

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13380 of 2022

Satyendra Kumar Gupta, son of Sri Arun Kumar Gupta, Resident of Village-Bauraha, P.S.- Birpur, District- Supaul.

... ... Petitioner/s

Versus

1. The State of Bihar through the Director General of Police, Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Principal Secretary, Home (Police) Department, Bihar, Patna.
4. The Under Secretary, Home (Police) Department, Bihar, Patna.
5. The Additional Director General of Police, Law and Order-cum-Appellate Authority, Bihar, Patna.
6. The Inspector General of Police, Purnea Range, Purnea.
7. The Superintendent of Police, Araria.
8. The Enquiry Officer-cum-Deputy Superintendent of Police, Forbesganj, District- Araria.

... ... Respondent/s

Appearance :

For the Petitioner/s : Mr. Vinay Ranjan, Advocate
Mr. Abhishek Teerthankar, Advocate
Mr. Ankit Kumar, Advocate

For the Respondent/s : Mr. P. K. Verma, AAG- 3

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

Date : 18-03-2025

The petitioner is represented through Mr. Vinay Ranjan, learned Advocate and the State respondents through Mr. P. K. Verma, learned Senior Advocate-cum-Additional Advocate General No.-3.

2. The petitioner is aggrieved with the order as contained in Memo No. 1108 dated 08.12.2020, issued under the signature of Inspector General of Police, Purnea Range, Purnea,



whereby the petitioner has been inflicted with the punishment of dismissal from service. The challenge has also been made to the order, as contained in letter no. 106 dated 02.03.2021, by which the Departmental Appeal preferred by the petitioner came to be rejected; further, the order, as contained in letter no. 6101 dated 23.06.2022, issued under the signature of Under Secretary to the Government of Bihar, whereby the Memorial Appeal against the appellate order also came to be rejected.

3. The facts in brief, as culled out from the materials available on record, are incorporated hereinunder:

(i) The petitioner was duly inducted in Bihar Police Service as Sub-Inspector of Police in the year 2009. While he was posted as S.H.O. Baansi police station, one Mukesh Mukhiya was brought in the police station in drunken position, but allegedly he was released by the petitioner from the police station itself after accepting bribe of Rs.8,000/- through Chaukidar, namely, Raj Kumar. Further, on that date itself, one another person, namely, Asfaque was also arrested with five bottles of Corex Cough Syrup on his motorcycle, leading to institution of the F.I.R. lodged by the petitioner.

(ii) One Surendra Paswan, Assistant Sub-Inspector of Police, was appointed as investigating officer of the said case,



but initially he refused to accept the case for investigation, whereupon some hot exchange of abusive talk took place, resulting into a complaint filed by ASI Surendra Paswan to the Superintendent of Police, Araria along with the name of the witnesses, who had allegedly seen the occurrence. It is also alleged that the petitioner after accepting bribe of Rs.15,000/- from the family members of accused Asfaque, released the motorcycle illegally. The aforesaid incident and on receipt of the written complaint, led to issuance of Memo No. 19481 dated 01.07.2019 issued by the Superintendent of Police, Araria directing the Sergeant Major to enquire the matter and submit his report. In compliance thereto, the Sergeant Major submitted his enquiry report on 05.07.2019.

(iii) The Superintendent of Police, Araria, on being dissatisfied with the report vide Memo No. 20234 dated 07.07.2019 asked the Sergeant Major to submit a fresh enquiry report on the point mentioned therein. A fresh enquiry report was submitted on 12.07.2019, but this report did not satisfy the Superintendent of Police, Araria leading to fresh enquiry and the Sergeant Major again submitted his 3rd enquiry report on 19.07.2019. This time also, the report could not satisfy the Superintendent of Police, Araria, who vide Memo No. 30470



dated 20.07.2019 asked for another enquiry report, whereupon the enquiry report dated 26.07.2019 was submitted but the Superintendent of Police, Araria directed for a fresh enquiry and lastly 5th enquiry report was submitted by the Sergeant Major on 07.08.2019.

