IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12321 of 2021

==========

Manoj Kumar Ram S/o- Late Mahanth Ram Resident of Village- Harpur, P.S.- Raghunathpur, District- Siwan (Bihar).

... ... Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Department of Home, Govt. of Bihar, Patna.
2. The Director General of Police Govt. of Bihar, Patna.
3. The Additional Director General of Police (Law and Order), Govt. of Bihar, Patna.
4. The Inspector General of Police (Budget, Appeal and Welfare), Govt. of Bihar, Patna.
5. The Inspector General of Police Muzaffarpur Zone, Muzaffarpur.
6. The Deputy Inspector General of Police Saran Range, Saran, Chapra.
7. The Superintendent of Police Saran, Chapra.
8. The Superintendent of Police District- Gopalganj.
9. The Enquiry Officer-cum- Deputy Superintendent of Police HQ, Saran, (Chapra).

... ... Respondent/s

==========

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Giri, Adv.
Mr. Mritunjay Harsh, Adv.

For the State : Mr. Md. Nadim Seraj, GP 5
Mr. Dhurendra Kumar, AC to GA 5

==========

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

C A V J U D G M E N T

Date : 20-03-2025

Heard Mr. Sanjay Kumar Giri, learned Advocate for the petitioner and Mr. Md. Nadim Seraj, learned Advocate for the State at length.

2. The petitioner has invoked the prerogative writ jurisdiction of this Court, seeking quashing of Memo No. 3340 dated 17.11.2018 passed by the Deputy Inspector General of Police, Saran Range, Chapra (respondent no. 6), whereby the

petitioner has been inflicted with the punishment of dismissal from the post of Sub Inspector of Police. The consequential orders, as contained in Memo No. 4989 dated 24.11.2018 as well as Memo No. 2488 dated 29.11.2018, are also put to challenge in the present writ petition. The petitioner is further aggrieved with the order dated 16.02.2021 passed by the respondent no. 3, whereby the appeal preferred against the order of dismissal also came to be rejected vide order dated 16.02.2021 along with the consequential orders issued under Memo No. 1498 dated 13.03.2021 and Memo No. 595 dated 23.03.2021.

3. The relevant facts necessary for adjudication of the present *lis* as culled out from the materials available on record, in brief, are as follows:

(i) The petitioner was duly appointed as a Sub Inspector of Police on 18.02.2009. While the petitioner was posted in Jalalpur Police Station within the district of Saran, he was handed over an investigation in connection with Jalalpur P.S. Case No. 112 of 2014 registered for the offences punishable under Section 420 of the Indian Penal Code. The afore noted case was instituted against the Headmaster of the Government School along with other persons. In the meanwhile, the husband

of the accused (Rajani Dubey) made a written complaint on 18.11.2014 before the Superintendent of Police,Vigilance Bureau, Patna to the effect regarding demand of Rs.30,000/- by the SHO of Jalalpur P.S. in lieu of sending the case diary to the court, where bail application of his wife was pending.

(ii) On the basis of the said complaint, verification was made on 19.11.2014 and subsequent thereto, a trap team was constituted by the Vigilance Investigation Bureau, Patna. A raid was conducted on 21.11.2014 and the petitioner was apprehended while accepting bribe of Rs.20,000/- leading to institution of Vigilance P.S. Case No. 90 of 2014 registered for the offences punishable under Sections 7/13 (2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988. Consequent to the institution of the FIR, the petitioner was placed under suspension and P*rapatra-Ka* was framed under Memo No. 27 dated 03.01.2015.

