026

Heard Mr. Chitranjan Sinha, learned Senior counsel
for the petitioner and Mr. Md. Nadim Seraj, learned
Government Pleader for the respondents.



2. The petitioner has filed the instant application for the following relief(s) :-

“1. (i) For issuance of an appropriate direction, order or writ in the nature of 'certiorari' quashing the memo no. 314 dated 10.03.2011 and its consequential order as contained in memo no. 992 dated 20.03.2011 by which the petitioner was dismissed from service on nonest and non-existent ground in utter disregard to the order dated 19.05.2008 passed in L.P.A. No. 200 of 2008 and for further quashing the order dated 24.06.2014 as well as the order dated 11.08.2016 by which the appeal and the memorial respectively filed by this petitioner have been rejected in most arbitrary manner and complete non-application of mind by the respondents concerned.

(ii) For commanding the respondents to pay retiral dues of the petitioner i.e. pension, gratuity, leave encashment, insurance etc. including salary of the petitioner for the period from 01.02.2011 to 25.07.2011 which is due to be paid to the petitioner.

(iii) For further holding and declaring that the entire actions of the respondents against this petitioner is contrary to the order and direction dated 19.05.2008 passed in L.P.A. No. 200 of 2008 which is void-ab-initio and fit



to be quashed.

(iv) For any other relief/reliefs to which the Petitioner may be found entitled to, in the facts and circumstances of the case.”

3. The case of the petitioner in brief is that having passed his matriculation examination in the year 1968, the petitioner was appointed as a Matriculate Constable in the Bihar Police Headquarters on 18.1.1970.

4. The respondent concerned recorded the petitioner's date of birth in the candidates register as 19.1.1948 and the service book of the petitioner was opened. On being absorbed on the post of Writer Constable in the year 1974, the petitioner for the first time came to know about his date of birth having been mentioned in the candidates register as 19.1.1948. The petitioner immediately filed an application for correction of the date of birth. The application of the petitioner came to be rejected by order dated 10.3.1975 of the Superintendent of Police, C.I.D. The petitioner filed an application before the Deputy Inspector General of Police, Bihar, against the said rejection, however the same continued to remain pending without any order having been passed.

5. It is submitted by learned Senior counsel



appearing for the petitioner that in the meantime on 9.2.1992, the date of birth of the petitioner came to be erroneously recorded in the service book as 19.1.1948. The service book had been opened on 6.3.1970 and the date of birth was entered therein on 9.2.1992.

6. It is the case of the petitioner that the petitioner once again filed several representations requesting the respondents to make necessary corrections in his date of birth as entered in the service book to be made 17.6.1953 as mentioned in his matriculation certificate.

7. No steps having been taken by the respondents lead to the petitioner filing CWJC no.826 of 2008. This writ application was dismissed by the learned Single Judge by order dated 12.2.2008.

8. L.P.A no.200 of 2008 preferred by the petitioner was disposed of directing the authority to correct the date of birth in the service record of the petitioner as 17.6.1953 in place of 19.1.1948, however giving liberty to the respondents to take appropriate disciplinary action against the petitioner if the petitioner had got wrongful entry into his service on wrong representation having been made by him in respect of his date of birth.



9. Learned Senior counsel submits that inspite of there being no material to proceed against the petitioner, the respondents initiated a departmental proceeding against the petitioner on 4.2.2009. An enquiry report was submitted in the departmental enquiry on 4.7.2009 and by order dated 10.3.2011, the D.I.G, Tirhut Range, Muzaffarpur was pleased to pass the order of punishment of dismissal from service of the petitioner. The order of dismissal was communicated to the petitioner by order dated 20.3.2011 (Annexure-16) of the Senior Superintendent of Police, Muzaffarpur. The appeal filed by the petitioner was rejected by the Inspector General of Police on 24.6.2014 and the memorial preferred by him was rejected by order dated 11.8.2016 passed by the Additional Secretary, Home (Police) Department, Government of Bihar.

10. The petitioner by way of this writ application has challenged the order of dismissal dated 10.3.2011 passed by the D.I.G, the order dated 20.3.2011 of the Senior Superintendent of Police, Muzaffarpur communicating the order of dismissal, the order dated 24.6.2014 of the I.G of Police, Muzaffarpur Range, Muzaffarpur as also the order dated 11.8.2016 of the Additional Secretary, Home (Police) Department, Government of Bihar.



11. On perusal of the memo of charge, it would transpire that the charge levelled against the petitioner in the departmental proceeding was that in case his date of birth as given in the matriculation certificate i.e., 17.6.1953 is treated to be correct, on the date of his appointment on 18.1.1970, the age of the petitioner would be about 16 years 7 months, which was below the minimum age of 19 years required under Rule 663(*ka*) of the Police Manual. Thus his appointment was not possible and as such the petitioner had hidden his correct date of birth and having produced a forged certificate, had succeeded in getting appointed. This was a clear case of the petitioner misleading the authorities and showed the suspicious character of the petitioner.

