

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23374 of 2019

316, Sipahi Brajesh Kumar Singh @ Braj Bhushan Singh S/o Sri Sambhu Prasad Singh R/o- Village and Post- Barail, P.S. and P.O. and District- Supaul.

... .. Petitioner/s

Versus

1. The State of Bihar through D.G.P., Police, Patna, Bihar.
2. Director General of Police Patna, Bihar.
3. D.I.G., Sahabad Reigion, Dehri On Sone.
4. Superintendent of Police Buxar.
5. Deputy Superintendent of Police Buxar.
6. Krishna Kumar Inquiry Officer of the case cum The then Inspector, Dumroan Circle P.S., Buxar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Neeraj Kumar Singh, Advocate
For the Respondent/s : Mr. Manish Kumar (Gp4)

CORAM: HONOURABLE MR. JUSTICE RITESH KUMAR
ORAL JUDGMENT

Date : 12-05-2026

Heard the parties.

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

“(I) To quash the order dated-13.12.2016 bearing Memo no. 6541 passed by Director General of Police, Patna, Bihar (Respondent No. 2), communicated to the petitioner vide Memo No. - 931/442055 dated 24.05.2019 through which Memorial Petition filed against order (Termination) dated- 14.05.2016, contained in Memo No. - 882, in Appeal (D.O.) No.- 755/ 2016 passed by Respondent No.-3, has not been accepted rather refused to expunge petitioner from charges leveled against him and denied to reinstate



him in service on wholly erroneous grounds, without application of mind.

- (II) *To quash the order dated 14.05.2016, contained in Memo No. - 882, passed by The Deputy Inspector General of Police, Sahabad Range, Dehri-An-Sone, Sasaram at Rohtas (Respondent No. 3) in Appeal (D.O.) No.- 755/2016 where by Appeal filed by the Appellant against order (Termination) dated 25.08.2015, contained in Memo No. - 2702, passed by Respondent No.- 4, had dismissed the appeal and affirmed order of respondent No. -4.*
- (III) *To quash the order dated 25.08.2015, contained in Memo No. 2702, issued under the signature of Respondent No. - 4 relying upon D.O No.- 1090/15 against departmental proceeding No.- 17/ 2012 whereby service of the petitioner from the post of Constable (Sipahi) has been terminated with immediate effect in a very arbitrary and capricious manner; in contravention of the basic and relevant provisions of law.*
- (IV) *To quash the report of departmental inquiry no. 17/2012 initiated against the petitioner; conducted and submitted by one Krishna Kumar, Inspector P.S. Dumroa, because the procedure adopted was ex-parte and not as per the settled principles and in violation of natural justice without giving any opportunity to the Petitioner.*
- (V) *That, it is further request to direct the Respondent authorities to re-instead the Petitioner on his Post and allow him to discharge his duty.*
- (VI) *That, it is further requested to direct respondents to make all relevant documents available to the*



Appellant regarding this case, so that Petitioner can defend his part more better then present.”

FACTS OF THE CASE

3. The brief facts giving rise to the present writ petition are that the petitioner was appointed as a Constable. At the relevant time, he was posted at Buxar and was deployed as Security Guard for E.V.M. On the complaint filed by one Constable Kanahaiya Lal Paswan regarding missing of 50 cartridges, an enquiry was initiated by the Dy.S.P., Buxar on 28.02.2012. On the same day, vide Memo No. 481/12, he submitted his report before the Superintendent of Police, Buxar. In the enquiry report, it was stated that Constable Kanak Lal Mandal and Vindhyachal Sah, who were present on duty, informed that yesterday they came to join their duty, but did not assume charge, since the petitioner had asked them to take charge of 5 rifle and 200 cartridges only. They submitted that 50 cartridges were not made available to them. On enquiry, the petitioner informed that after handing over the charge, he went to Buxar to meet the officer in-charge of Nagar P.S. alongwith Kanak Lal Mandal. On the directions of the authorities, the petitioner appeared before the Dy.S.P. and it was disclosed that out of 5 guards, one Anil Kumar was sick and was referred to P.M.C.H. from the second day after