(iii) The petitioner on being released from the judicial custody on 16.01.2015 filed a show cause on 09.03.2015 requesting therein to allow him to cross examine all the witnesses, who shall depose in the departmental enquiry. The petitioner also filed his show cause/defence statement before the Conducting Officer on 24.09.2018; a demand was made for

necessary document with regard to the charges alleged against him. On 19.12.2017 under Memo No. 5793 issued by the Superintendent of Police, the Presenting Officer was appointed. On enquiry, all the charges levelled against the petitioner stand proved and accordingly, after completion of the enquiry, the Conducting Officer has submitted its enquiry report to the Superintendent of Police vide Memo No. 578 dated 27.09.2018. Upon submission of the enquiry report, a show cause notice was duly served upon the petitioner against his proposed dismissal from service. In response thereto, the petitioner filed his exhaustive reply in his defence reiterating the grounds which have been taken during enquiry. Finally, the impugned order of dismissal came to be passed under Memo No. 3340 dated 17.11.2018, which order has been communicated to the petitioner by passing a consequential order under Memo No. 4989 dated 24.11.2018/Memo No. 2488 dated 29.11.2018 respectively.

(iv) It would also be relevant to point out that during the departmental proceeding, the petitioner had also preferred CWJC No. 15117 of 2018 for keeping the departmental enquiry in hold till the disposal of the Vigilance Case. However, on account of the order of dismissal having been passed in the

interregnum period, the writ application has become infructuous.

(v) Being aggrieved with the order of dismissal, the petitioner also preferred CWJC No. 9534 of 2019 which came to be disposed of vide order dated 12.11.2020 with a direction to the respondent to dispose of the statutory appeal, which was found pending before the appellate authority. Pursuant to the direction of this Court, the appeal was taken up and finally came to be rejected vide order dated 16.02.2021. Upon the order being passed by the appellate authority, the consequential orders of rejection of appeal also communicated through Memo No. 1498 dated 13.03.2021 and Memo No. 595 dated 23.03.2021, respectively.

4. Learned Advocate for the petitioner while assailing the impugned order of dismissal and its affirmance by the appellate authority has contended that the Superintendent of Police was neither the disciplinary authority nor the appointing authority of the petitioner, who was holding the post of Sub Inspector, and, as such, the issuance of memo of charge by the Superintendent of Police, Saran and the recommendation for dismissal is wholly without jurisdiction, apart from there is non compliance of Rules 16, 17 (2) and 18 of the Bihar Government

Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as the 'CCA Rules, 2005'). Adverting to the facts of the case, it is further contended that admittedly the date on which the memo of charge was issued, the petitioner was under judicial custody; from bare perusal of memo of charge which was issued on 03.01.2015 it would be evident that no Presenting Officer was appointed to conduct the case of the Department. For the first time, the Presenting Officer was appointed on 19.12.2017, much belatedly after examination of so many witnesses. Non appointment of the Presenting Officer was completely in the teeth of Rule 17(5)(c) of the CCA Rules, 2005 as also the consequential letter issued at the level of the Inspector General of Police under Memo no. 235 dated 20.12.2017 directing all the Superintendents of Police to follow the statutory prescriptions. Referring to the aforesaid facts, learned Advocate thus contended that the departmental proceeding stands vitiated as it is the Conducting Officer who has acted as a Presenting Officer. It is the specific contention of the petitioner on affidavit that he was not provided an appropriate opportunity of examining the witnesses during the course of enquiry, despite request having been made time to time on his part; hence submission has been made that the

impugned order of dismissal is violative of the rule of principles of natural justice.

5. Referring to various paragraphs, learned Advocate for the petitioner contended that the delinquent has not been given any notice during the course of departmental enquiry when prosecution witnesses were to be examined by the enquiry officer, which also supports the submission, afore noted.

6. The next limb of argument of the learned Advocate for the petitioner is confined to the legality of the impugned order as it is said to have been passed without considering the defence adduced by the petitioner during departmental enquiry along with the affidavit provided in support thereof by the independent witness of the seizure list of trap case. The important facts which was overlooked by the enquiry officer as well as the disciplinary authority and the appellate authority is writ large as the complaint was only made against Manish Kumar, the Officer Incharge of the Jalalpur P.S. and not against the petitioner with respect to demand of bribe from the complainant. The entire trap case was false and actuated with malice and to substantiate such submission, a lengthy argument referring to the averments made in the writ petition has also been made. Adding with the aforesaid submission it has also

been pointed out that the person who conducted the investigation in the Vigilance Case was itself a tainted officer, marked with black mark in a disciplinary proceeding and thus not trustworthy liable officer to conduct such enquiry. Grounds taken by the petitioner have neither been considered by the disciplinary officer nor the appellate authority, there is no discussion as to why the defence statement of the petitioner and the grounds raised in support of such defence did nto find favour.