(iv) After receipt of the enquiry report, explanation was sought for by the petitioner, who in response thereto submitted his explanation. The explanation submitted by the petitioner was not found satisfactory, hence the Memo of Charge against the petitioner in (Prapatra 'क') was framed by the Superintendent of Police, as contained in Memo No. 3038 dated 11.10.2019 and Memo No. 3788 dated 07.12.2019 directing the petitioner to submit his explanation. Subsequent thereto, a fresh Memo of Charge, as contained in Memo No. 3922 dated 18.12.2019 issued incorporating the Departmental Proceeding No. 30/2019 against the petitioner. The Sub-Divisional Police Officer, Forbesganj was appointed as Conducting Officer. One Gopal Jee Singh was also appointed as the Presenting Officer.

(v) The petitioner in response to all the Article of charges submitted his written-defence statement and after completion of the enquiry in the said departmental proceeding



no. 30/2019, the enquiry report was submitted holding the petitioner guilty of the charges levelled in the Memo of Charge. On receipt of the enquiry report, the Superintendent of Police, Araria vide Memo No. 2120 dated 04.08.2020 issued second show-cause notice seeking explanation of the petitioner in the light of the enquiry report, which was duly responded by the petitioner. The explanation of the petitioner did not satisfy the Superintendent of Police, Araria, who vide its Memo No. 2267 dated 18.08.2020 sent its recommendation to the Inspector General of Police, Purnea Range, Purnea for dismissal/removal/compulsory retirement from service. The petitioner was also directed to submit explanation before the Inspector General of Police, Purnea Range, Purnea, which was duly complied by the petitioner.

(vi) Finally, the impugned order of dismissal, as contained in Memo No. 1108 dated 08.12.2020 came to be passed by the Inspector General of Police, Purnea Range, Purnea, being dissatisfied with the explanation submitted by the petitioner. Aggrieved with the aforesigned order of dismissal, the petitioner preferred departmental appeal before the Additional Director General of Police (Law & Order), Patna, which did not find favour and came to be rejected. The petitioner's Memorial



appeal preferred before the Home Secretary (Police), Home Department, Bihar was also rejected vide Memo No. 6101 dated 26.03.2022.

4. While assailing the impugned orders, learned Advocate for the petitioner primarily contended that the petitioner was Sub-Inspector of Police, thus the Disciplinary Authority of the petitioner was non-else, but the Deputy Inspector General/Inspector General of Police, as per the Bihar Police Manual. Referring to Rule 16(1)(a) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as 'the CCA Rules, 2005') it is contended that it is the only appointing authority or the Disciplinary Authority, who may proceed against the petitioner, but in the present case, the Superintendent of Police, Araria asked the explanation and framed the Memo of Charge as well as recommended for dismissal, which is wholly without jurisdiction. Consecutive enquiry at the dictate of the Superintendent of Police, Araria till his satisfaction suggesting the materials to proceed against the petitioner departmentally is actuated with mala fide on the part of the authorities, especially the Superintendent of Police, Araria. It is further contended that for one proceeding, altogether three article of charges have been



framed; moreover, the charges were completely vague and all of them were issued in gross violation of Rule 17 of the CCA Rules, 2005. The disciplinary proceeding, even if admitted, was commenced on issuance of second charge memo, but the same was not consistent to the provisions contained in Bihar Charge-sheet Rule, 2017. All the more, the charges have not been explained, rather preliminary enquiry report or fact finding report, including the statement of witnesses and different orders of the Superintendent of Police was mentioned therein. None of the eye witness to the alleged seizure of motorcycle and subsequent release was made witness, which is not only against the provisions of law, but also against strict instruction issued and circulated by the Headquarter of the Bihar Police time to time.

5. The explanation sought for by the Superintendent of Police in the capacity of the Disciplinary Authority and the recommendation made to the Disciplinary Authority-cum-Inspector General of Police, Purnea Range, Purnea for dismissal from service and on the basis thereupon impugned punishment of dismissal was passed is nothing, but a gross violation of the Bihar Police Manual as well as CCA Rules, 2005, apart from in complete transgression to the instructions issued from the Bihar



Police Headquarter. Reliance has been placed on a learned Single Judge decision of this Court dated 18.08.2019 passed in the case of **Sanjay Kumar Singh Vs. The State of Bihar & Ors.** (C.W.J.C. No. 6530 of 2017) and further in the case of **Dharmendra Kumar Vs. The State of Bihar & Ors.** (C.W.J.C. No. 470 of 2018).