deployment at the post, Sanjay Kumar Singh was on leave since 15.02.2012, Kanhaiya Lal Paswan was mentally unstable and also became sick on 24.02.2012 to 28.02.2012 and Rohit Kumar was also sick from 24.02.2012 onwards and was not present even on 28.02.2012, during enquiry. It was informed by the petitioner that Rohit Kumar is the In-charge of Guards and Command letter is in his possession. In presence of the persons, guard register was checked and it was found that 5 guards were posted. Constable no.86 Kanak Lal Mandal and Constable no. 684 Vindhychal Sah took charge of 5 rifles and 200 round of cartridges from Constable Rohit Kumar, but no one signed on the said charge assuming copy. It was also mentioned in the guard register that the petitioner was present and attentive on duty on 23.02.2012 and 24.02.2012. After enquiry and upon the directions of the Superintendent of Police, Buxar, who vide Memo No. 1038 dated 28.02.2012 directed for institution of criminal case, criminal case bearing Town P.S. Case No. 57 of 2012 was registered against the petitioner, constable Kanhaiya Lal Paswan and the In-charge Rohit Kumar, under different section of the Indian Penal Code. Subsequently, vide Buxar District Order No. 258/12, the petitioner was put under suspension, but, neither a copy of the suspension letter nor a copy of the Memo of charge was supplied to the petitioner. The



petitioner was taken into custody and vide Letter No. 496 dated 02.03.2012, issued under the signature of the Superintendent of Police, Buxar, a departmental proceeding was initiated against him for the charges mentioned in the Memo of charge.

4. It is the case of the petitioner that any paper, document, charge-sheet/Memo of charge was ever supplied to the petitioner. The departmental proceeding was initiated and the enquiry officer, after conducting the departmental proceeding bearing No. 17 of 2012, submitted his report before the Superintendent of Police, Buxar vide no. DR.594/13 dated 09.03.2013, whereby he found the petitioner to be guilty of the charges levelled against him. It is the specific case of the petitioner that during course of enquiry, neither any document was provided to the petitioner nor any memo of charge was provided and even, no opportunity was given to the petitioner to file his show cause reply, to the memo of charge and he did not even participate in the departmental proceeding. The departmental proceeding was conducted ex-parte and on the basis of the enquiry report dated 09.03.2013, vide letter no. 2702 dated 25.08.2015, issued under the signature of the Superintendent of Police, Buxar, the services of the petitioner was terminated. Being aggrieved with the order passed by the disciplinary authority, the petitioner filed an appeal



before the appellate authority. The appeal preferred by the petitioner was also dismissed vide Memo no. 882 dated 14.05.2016, issued under the signature of the D.I.G., Sahabad Range, Dehri on Sone. Subsequently, the petitioner preferred Memorial before the Director General of Police, Bihar, Patna. However, the Memorial preferred by the petitioner was also rejected vide order dated 13.12.2016, passed by the Director General of Police contained in Memo no. 6541. It is further case of the petitioner that the petitioner had also preferred a writ petition bearing C.W.J.C. No. 14208 of 2014, however the same was disposed of vide order dated 13.08.2019 passed by a learned Coordinate Bench of this Court with a direction to the authorities concerned to take decision on the Memorial preferred by the petitioner within 8 weeks and while considering/disposing of the Memorial, the authority should consider the plea raised by the petitioner regarding non-service of second show cause notice upon the petitioner, in the background of the decision in the case of Rohit Kumar, decided by learned Co-ordinate Bench of this Court on 06.12.2016 in C.W.J.C. no. 10822 of 2015.

