

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 8702 of 2015

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Tribhuban Singh Son of Late Bhagwat Singh, Resident of Village - Pojhi, Police Station - Marhorah, District - Saran Chapra.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Inspector General of Police, Tirhut Range Muzaffarpur, District-Muzaffarpur.
3. The Deputy Inspector General of Police, Muzaffarpur Range at Muzaffarpur, District - Muzaffarpur.
4. The Superintendent of Police, Sitamarhi, District - Sitamarhi.
5. The Additional Superintendent of Police-cum-Departmental Proceeding Officer, District - Sitamarhi.
6. The Deputy Superintendent of Police Head Quarters-cum-Presenting Officer at Sitamarhi.

... .. Respondent/s

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Service Law---Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (CCA Rules)---Rule 17(4)---Departmental Proceedings---Absence of Presenting Officer---writ petition to quash the dismissal order of the petitioner, an A.S.I. in the police department---plea that entire departmental proceeding is bad in law because it was conducted in the absence of a Presenting Officer---Findings: for the police officials whether gazetted or non-gazetted, the Bihar CCA Rules, 2005 shall be applicable to take disciplinary action against them---there was no Presenting Officer present either to lead or to prove the evidence whatsoever, collected against the petitioner---The Enquiry Officer in such circumstances could not have assumed this duty upon himself to examine the evidence to hold it sufficient enough for upholding the charges---any departmental proceeding conducted in the absence of a Presenting Officer is legally flawed---impugned order quashed and set aside---liberty granted to respondent authorities to conduct an fresh enquiry within a period of eight months failing which the chargesheet will automatically stand quashed. **(Para- 2, 3, 5, 10-12)**

1996 (1) PLJR 401, CWJC No. 25445 of 2019, 2017(4) PLJR 195, LPA No. 507 of 2017

.....**Relied Upon.**

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... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Mukeshwar Dayal, Advocate

Mr.Dilip Kumar, Advocate

For the Respondent/s : Mr.Manish Kumar, GP-4

Mr. Sanjay Parasmani, AC to GP-4

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 04-02-2025

Heard learned counsel for the petitioner and learned
counsel for the State.

2. The present Writ Petition has been filed for a
direction to the respondent authority to quash the dismissal order
of the petitioner issued vide Memo No. 229/ साठ शठ dated
26.01.2014 passed by the Deputy Inspector General, Tirhut



Range, Muzaffarpur (Annexure -4 to the Writ Petition) and Memo N. 1092 dated 27.05.2014 passed by the Inspector General of Police, Muzaffarpur (Annexure -4A to the Writ Petition). The further prayer of the petitioner to quash the order passed in the Memorial by the Director General of Police, Bihar, Patna vide Memo No. 5029 dated 20.11.2014 in Disciplinary Proceeding Appeal No. 29 of 2013 (as contained in Annexure-8 to the Writ Petition).

3. Learned counsel for the petitioner submits that the entire departmental proceeding is bad in law because it was conducted in the absence of a Presenting Officer. He further submits that the petitioner was admittedly an A.S.I. in the police department, and the departmental proceeding against him was conducted under the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as the 'CCA Rules, 2005'). Learned counsel emphasizes that Rule 17(4) of the CCA Rules, 2005 casts a mandatory duty on the Presenting Officer to lead evidence and examine witnesses, which has not been done. Instead, the Enquiry Officer himself assumed this role.

4. He further submits that in the case of ***Panchanan Kumar v. The Bihar State Electricity Board and Ors.***, reported



in **1996 (1) PLJR 401**, it was held that the action of the Enquiry Officer in presenting the case on behalf of the department and also examining the correctness of the case clearly indicates that the Enquiry Officer, in the present case, has failed to discharge his duty as a fair and impartial authority. Learned counsel further submits that due to the gross violation of the failure to appoint a Presenting Officer in the departmental proceeding, the entire proceeding is bad in law.

4. On the other hand, learned counsel for the State submits that the departmental proceeding in the present case must be conducted according to the Police Manual. Therefore, the benefit, as claimed by counsel for the petitioner, cannot be granted. He submits that the entire proceeding has been conducted in full accordance with the law and that there is no illegality in the said proceeding. He further submits that there is no illegality in the orders passed by the Original Authority, Appellate Authority, or Memorial Authority. Hence, the present Writ Petition should be dismissed.

5. After hearing the parties, there are two points to be examined. The first point is whether the departmental proceeding should be conducted according to the Police Manual, and whether the CCA Rules, 2005, are not applicable in this



case. The second point is whether the absence of a Presenting Officer, if the CCA Rules, 2005, are applicable, would vitiate the departmental proceeding against the petitioner.

6. The question of applicability of CCA Rules, 2005 in case of employees of Bihar Police has been tested by this Court in the case of ***Md. Giaaul Hak Vs. The State of Bihar and Ors.*** passed in ***CWJC No. 25445 of 2019*** dated 06.11.2023. Paragraph 15 to 17 whereof is quoted as under :-

"15. In this background, it becomes crystal clear to this Court that for the police officials whether gazetted or non-gazetted, the Bihar CCA Rules, 2005 shall be applicable to take disciplinary action against them. In this view of the matter, this Court rejects the contention of the respondent that police manual shall only apply because police manual itself indicates that disciplinary action shall run according to disciplinary rules 1930 & 1935, which are replaced by Bihar CCA Rules, 2005. After conjugal reading of Rules 824 A of Bihar Police Manual read with Rule 32 of Bihar CCA Rules, 2005, the issue about applicability of the rule in the disciplinary action against the police personnel is hereby cleared that in all types of Police personnel's in Bihar CCA Rules 2005 shall apply.