6. Learned Advocate for the petitioner referring to the impugned order passed by the Disciplinary Authority has further contended that apart from the order being cryptic in nature, the same has been passed in mechanical manner without assigning any reason for rejecting the explanation of the petitioner. Similarly the Appellate Authority did not take notice of the aforesaid errors committed by the enquiry officer, Superintendent of Police as well as the Disciplinary Authority, while rejecting the departmental appeal of the petitioner. Grounds raised by the petitioner in the Memorial appeal has also been ignored by the Government.

7. Per contra, learned Additional Advocate General, Mr. P. K. Verma, submitted that since the preliminary enquiry was not conducted in the manner, it was required to be done, the Superintendent of Police, Araria directed for fresh enquiry on the point allegedly complained against the petitioner. The



allegation levelled in the complaint was substantiated in the preliminary enquiry, which led to issuance of Memo of charge. Since in first Memo of charge, no Conducting Officer and the Presenting Officer was appointed, hence a fresh Memo of charge was issued. Moreover for this reason, the departmental proceeding cannot be faulted. The Memo of charge contained the list of documents as well as list of witnesses by which the charges were proposed to be proved. During enquiry, the witnesses were examined, who supported the charges. The explanation of the petitioner was duly considered by the Conducting Officer. Moreover, after thorough enquiry, the charges were found proved, leading to issuance of the second show-cause notice. The Superintendent of Police, being fully satisfied with the findings of the enquiry report vide its Memo No. 2267 dated 18.08.2020 made its recommendation to the Inspector General of Police, Purnea Range, Purnea for dismissal/removal/compulsory retirement of the petitioner from his service. It is the Inspector General of Police, Purnea Range, Purnea, who having considered the materials available on record, has inflicted the punishment of dismissal. All the more, the order passed by the Disciplinary Authority, duly affirmed by the Appellate Authority as well as by the Home Secretary



(Police), Home Department, Bihar.

8. Learned Senior Advocate for the State lastly contended that the procedure required under the law was duly followed, leading to dismissal of the petitioner. So far the scope of judicial review in a departmental proceeding is very limited and the Court cannot sit in appeal and cannot re-appreciate the evidence, hence no interference is warranted.

9. This Court has anxiously heard the learned Advocate for the respective parties and also perused the materials available on record.

10. Before dealing with the issue germane for adjudication, this Court deprecates the manner in which consecutively enquiry was directed, one after another, as also the issuance of three Memo of Charges for one and the same departmental proceeding. Suffice it to observe that evidence recorded in a preliminary enquiry cannot be used for a regular enquiry, as the delinquent is not associated with it and opportunity to cross-examine the persons examined in preliminary enquiry is not given. Though, this issue has been crystallized by the Constitution Bench time to time, but it would worth benefiting to observe here that the Constitution Bench of Apex Court in **Amalendu Ghosh Vs North Eastern Railway**,



reported in, **AIR 1960 SC 992**, held that the purpose of holding a preliminary inquiry in respect of a particular fact is *prima facie*, to know as to whether the alleged misconduct has been committed and on the basis of the findings recorded in preliminary inquiry, no order of punishment can be passed. It may be used only to take a view as to whether a regular disciplinary proceeding against the delinquent is required to be held.

11. Similarly, in **Champaklal Chimanlal Shah Vs. Union of India**, reported in, AIR 1964 SC 1854, a Constitution Bench of Apex Court while taking a similar view held that preliminary inquiry should not be confused with regular inquiry. The preliminary inquiry is not governed by the provisions of Article 311(2) of the Constitution of India. It is merely for the satisfaction of the Government though usually for the sake of fairness, an explanation may be sought from the government servant even at such an inquiry. But at that stage, he has no right to be heard as the inquiry is merely for the satisfaction of the Government as to whether a regular inquiry must be held.

12. Reiterating the aforesaid proposition, the Apex Court in the case of **Narayan Dattatraya Ramteerthakhar Vs. State of Maharashtra**, reported in (1997) 1 SCC 299, the



Court held that a preliminary inquiry has nothing to do with the enquiry conducted after issue of charge-sheet. The preliminary enquiry is only to find out whether disciplinary enquiry should be initiated against the delinquent. Once regular enquiry is held under the Rules, the preliminary enquiry loses its importance and, whether preliminary enquiry was held strictly in accordance with law or by observing principles of natural justice, remains of no consequence.