SUBMISSION ON BEHALF OF THE PETITIONER

5. The learned counsel for the petitioner submits that during course of investigation in the criminal case on the



confessional statement made by Constable Rohit Kumar, missing 50 cartridges along with one Bindolia was recovered by the police from the shop of one Barber. The petitioner was also put behind bars in the said criminal case and he was subsequently released on bail on the orders passed by this Hon'ble Court vide order dated 03.07.2012 passed in Criminal Miscellaneous No. 16245 of 2012. He submits that the entire departmental proceeding was conducted ex-parte without giving any opportunity to the petitioner to participate in the departmental enquiry. He submits that before initiating the departmental proceeding no opportunity was given to the petitioner to file show cause reply and the memo of charge was never supplied to the petitioner. Even during course of departmental proceeding, the petitioner was not given any opportunity to participate, since during departmental proceeding, he was in jail. He further submits that since the petitioner did not participate in the departmental proceeding and the departmental proceeding was conducted ex-parte, there is no question of cross-examination of any witness on behalf of the petitioner and the order passed by the disciplinary authority is in complete violation of the provisions contained in the Bihar C.C.A Rules, 2005.

6. The learned counsel for the petitioner further submits that prior to passing the impugned order of punishment, no second



show cause notice was issued to the petitioner and the disciplinary authority only on the basis of the enquiry report, proceeded to pass the impugned order of the punishment, whereby the petitioner has been terminated from service. He further submits that constable Rohit Kumar, against whom the allegation of not taking care of the 50 cartridges were there and on his confessional statement, the cartridges were recovered, had also filed a writ petition bearing C.W.J.C. No. 10822 of 2015. The said writ petition was allowed vide order 06.12.2016 passed by a learned Coordinate Bench of this Court, on the ground that no copy of the enquiry report was forwarded to the said Rohit Kumar, which is in violation of Rule 18(3) of Bihar C.C.A. Rule, 2005 and the order of punishment was not preceded with the service of show cause on the enquiry report, therefore, the writ petition was allowed and the matter was remitted back to the Superintendent of Police, Buxar to proceed with the matter afresh, in accordance with law and in observance that the statutory rules, from the stage of service of copy of enquiry report. He submits that the case of the petitioner is squarely covered by the judgment of the learned Coordinate Bench of this Court passed in C.W.J.C. no. 10822 of 2015.

SUBMISSION ON BEHALF OF THE RESPONDENTS



7. Per contra, the learned counsel appearing on behalf of the State submits that despite repeated opportunities being given to the petitioner to participate in the departmental proceeding, which would appear from the enquiry report, wherein the enquiry officer has specifically mentioned about sending notices/information to the petitioner through post on his home address as also through the Dumraon Circle, the petitioner chose not to appear in the enquiry proceeding and left with no other option, the enquiry officer proceeded to conduct the departmental enquiry ex-parte.

8. The learned counsel appearing on behalf of the State further submits that before initiation of the departmental enquiry, all the procedures, as prescribed under law was followed and the disciplinary authority after going through the reports submitted by the enquiry officer, proceeded to pass the order of termination against the petitioner. He submits that the petitioner was found to be negligent in his duty and he did not take care of the 50 cartridges, which were in his position and for which, a First Information Report was also lodged against the petitioner and other similarly situated constables. He submits that there is no infirmity in conducting the departmental proceeding and every effort was taken by the disciplinary authority to consider the enquiry report and then, after consideration the impugned order of



termination was passed. He submits that even the appellate authority, who passed the order on the appeal preferred by the petitioner, proceeded to reject the appeal after thorough consideration of all the defense raised by the petitioner. He submits that the Memorial preferred by the petitioner was rejected by the Director General of Police, Bihar, Patna, after going through the order passed by the disciplinary authority and the appellate authority, as well as after the appreciation of the enquiry report and there is no infirmity in the order passed by the Director General of Police, Government of Bihar, Patna.

9. The learned counsel appearing on behalf of the State further submits that a show cause reply was filed on behalf of the petitioner, which was received on 4/6.02.2014, and therefore, it cannot be said that the petitioner was not given any opportunity to file his defense.