12. Mr. Chitranjan Sinha, learned Senior counsel submitted that no Presenting Officer was appointed in the departmental proceeding and only one witness was examined in course of enquiry. Absence of appointment of the Presenting Officer was a serious *lacuna* and further perusal of the enquiry report would show that the witness examined did not prove any document nor any document was marked as an exhibit. It is a case of no evidence against the petitioner and as such the order of punishment of dismissal based on such an



enquiry report is not sustainable and fit to be set aside. The orders rejecting the appeal as also the memorial filed by the petitioner, not having considered these aspects, are also not sustainable and fit to be set aside. The orders impugned be set aside and the writ application be allowed.

13. Learned Senior counsel for the petitioner in support of his submission has placed reliance on the Division Bench judgment of this Court in the case of Upendra Pandit vs. the State of Bihar & Ors.; 2023 (4) PLJR 568.

14. Mr. Md. Nadim Seraj, learned counsel appearing for the State of Bihar submitted that CWJC no.826 of 2008 filed by the petitioner for correction of his date of birth in the service book at the fag end of his service was dismissed by order dated 12.2.2008.

15. Taking note of the fact that if his date of birth as mentioned in the matriculation certificate i.e., 17.6.1953 is taken to be correct, he would be approximately 16 years 7 months at the time of entry into his service making him clearly ineligible, the learned Single Judge also observed that the claim is full of controversial facts. On the petitioner filing LPA no.200 of 2008, though the order was passed for correcting the date of birth of the petitioner in the service



record, however liberty was given to the respondents to take appropriate disciplinary action against the petitioner if, by wrong representation in respect of his date of birth, he had got entry into service.

16. Learned counsel for the State of Bihar submitted that pursuant to the leave granted by the Court in its order passed in LPA no. 200 of 2008, the petitioner was proceeded against in a departmental proceeding and was served with the memo of charge along with covering letter dated 4.2.2009. The petitioner submitted his written defence dated 16.3.2009 (Annexure-H). After conducting the enquiry, the Conducting Officer submitted his enquiry report on 4.7.2009 finding the petitioner to be guilty and recommending strong action against him. By order dated 10.3.2011, the D.I.G, Tirhut Range, Muzaffarpur was pleased to pass the order of punishment of dismissal from service of the petitioner which was communicated to the petitioner vide District Order no.810/2011 dated 20.3.2011 passed by the Senior Superintendent of Police, Muzaffarpur. The appeal preferred by the petitioner was rejected vide order dated 24.6.2014 by the Inspector General of Police and the memorial filed was rejected vide order dated 11.8.2016 by the Additional



Secretary, Home (Police) Department, Government of Bihar.

17. Learned counsel for the State of Bihar submits that there is no procedural irregularity in the conduct of the departmental proceeding and the petitioner has been given all opportunities at each stage as contemplated under the relevant Rules. The petitioner has not been able to demonstrate any illegality in the orders impugned and has not been able to make out any ground for interference in the order of punishment. There being no merit in the writ application, the same be dismissed.

18. Heard learned counsel for the parties and perused the material on record.

19. The relevant facts in brief are that the petitioner having passed his matriculation examination in the year 1968, applied for and was appointed as a Matriculate Constable on 18.1.1970 in the Bihar Police Headquarters. The date of birth of the petitioner in his matriculation certificate was 17.6.1953, however in the candidates register, it was recorded as 19.1.1948.

20. On being absorbed on the post of Writer Constable in the year 1974, the petitioner came to know about his date of birth having been mentioned in the candidates



register as 19.1.1948 and thus filed an application for correction of the date of birth which was rejected by the Superintendent of Police, C.I.D by his order dated 10.3.1975. The application filed by the petitioner before the D.I.G, Bihar continued to remain pending.

21. Though the service book of the petitioner was opened on 6.3.1970, the date of birth of the petitioner came to be recorded in the service book as 19.1.1948 only on 9.2.1992.

22. Once again the petitioner filed representations requesting for correction in the date of birth in his service book, however no steps were taken by the respondents.

23. The petitioner finally moved this Court in CWJC no. 826 of 2008 seeking correction of his date of birth and for extension of his service tenure till 2013. The writ application came to be dismissed by order dated 12.2.2008.

24. While dismissing the writ application, the learned Single Judge took into consideration the fact that if the contention of the petitioner that his correct date of birth as given in his matriculation certificate is 17.3.1953 is taken to be correct, he was approximately 16 years 7 months at the time of his entry into service making him clearly ineligible.