13. Notwithstanding the settled legal position, as discussed hereinabove, having gone through the Memo of charges as well as enquiry report, this Court finds that it contains reiteration of the preliminary enquiry held time to time by the Sergeant Major pursuant to the direction of the Superintendent of Police, Araria. It is trite that the evidence recorded in preliminary enquiry cannot be used as regular enquiry, as the delinquent is not associated with it and opportunity to cross-examine the person examined in such enquiry is not given, using such evidence would obviously be violative of the principles of natural justice and fair play.

14. Coming to the issue regarding jurisdiction of the Superintendent of Police to issue Memo of charge and conducting disciplinary proceeding against a delinquent holding



the post of Sub-Inspector of Police and further making recommendation for his dismissal had come up for consideration before a Bench of this Court in the case of **Uday**

Pratap Singh Vs. The State of Bihar & Ors, reported in 2017

(4) PLJR 195. Highlighting the definition of appointing authority as well as disciplinary authority, as prescribed under Rules 2(f) and 2(j) read with Rule 16 of the CCA Rules, 2005, the learned coordinate Bench of this Court has observed that a careful reading of the aforesaid provisions leaves no room for confusion that it is either the appointing authority or any authority authorized by it or an authority authorized by special or general order, who would be competent to initiate a disciplinary proceeding against a Government servant.

15. Thus in case of Sub-inspector of Police, it is the Inspector General of Police / Deputy Inspector General of Police, who would be the appointing authority as well as disciplinary authority. It would be appropriate to encapsulate para. 31 of the judgment of **Uday Pratap Singh** (supra) to clarify the position.

“31. In so far as the case in hand is concerned it is the Senior Superintendent of Police, Patna who has initiated the proceeding against the



petitioner by service of charge memo placed at Annexure-6 and which also directs the petitioner to file his reply before the Senior Superintendent of Police but then in absence of any authorization given to the Senior Superintendent of Police either under the Bihar Police Manual or by the Inspector General of Police being the appointing authority or the Deputy Inspector General of Police being the Disciplinary Authority to initiate the process, the very initiation is without jurisdiction.”

16. The Court further reiterating the judgment rendered by the Apex Court in the case of **Secretary, Min. of Defence vs. Prabhash Chandra Mirdha**, reported in **AIR 2012 SC 2250** has observed that there cannot be a contest on the legal proposition that a disciplinary proceeding can only be initiated by an authority competent to do so. It is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings.

17. In the case in hand, specific plea has been taken by the petitioner with regard to the Superintendent of Police having no jurisdiction to conduct a departmental proceeding, but neither it has been responded in the counter affidavit nor any order of authorization has been placed on record to the effect



that the Superintendent of Police has been authorized for such purpose.

18. The identical issue has also been considered in the case of **Dharmendra Kumar** (supra) wherein the Court has observed that admittedly the Deputy Inspector General of Police is the Disciplinary Authority of a Sub-Inspector of Police, hence the initiation of the departmental proceeding by issuance of the Memo of charge by a Sub-ordinate official is wholly illegal and for this reason alone the entire proceeding is found fit to be set aside.

19. Rule 17 of the CCA Rules, 2005 prescribes the procedure for imposing major penalties. Rule 17(3) thereof casts an obligation on the Disciplinary Authority to draw a charge against a delinquent Government servant or cause it to be drawn up against the officer delinquent.

20. It is specifically ruled that the substance of imputation of misconduct or misbehaviour has definite and distinct article of charge. In support of each charge, the statement of all relevant facts, including a list of such document by which, and a list of such witnesses by whom, the articles of charge is sustained.

21. Rule 17(4) thereof mandates the delivery of such



charge memo so drawn up either through the Disciplinary Authority or through an officer duly authorized. The obligation cast on the Disciplinary Authority has further mandated him to satisfy himself whether the explanation so forwarded by a delinquent on the proposed charge, requires an enquiry by the Enquiry Officer or requires a closure.