7. To buttress all the submissions afore noted, Mr. Sanjay Kumar Giri, learned Advocate for the petitioner placed reliance upon the judgment rendered by the Apex Court in the case of ***Kumayu Mandal Vikas Nigam Limited vs. Girija Shankar [(2001) 1 SCC 182],*** wherein the Court emphasized that the object of doctrine of natural justice is not to secure justice but to prevent miscarriage of justice. The Hon'ble Court observed that the 60 pages report submitted by the Conducting Officer where charges against the delinquent stand proved and the lengthy order passed by the disciplinary authority did not find enough to sustain the order of dismissal when the enquiry report was found without any basis and also who is the person, who has produced the same in absence of any Presenting Officer

and the notice fixing the date of hearing.

8. Reliance has also been placed on a decision rendered by the Hon'ble Supreme Court in the case of ***State of U.P. & Ors. vs. Saroj Kumar Sinha [(2010) (2) SCC 772]*** to remind this Court with the settled proposition that the Enquiry Officer acting in quasi judicial authority, is in the position of an independent adjudicator and thus he is not supposed to be a representative of Department / disciplinary authority/ Government. Enquiry Officer should not act as a prosecutor as well as a judge.

9. Referring to the decision of the learned Division Bench of this Court in the case of ***Upendra Pandit vs. State of Bihar & Ors. [2023(4) PLJR 568],*** learned Advocate for the petitioner has contended that non appointment of Presenting Officer is a clear and serious lapse of the provisions of Rule 17 of the CCA Rules, 2005 which may lead to setting aside the order of dismissal as well as the order rejecting the appeal. Reliance has also been placed on a judgment rendered by the Apex Court in the case of ***T. Subramanian vs State of Tamil Nadu [AIR 2006 SC 836]*** and Further in the case of ***B. Jayaraj vs State of Andhra Pradesh [(2014) 13 SCC 55]*** on the point that in absence of proof of payment of illegal gratification, mere

recovery of tainted currency notes from the accused did not establish the commission of offence. It is the contention of the petitioner that though the judgments have been rendered in a criminal appeal but the position is settled in law that the demand of illegal gratification is a *sine qua non* to establish the said offence and mere recovery of currency notes cannot constitute an offence under Section 7 of the Prevention of Corruption Act, 1988, unless it is proved beyond all reasonable doubts that the accused voluntarily accepted the money knowing it to be a bribe. It is very surprising that the person against whom complaint of demand of bribe was made, he was also put to departmental proceeding but inflicted only with the punishment of one black mark; so far as the petitioner is concerned, he has been visited with the extreme punishment of dismissal.

10. While summing up the submission, learned Advocate for the petitioner referred to a Bench decision of this Court in the case of ***Md. GiaaulHak vs. State of Bihar [2024(1) BLJ 94]*** to the effect that if any action, which ought to be done by the Presenting Officer has been done by enquiry officer himself and the enquiry proceeding resulted into punishment, is not sustainable and fit to be quashed.

11. Dispelling the contentions made on behalf of the

petitioner, Mr. Md. Nadim Seraj, representing the State has vehemently argued that the initiation of the disciplinary proceeding with the memo of charge was actuated pursuant to the direction of the Director General of Police to the Superintendent of Police, Saran and thus the plea of the petitioner that the disciplinary proceeding and the issuance of memo of charge is wholly without jurisdiction and in no circumstances, stands substantiated. During the departmental proceeding, ample opportunity had been offered to the petitioner, who submitted his detailed exhaustive reply/defence statement as well as the additional explanation along with other supporting documentary evidence, like affidavit of the witnesses, which are duly considered by the Conducting Officer and after proper consideration of the materials and evidences available on record, the charges against the petitioner was found proved.