25. The petitioner filed LPA no.200 of 2008 against the order dismissing the writ application.

26. The Court hearing LPA no.200 of 2008 took note of the fact that the petitioner had made an application for correction of his date of birth in the service record within the prescribed time of 10 years of his entry into service. It also took note of the fact that it was not the case of the respondents that the matriculation certificate was forged or fabricated. The only contention of the respondents in L.P.A was that if the petitioner's correct date of birth is 17.6.1953, he was under-age on the date that he entered in employment.

27. By order dated 19.5.2008, this Court was pleased to dispose of the Letters Patent Appeal (L.P.A no.200 of 2008) by setting aside the order dated 12.2.2008 of the learned Single Judge, directing the respondents to correct the date of birth of the petitioner in the service record as 17.6.1953 in place of 19.1.1948 and leaving it open to the respondents to take suitable action against the petitioner if it is found that he secured entry into service by wrongful representation in respect of his date of birth.

28. Pursuant to the liberty granted by the Court hearing the Letters Patent Appeal, the respondents started a



departmental proceeding and served memo of charge dated 28.11.2008 under the signature of the Superintendent of Police, Muzaffarpur along with the covering letter dated 4.2.2009 asking the petitioner to submit his reply within one week.

29. The charge against the petitioner was that pursuant to District Order no. 31/70, the petitioner whose date of birth as recorded in the service book is 19.1.1948 had been appointed on 18.1.1970 in the Bihar Police Headquarters and thus was aged 22 years at the time of his appointment. Accordingly, he would retire at the age of 60 years on 31.1.2008.

30. The charge further was that after his appointment he cleared his matriculation examination in April, 1968 wherein he gave his date of birth as 17.6.1953. If this date of birth is accepted, on the date of his appointment i.e., 18.1.1970, his age would be 16 years 7 months which would be below the age of 19 years as required under Rule 663(*ka*) of the Police Manual. In such circumstances, his appointment would not have been possible. Thus in these circumstances, it was stated that the petitioner suppressed his correct date of birth, produced a forged certificate and on the basis of the



same, having mislead the authorities and keeping them in dark, succeeded in obtaining appointment.

31. The memo of charge further stated that departmental proceeding no.202/08 is started.

32. While naming the Conducting Officer, the memo of charge stated that a Police Inspector would be a witness and the documents being relied upon to prove the charges would be the service book of the petitioner, the matriculation certificate and the candidates register. No Presenting Officer was appointed.

33. In response to the memo of charge, the petitioner filed his show-cause explanation on 16.3.2009 denying the allegations. He stated that he did not pass the matriculation examination after joining service on 18.1.1970 but had passed the same in April, 1968 itself and it was for this reason that the service book clearly mentioned his qualification as matric and he had been appointed as a Literate/Matriculate Constable. The petitioner further requested for different documents to be provided to him including any application filed by him or any certificate produced by him at the time of his appointment.

34. The proceedings continued and the Conducting



Officer was pleased to submit the enquiry report dated 4.7.2009 finding the petitioner to be guilty and recommending that strong action be taken against him.

35. The petitioner was served with a copy of the enquiry report to which he filed his reply once again reiterating his demand to the respondents to supply him with the document including his application which may show that he suppressed his correct date of birth.

36. By order dated 10.3.2011, the D.I.G, Tirhut Range, Muzaffarpur proceeded to pass the order of punishment of dismissal from service against the petitioner. The same was communicated to the petitioner by the Senior Superintendent of Police, Muzaffarpur by District Order no.810/2011 dated 20.3.2011. The appeal preferred by the petitioner was rejected vide order dated 24.6.2014 passed by the I.G of Police, Muzaffarpur Range, Muzaffarpur and the memorial filed by the petitioner was rejected by order dated 11.8.2016 of the Additional Secretary, Home (Police) Department, Government of Bihar.

37. A perusal of the enquiry report (Annexure-12) would show that the respondents in order to prove the charge levelled against the petitioner in the departmental proceeding



have relied upon the evidence of one witness namely A.S.I-1 Bhola Ram and mention about three documents i.e., (i) photocopy of the service book of the petitioner showing his date of birth to be 19.1.1948 wherein his educational qualification is shown to be matric; (ii) matriculation certificate showing him to have passed in second division in the year 1968 with his date of birth shown as 17.6.1953; and (iii) verification roll with the candidates register which states that the same is to be filled by the applicant and showing his date of birth as 18.1.1949.

38. On further perusal of the enquiry report, it transpires that there is no mention of the fact as to which document and/or the contents thereof was proved by the said witness. The Conducting Officer has proceeded on the premise, without there being any evidence to the said effect, that as the verification roll was required to be filled in by the applicant, the date of birth mentioned therein as 18.1.1949 was filled in by the petitioner.