CONSIDERATION

10. Having heard the learned counsel for the parties and after going through the records, it appears that a First Information Report was lodged against the petitioner, wherein he was in custody from 28.02.2012 to 03.07.2012. The memo of charge was issued on 02.03.2012 i.e. after the petitioner was taken into custody and a specific averment has been made in paragraph no. 9



of the writ petition to the effect with the memo of charge was not served upon the petitioner and neither an opportunity was given to the petitioner to submit his clarification, which has not been denied by the respondent authorities, while filing counter affidavit and only a statement has been made that the same is matter of record. It further appears that during course of departmental enquiry, notices were issued to the petitioner on different dates, but admittedly, the petitioner was in custody, however after his release from the custody 2 or 3 notices were issued to the petitioner. However, it is the specific of the case of the petitioner that the said notices were never received by him and no denial is there in the counter affidavit, filed on behalf of the respondent authorities. It further appears that the enquiry report was submitted by the enquiry officer, before the disciplinary authority and from the order impugned contained in Memo no. 2702 dated 25.08.2015 by the disciplinary authority, it would transpire that no second show cause notice was issued to the petitioner or any enquiry report was ever served upon the petitioner. The disciplinary authority in complete violation of the provisions contained in Rule 18(3) of the Bihar C.C.A Rules, 2005, without providing the enquiry report to the petitioner or without giving any opportunity to the petitioner, proceeded to pass the order of punishment against the petitioner,



whereby the petitioner has been dismissed from service. Further, since admittedly no opportunity was given to the petitioner to file his second show cause reply, there is no question of consideration of his reply by the disciplinary authority and the order passed by the disciplinary authority is based on the basis of the enquiry report submitted by the enquiry officer, wherein admittedly, the petitioner was not present. Even the appellate authority, without considering the defense raised by the petitioner in his memo of appeal, proceeded to reject the appeal filed by the petitioner, mechanically. The Director General of Police, while considering the Memorial preferred by the petitioner, did not even consider the fact that the writ petition of similarly situated person was allowed by a learned Co-ordinate Bench this Hon'ble Court, by directing the Director General of Police to consider this aspect while passing the final order on the memorial, but even then he did not consider the same and proceeded to reject the memorial preferred by the petitioner. It has been informed by the learned counsel appearing on behalf of the petitioner that Rohit Kumar, whose writ petition was allowed by a learned Coordinate Bench of this Court vide order dated 06.12.2016 passed in C.W.J.C. no. 10822 of 2015, has been reinstated in service and is working in the Police Department. Further, pursuant to the order dated 13.08.2019 passed in C.W.J.C.



no. 14208 of 2014 preferred by the petitioner, an information was given to the learned counsel for the petitioner vide Memo no. 931/442055 dated 24.09.2019 that the memorial preferred by the petitioner has already been rejected on 14.12.2016 by the Director General of Police and the case of Rohit Kumar cannot be taken parity with the case of the petitioner, therefore, again the same was rejected.

11. Considering the above, this Court is of the opinion that the order impugned passed by the Superintendent of Police contained in Memo no. 2702 dated 25.08.2015, Memo no. 882 dated 14.05.2016 passed by the D.I.G. Shahbad Range, Dehri-on-Sone, the order contained in Memo no. 6541 dated 13.12.2016 passed by the Director General of Police, Bihar, Patna and Memo no. 931/442055 dated 24.09.2019 issued under the signature of the A.I.G. (inspection), Government of Bihar, Patna, office of the Director General of Police, Bihar, Patna deserves to be set aside and are accordingly set aside.

12. The matter is remitted back to the disciplinary authority to proceed afresh from the defective stage i.e. from the issuance of show cause notice to the petitioner. The entire exercise must be completed within a period of six months.



13. The writ petition is allowed in the above mentioned terms.

14. Pending application, if any, shall also stand disposed of.

(Ritesh Kumar, J)

Ajay/Pallavi/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	16.05.2026
Transmission Date	NA