12. It is fairly contended that though the Presenting Officer was duly appointed on 19.12.2017, but subsequent thereto the witnesses were examined and the petitioner was duly informed about the scheduled date in the proceeding, but he failed to ensure his presence and cross examine the witnesses. To fortify the aforesaid contention, the record in relation to the

departmental proceeding No. 2 of 2015 has been produced before this Court. Drawing the attention of this Court to the memo of charge it is contended that the petitioner has been provided the list of witnesses and the documents based upon which the charges proposed to be proved. The enquiry report clearly suggests that the deposition of the member of the trap team as well as others witnesses were recorded in the disciplinary proceeding, and they have clearly supported the charge of accepting bribe of Rs. 20,000/- by the petitioner. The Conducting Officer also considered the written statement of the petitioner. List of documents as disclosed in the memo of charge was duly supplied upon the delinquent; moreover the enquiry report suggests that the charges stand proved after considering all the materials available on record. Based upon the enquiry report, show cause notice was duly served upon the petitioner and on receipt of the reply to the show cause, the Superintendent of Police examined the same and made recommendation to the Deputy Inspector General of Police, Saran Range, Chapra to inflict punishment of dismissal. Disciplinary authority, on being satisfied with the enquiry report, analysed the entire matters including show cause reply of the petitioner and inflicted punishment of dismissal, which is proportionate to the charges.

13. The appeal preferred by the petitioner also came to be rejected on being found no merit. Heavy reliance has been placed on a decision rendered by the Apex Court in the case of ***State of Rajasthan & Ors. vs. Bhupendra Singh [2024 SCC OnLine SC 1908]***. Mr. Md. Nadim Seraj, learned Government Pleader, after taking this Court through the aforesaid decision has reminded the settled principle of law that the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal or the disciplinary authority. It has also been urged before this Court, that it is well settled that if the disciplinary authority accepts the findings recorded by the Enquiry Officer and proceeds to impose punishment on the basis thereof, no elaborate reasons are required, as explained by three Judges Bench of the Apex Court. [***vide: Boloram Bordoloi v Lakhimi Gaolia Bank, (2021) 3 SCC 806].***

14. This Court has given anxious consideration to the submissions advanced on behalf of the learned Advocates for the respective parties and also perused the materials available on record, including the record in relation to departmental proceeding produced before this Court.

15. Before coming to the facts of the case it would be apposite to discuss the legal position which would govern the point in issue raised before this Court. A charge of corruption is rather a serious charge and if found in a disciplinary proceeding, the opinion expressed by the disciplinary authority/presenting officer cannot be interfered with on misplaced sympathy. The Hon'ble Supreme Court in the case of ***Secretary, Minister of Defence & Ors. vs. Prabhash Chandra Mirdha [AIR 2012 SC 2250***] has ruled that a gravity of charge is also a relevant factor. In the same line, the Court in the case of ***Brajendra Singh Yambem vs. Union of India & Anr. [(2016) 9 SCC 20]*** has observed that the gravity of charge is a relevant factor in trap cases in technical flow flop would not be sufficient to set aside the order passed on such misconduct. The Supreme Court did not grant indulgence after noticing the fact of procedural lapses which was found to be only irregular. It is trite that an extreme charge of such nature warrants an extreme

action and there cannot be any dispute on the principles but nonetheless any action initiated by the State in this direction should be lawful by following the prescribed statutory procedures. A Bench of this Court in the case of ***Uday Pratap Singh vs. State of Bihar & Ors. [2017(4) PLJR 195]*** while making the afore noted observation has said that it is not on mere whims and fancies that any opinion should be formed by the disciplinary authority merely on the seriousness of charge rather before any final opinion is expressed on the charge, the Disciplinary Authority is under a lawful obligation to follow the procedure prescribed under the service rules.