22. In case of Shankar Dayal Vs. State of Bihar & Ors. (C.W.J.C. No. 7207 of 2016) while reiterating the aforesaid proposition of law had held that this power is exclusively vested in the Disciplinary Authority under Rule 17(4) cannot be delegated. The Court found that this mandatory obligation cast on Disciplinary Authority has been flouted as confirmed from the letter issued by the Enquiry Officer directing the petitioner to file his reply on the charges before him.

23. In the case in hand, this Court finds that Rule 17(4) of the CCA Rules, 2005 has been given a complete go-bye.

24. Now coming to the enquiry report, though this Court finds that the witnesses were examined to prove the charges levelled against the petitioner, but except the reiteration of the consecutive preliminary enquiry report and the direction given by the Superintendent of Police time to time, apart from



the deposition of the witnesses, there is no discussion as to why the explanation of the petitioner is not acceptable to the enquiry officer. The enquiry report merely reiterates the preliminary enquiry reports as well as witnesses, who were examined even during the preliminary enquiry. It surprisingly runs in eighteen (18) pages, but the opinion of the enquiry officer is only in two lines, which also based upon the preliminary enquiry holding that the charges levelled against the petitioner stands proved.

25. Another infirmity has been committed by the Superintendent of Police while asking the explanation from the petitioner after receipt of the enquiry report and on being found it unsatisfactory recommended for harsh punishment of dismissal. The Disciplinary Authority further committed serious illegality while passing the impugned order of punishment of dismissal dated 08.12.2020 based on the recommendation of the Superintendent of Police, Araria. From perusal thereof, it clearly smacks of total non-application of independent mind by the Disciplinary Authority.

26. The importance of giving reasons has been emphasized and painstakingly explained by the Apex Court in the case of **Kranti Associates (P) Ltd. Vs. Masood Ahmed Khan**, reported in, **(2010) 9 SCC 496**, wherein the Court, inter



alia, held that a quasi-judicial authority must record reasons in support of its conclusions, inasmuch, as recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power. It is the reasons, which facilitate the process of judicial review by the superior Court.

27. This Court is also tempted to encapsulate the relevant paragraph of the Division Bench Judgment of this Court rendered in the case of **Kems Services Private Limited Vs. State of Bihar**, reported in **2014 (1) PLJR 622**.

“**11.** Natural justice is a word of very wide connotation. It cannot be put in any straight jacket formula. Its applicability shall depend on facts of each case. It cannot mean only fulfillment of the formality for giving of a show cause notice and acceptance of a reply. The final order must display complete application of mind to the grounds mentioned in the show cause notice, the defence taken in reply, followed by at least a brief analysis of the defence supported by reasons why it was not acceptable. To hold that the cause shown can be cursorily rejected in one line by saying that it was not satisfactory or acceptable in our opinion shall be vesting



completely arbitrary and uncanalised powers in the authority. In a given situation if the authority concerned finds the cause shown to be difficult to deal and reject, it shall be very convenient for him not to discuss the matter and reject it by simply stating that it was not acceptable. The giving of reasons in such a situation is an absolute imperative and a facet of natural justice. Reasons have been held to be the heart and soul of an order giving insight to the mind of the maker of the order, and that he considered all relevant aspect and eschewed irrelevant aspects.”

28. In view of the aforesaid facts, circumstances and the position obtaining in law, the entire disciplinary proceeding leading to issuance of the impugned order of dismissal is held to be illegal, dehors the statutory procedure. Accordingly, the entire disciplinary proceeding, right from inception of Memo of Charge as well as order of punishment dated 08.12.2020, as also the Appellate order dated 02.03.2021 and the order passed in Memorial appeal dated 23.06.2022, are hereby quashed.

29. Now the question which would arise before this Court as to whether the petitioner would be entitled to back wages, especially when this Court has set aside the impugned



orders after holding it bad and illegal. Suffice it to observe that in cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee, the nature of misconduct, if any found proved against the employee, the financial condition of the employer and similar other facts [Vide: **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya and Others, (2013) 10 SCC 324**].

30. Having regard to the facts that the respondents have completely failed to justify their action in inflicting the punishment and they have acted in gross violation of the statutory provisions and/or principles of natural justice, this Court further directs the respondents to pay the back wages to the petitioner along with consequential benefits.

32. The writ petition stands allowed with the aforesigned direction.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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