39. Besides there being no evidence that the date of birth in the verification roll was filled in by the petitioner, even if the same is accepted for the sake of argument, it leaves many a questions unanswered. Exhibit-1 is the photocopy of



the service book which shows the petitioner's educational qualification as matric. The educational qualification of the petitioner could be mentioned as matric only after the matriculation certificate was in possession of the respondents. While the matriculation certificate states the petitioner's date of birth to be 17.6.1953, the verification roll mentions it as 18.1.1949 and the service book mentions it as 19.1.1948. Thus it only shows that there is something amiss in the respondents presuming that the verification roll mentioning about the applicant filling his date of birth, the petitioner had filled it incorrectly and therefore the charges are proved. If the petitioner had filled the date of birth incorrectly in the verification roll (which is 18.1.1949) then from where did the date of birth of 19.1.1948 come to be mentioned in the service book. These facts show that there are a number of disputed questions of fact for which the respondents have no answer.

40. The Court finds that no application of the petitioner nor any evidence was produced in course of the departmental proceeding to show that the petitioner had misrepresented his age.

41. A perusal of the enquiry report as also the order of punishment of dismissal from service passed by the D.I.G,



the order dated 24.6.2014 rejecting the appeal and the order dated 11.8.2016 rejecting the memorial would all show that at each stage instead of proving the charge by producing evidence both documentary and oral, the respondents have proceeded on the ground that if the petitioner's contention that his correct date of birth is 17.6.1953 is accepted then he would be under-age on the date of his appointment on 18.1.1970 being aged about 16 years 7 months. Thus only in this manner they arrive at the conclusion that the petitioner had misrepresented and was guilty.

42. The Hon'ble Supreme Court in the case of **Roop Singh Negi vs. Punjab National Bank; (2009) 2 SCC 570** held as follows :-

“14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. 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 investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said



documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.”

43. Further, a Division Bench of this Court in the case of **Devendra Prasad vs. State of Bihar & Ors.** (judgment dated 19.10.2023 passed in LPA no.1302 of 2017), following Roop Singh Negi (*supra*) observed as follows :-

“7. As has been held in Roop Singh Negi v Punjab National Bank and others; (2009) 2 SCC 570, the documents produced in a departmental inquiry has to be proved by examining witnesses. Even an F.I.R. was held to be not evidence by itself without actual proof of facts stated therein. The Hon’ble Supreme Court had also held that even an admission or confession to the police itself is not sufficient to find the delinquent employee guilty in a departmental proceeding if no evidence is brought on record to prove the offence or misconduct alleged. Departmental inquiry was held to be a quasi-judicial proceeding and the Inquiry Officer functions in the status of a quasi-Judicial authority. Not only should evidence be led in a departmental inquiry, the conclusions arrived at should be based on evidence which brings forth a probability that the delinquent has committed the misconduct alleged and charged against him. No Inquiry Report based on



conjectures and surmises can be sustained and even in a departmental inquiry, the standard of proof is not a mere suspicion. However high the degree of suspicion is, it cannot be a substitute for legal proof.”

44. Coming to the facts of the instant case, during the departmental proceeding, the respondents were required to prove the charges against the petitioner by leading positive evidence of misrepresentation by the petitioner in his application or any documents accompanying the application filed by the petitioner at the time of his appointment. Even this Court in its order dated 19.5.2008 passed in LPA no. 200 of 2008 while disposing of the appeal had clarified that it shall be open for the respondents to take suitable action against the petitioner if it is found that he secured entry into service by wrongful representation in respect of his date of birth. Thus even this liberty granted to the respondents required them to demonstrate in the departmental proceeding ‘the wrongful representation’ by the petitioner with respect to his date of birth at the time of entering in service, which the respondents have clearly failed to do so.

45. Further, there being no dispute with respect to the fact that no Presenting Officer was appointed on behalf of the respondents to prove the charges against the petitioner in



the departmental proceeding, the orders impugned are fit to be set aside on this ground also.

46. In view of the facts and circumstances of the case, neither the order of dismissal nor the orders rejecting the appeal or the memorial can be sustained.

47. As such the order dated 10.3.2011 of the D.I.G, Tirhut Range, Muzaffarpur dismissing the petitioner from service, the order dated 20.3.2011 of the Senior Superintendent of Police, Muzaffarpur communicating the order of dismissal, the order dated 24.6.2014 of the I.G of Police, Muzaffarpur Range, Muzaffarpur rejecting the appeal and the order dated 11.8.2016 of the Additional Secretary, Home (Police) Department, Government of Bihar rejecting the memorial filed by the petitioner are all set aside.

48. The writ application is allowed with all consequential benefits.

(Partha Sarthy, J)

Shiv/-

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