16. The scope of Article 226 of the Constitution in dealing with the departmental enquiries has been considered in innumerable decisions by the highest court of the land. The scope of judicial review is limited to the deficiency in the decision making process and not the decision. Caution has been made that the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator ***[vide: Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223: (1947) 2 All ER 680 (CA)].*** In the case of ***Union of India & Ors. P Gunasekaran***

[(2015) 2 SCC 610], the Apex Court painstakingly summarized the scope of interference while exercising power under Article 226 and 227. It would be worth benefiting to encapsulate the relevant paragraph:

> *"12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:*
>
> *(a) the enquiry is held by a competent authority;*
>
> *(b) the enquiry is held according to the procedure prescribed in that behalf;*
>
> *(c) there is violation of the principles of natural justice in conducting the proceedings;*
>
> *(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
>
> *(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence."

17. As regards the power of the High Court to reappraise the facts, it cannot be said that the same is completely impermissible under Articles 226 and 227 of the Constitution. However, there must be a level of infirmity greater than ordinary in a tribunal's order, which is facing judicial scrutiny before the High Court, to justify interference as has been held by the Apex Court in the case of ***Bharti Airtel Limited vs. A S Raghavendra, [(2024) 6 SCC 418]***. Reiterating the settled legal position right from the case of ***Andhra Pradesh v. S Sree Rama Rao [AIR 1963 SC 1723]*** as also in the case of ***State of Andhra Pradesh v.Chitra Venkata Rao [(1975) 2 SCC 557]*** and ***State Bank of India v. S K Sharma [(1996) 3 SCC 364].*** The Apex Court in the case of ***Bhupendra Singh*** (supra) has also observed that in a case where a fair opportunity was given to the

delinquent to present his version on account of minor deficiencies in the process, if the same has not caused prejudice to the respondents to the extent warranting judicial interdiction and the charges were proved based upon legal evidence, the order of dismissal should not interfere normally.

18. Coming to the facts of the case in hand, it is the admitted position that the complaint was only confined to the allegation of demand of bribe by Manish Kumar, the Officer In Charge of Jalalpur Police Station which led to verification and apprehension of the petitioner while allegedly accepting bribe of Rs. 20,000/- resulting into institution of Jalalpur P.S. Case No. 112 of 2014. It is also the admitted position that the memo of charge was issued on 03.01.2015 while the petitioner was under judicial custody. The petitioner on being released, while denying the allegation filed representations contained in Annexure-4 series with a request for cross examination of the witnesses, whose names were disclosed in the list of witnesses by whom the charges were proposed to be proved. The petitioner also asked for supply of necessary relevant papers in order to offer a proper and exhaustive written statement. The presenting Officer in the disciplinary proceeding was appointed on 18.12.2017, however, in the meantime, two of the witnesses namely

Amarnath Singh, Deputy Superintendent of Police and Maharaja Kanisk Kumar, the Deputy Superintendent of Police, Vigilance Investigation Bureau were examined by the Conducting Officer.

19. Time without number the Court has cautioned with the very object of principles of natural justice which mandates that the employees should be treated fairly in any proceeding which may culminate in punishment being imposed on them. In the case of ***Saroj Kumar Sinha*** (supra) the Court while emphasizing the significance of role and status of the Enquiry Officer has observed that the departmental enquiry conducted against the government servant cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The enquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The Hon'ble Court has also emphasized the rulings rendered in the case of ***Shaughnessy v. United States, [345 US 206 (1953) (Jackson J)]***, a judge of the United States Supreme Court has said "procedural fairness and regularity are of the indispensable essence of liberty. Severe substantive laws can be endured if they are fairly and impartially applied."

20. It would be worth benefiting to encapsulate

paragraph-28 of the decision rendered in the case of ***Saroj Kumar Sinha*** (supra):

> *"28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department / disciplinary authority / Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents."*

21. It is also not in dispute that the Presenting Officer was not at all appointed rather it is a case where the Presenting Officer was appointed but belatedly. Even in such circumstances, the Court may observe that the respondent authorities transgressed the necessary requirement of the prescription and the statutory rule as incorporated under Rule 17(5)(c) of the CCA Rules, 2005. The significance of the appointment of the Presenting Officer has also been admitted by the respondent which led to issuance of memo No. 235 dated 20.12.2017 as contained in Anneuxre-7. The afore noted memo

clearly prescribed the role of the Presenting Officer which would worth relevant for the case in hand, the typed copy of which is incorporated in this order, hereinafter:

"ज्ञापांक 235/344106/एल. 1

पुलिस महानिदेशक का कार्यालय, बिहार पटना।

पटना, दिनांक 20/12/20

सेवा में,

सभी वरीय पुलिस अधीक्षक, बिहार।

सभी पुलिस अधीक्षक (रेलवे सहित) बिहार।

सभी समादेष्टा, बिहार सैन्य पुलिस।

विषयः–अनुशासनिक जाँच (विभागीय कार्यवाही) में प्रस्तुतीकरण पदाधिकारी की नियुक्ति एवं कार्य निष्पादन के संबंध में।

उपरोक्त विषय के संदर्भ में कहना है कि पुलिस पदाधिकारियों एवं कर्मियों के विरूद्ध चलाए जा रहे विभागीय जाँच (विभागीय कार्यवाही) में प्रस्तुतीकरण पदाधिकारी की प्रतिनियुक्ति नहीं रहने के कारण माननीय उच्च न्यायालय, पटना द्वारा विधि पूर्वक अनुशासनिक जाँच नहीं होने के कारण अपचारी को लाभ अथवा पुनः अनुशासनिक जाँच हेतु निर्देशित किया जा रहा है।..... बिहार सरकारी सेवक वर्गीकरण नियमावली के नियम 17 (5) (ग) के अनुसार जाँच प्राधिकार नियुक्त करने की दशा में अनुशासनिक प्राधिकार को आरोपों के समर्थन में मामला को प्रस्तुत करने के लिए किसी सरकारी सेवक को आदेश द्वारा प्रस्तुतीकरण पदाधिकारी नियुक्त करना है। प्रस्तुतीकरण पदाधिकारी की नियुक्ति अनुशासनिक प्राधिकार द्वारा किया जाता है। विभागीय जाँच में प्रस्तुतीकरण पदाधिकारी के निम्न कार्य हैः–

- *प्राप्त आरोप–पत्र (प्रपत्र–क), अभियोग की विषय वस्तु, अभिलेखीय साक्ष्य एवं अपचारी के अभिकथन का अध्ययन करना।*
- *अपचारी के विरूद्ध अभिलेखीय साक्ष्यों को उपयुक्त रूप से जाँच प्राधिकार के समक्ष उपस्थापित करना।*
- *अनुशासनिक प्राधिकार की ओर से साक्षियों का बयान जाँच प्राधिकार के समक्ष कराना।*
- *अपचारी द्वारा बचाव में प्रस्तुत साक्षियों से प्रतिपरीक्षा करना।*
- *अपचारी द्वारा प्रतिवाद में प्रस्तुत किए गए अभिलेखीय साक्ष्यों का अध्ययन कर उसकी त्रुटियों/असंगतियों को प्रस्तुत करना।*
- *जाँच प्रक्रिया समाप्त होने पर अनुशासनिक प्राधिकार की ओर से मौखिक पक्ष को जाँच प्राधिकार के समक्ष प्रस्तुत करना।*
- *अनुशासनिक प्राधिकार की ओर से लिखित रूप में जाँच प्राधिकार के समक्ष विभागीय पक्ष को प्रस्तुत करना।*
- *प्रस्तुतीकरण पदाधिकारी का कार्य जाँच प्राधिकार नहीं कर सकता है। ऐसा करने पर विभागीय जाँच की कार्रवाई अवैध होती है।*
- *प्रस्तुतीकरण पदाधिकारी की अनुपस्थिति में की गई जाँच की कर्रवाई निरस्त किया*

जाता है।

निर्देश दिया जाता है कि पुलिस पदाधिकारियों एवं पुलिसकर्मियों के विरूद्ध प्रारम्भ की गई विभागीय जाँच प्रक्रिया में सर्वप्रथम प्रस्तुतीकरण पदाधिकारी की नियुक्ति करें और उनसे उपर अंकित कार्यों का निष्पादन कराएं जिससे प्रक्रियात्मक त्रुटियों से बचा जा सके।

पुलिस महानिरीक्षक (बजट, अपील एवं कल्याण)
बिहार, पटना

प्रतिलिपिः–सभी पुलिस महानिरीक्षक/सभी पुलिस उप–महानिरीक्षक, बिहार को सूचनार्थ एवं आवश्यक क्रियार्थ हेतु प्रेषित।

पुलिस महानिरीक्षक (बजट, अपील एवं कल्याण)
बिहार, पटना"

22. Having taken note of the duty of the Presenting Officer, now coming to the enquiry report submitted by the Conducting Officer, copy of which is marked as Anneuxre-9 to the writ petition; this Court finds that save and except a sentence "to help in conducting the proceeding the Presenting Officer was also deputed", there is nothing as to what role he had played. The report of the Conducting Officer narrated the statement of the witnesses produced on behalf of the Department as well as defence written statement of the petitioner, but there is no deliberation and discussion as to why the defence of the petitioner is not worth accepting. Mere reiteration of the statement of the witnesses and the written defence statement could not be suffice to absolve the Enquiry Officer from discharging his significant duty, who has been bound to act as an independent quasi judicial authority.

23. It is trite that justice is not to be done but is manifestly seen to be done. At an enquiry which may lead to extreme punishment of dismissal, extreme caution is required; and if in case the delinquent could not get the benefit of cross examination of witnesses on account of his absence, if found to be his absence on justifiable ground, in such circumstances, the Enquiry Officer should be indulgent to provide opportunity for cross examination on the next date asked for by the delinquent. There is no dispute that the lengthy enquiry report without assigning any reason to uphold the charges stand proved is vulnerable and fit to be interfered. Moreover, the reasons have been held to be the heart and soul of an order giving the insight to the mind of the maker of the order and that he considered all relevant aspects and discarded irrelevant aspect. In the case of ***M/S Kranti Associates Pvt. Ltd. & Anr vs Masood Ahmed Khan & Ors [(2010) 9 SCC 496]*** the Hon'ble Court has summarized the significance of recording of reasons by holding that a quasi judicial authority must record reasons in support of its conclusion as it operates a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

24. This Court is not oblivious of the settled principle

that in a disciplinary proceeding the charges are proved on the basis of preponderance of probabilities whereas in a criminal case the charges are to be proved beyond all its reasonable doubts but in absence of proof of demand of illegal gratification, mere recovery of the tainted currency notes from the appellant/accused does not establish the commission of offence, hence in the case, herein, it was incumbent upon the Department to prove even on the yardstick of preponderance of probabilities that the petitioner voluntarily accepted the money knowing it to be a bribe.

25. It would be also noteworthy, the SHO of Jalalpur, namely, Manish Kumar against whom the complaint of demand of bribe of Rs. 30,000/- was made, he had been left only with a black mark, which is equivalent to warning.

26. On all these aforesaid counts and the discussions made hereinabove based upon the settled legal propositions, this Court finds substance in the writ petition. Accordingly, the impugned order as contained in Memo No. 3340 dated 17.11.2018 as well as the appellate order dated 16.02.2021 along with all the consequential orders are hereby set aside.

27. The writ petition stands allowed.

28. On account of the impugned orders and the orders

issued in consequent thereto, having been set aside, now the question would arise with respect to entitlement of back wages. Suffice it to observe that in case of wrongful dismissal/termination of service, reinstatement with continuity of service and back wages is the normal rule, subject to the rider that while deciding the issue of back wages, the adjudicating authority or Court may take into consideration various materials including the length of service, the financial conditions of the employer, the nature of misconduct if found proved and similar other factors [**V*ide; Deepali Gundu Surwase vs Kranti Junior Adhyapak & Ors, (2013) 10 SCC 324***]. To meet the interest of justice, the respondents are hereby directed to reinstate the petitioner with the continuity of service by extending half of the salary for the period he remained outside from service.

29. Pending application(s), if any, shall also stand disposed of.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	AFR
CAV DATE	18.02.2025
Uploading Date	24.03.2025
Transmission Date	