16. When it is clear that in the present



case there is applicability of Bihar CCA Rules 2005, then the question shall arise that whether the Presenting Officer has been appointed in the present case or not, and whether the Presenting Officer has discharged any of his duties as mentioned in the Bihar CCA Rules 2005 for the purpose he was appointed. After perusal of those rules, it transpires that the role of the Presenting Officer have been laid down firstly in Rule 17(6) (4), secondly in proviso of (17)(8)(a), thirdly in Rule 17(11), fourthly in Rule 17(14), fifthly in Rule 17 (15), sixthly in Rule 17(16), seventhly in Rule 17(19) and finally in Rule 17(23)(ii)(d) of the Bihar CCA Rules, 2005.

17. In this view of the matter, this Court finds that after appointment of Presenting Officer, he has not discharged any of his duties mentioned in the above eight rules except that he has signed on the enquiry report. Therefore, it transpires to this Court that any action which ought to be done by the Presenting Officer has been done by the Enquiry Officer himself. Therefore, on this ground this Court is of the view that the enquiry proceeding which resulted into punishment i.e. punishment order and acquired finality by appellate order contained in Annexure-4 vide memo no. 500 dated 02.03.2019, in Annexure-16 vide memo no. 2288 dated 05.08.2019 and in Annexure-17 vide memo no. 1570 dated 30.10.2019 are not sustainable and fit to be



quashed. The another aspect of the matter on which the counsel for the petitioner has invited attention of this Court i.e., the copy of the evidences which has been served upon the petitioner which is annexed to the writ petition as Annexure-7 relevant page 33 onwards in which examination of the witnesses are there, but on those papers, neither the signature of the witnesses nor of the Enquiry Officer were present. Only in the case of doctor's examination, the signature of the doctor and the Enquiry Officer is present."

7. Hence, this Court is of the view that CCA Rules, 2005 is applicable in the present case. With a view to decide the second question, it is necessary to quote the relevant paragraph 11 and 12 of the the judgement cited by the petitioner rendered in the case of **Panchanan Kumar** (supra) as under :-

"11. Considering the rival contentions of the parties, this Court is of the opinion that in the instant case the inquiry has been vitiated inasmuch as the enquiry officer himself has acted as the presenting officer even though the presenting officer was appointed by the Electricity Board. There is no explanation why the said presenting officer did not appear before the enquiry officer to present the case of the department. In the peculiar facts of this case, the action of the enquiry officer to present the case himself on behalf of the department and also to take upon himself the duty of enquiring the



correctness or otherwise of the said case clearly shows that the enquiry officer, in the instant case, has failed to discharge his duty as a fair and impartial enquiry authority. He has rolled up within himself the role of both the presenting officer and the enquiry officer and as such has acted in a manner which is not consistent with the principles of nature justice. In this connection, this Court is reminded of the observation of the Supreme Court in the case of D.K. Yadav v. J.M.A. Industries Limited reported in (1993) 3 SCC 259 : 1994 (1) PLJR 55 (SC). In the said judgment of D.K. Yadav (supra) the learned Judges of the Hon'ble Supreme Court has said that in a matter relating to dismissal from service the employee concerned is visited with civil consequences and as such the same amounts to deprivation of right of livelihood guaranteed under Article 21 of the Constitution of India. In the matter of Infliction of penalty of dismissal/termination, the procedure which is to be applied must be just, fair and reasonable. In the instant case, this Court is of the view that the procedure which has been applied by the enquiry officer in coming to his finding is neither just nor fair nor is the same resonable. As such this Court cannot approve the same. Even though it is well settled that technicalities of rules of evidence are not applicable to a departmental proceeding and this has also been settled by the Supreme Court as far back as in 1964 in its Constitution Bench judgment in the case of Union of India v. H.C. Goel reported in A.I.R. 1964 S.C. page 364 in paragraph 27 that the technical rules which govern criminal trials in courts may not necessarily apply to disciplinary proceedings, but nevertheless, the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are



not punished, applies as much to regular criminal trial as to disciplinary enquiries held under the statutory rules

12. In the instant case it is not in dispute that such disciplinary proceeding held against the petitioner has been held in accordance with the provisions of rule 166 of the Board's Miscellaneous Rules which has been adopted by the said Board as has been stated by the learned counsel for the respondents. Therefore, in the instant case the enquiry has also been held under the rules which are statutory in nature. Therefore, the aforesaid observation of the Supreme Court applies in this case with full force. Apart from that this Court finds that the decision of the appellate authority is wholly impermissible inasmuch as while passing its order, the appellate authority has not acted with due diligence and proper application of mind and the order does not show that there was any consideration of the, relevant materials by the appellate authority while passing the order. Therefore, the order of the appellate authority also cannot be sustained in view of the pronouncement of law in the case of Ram Chander v. Union of India reported in (1986) 3 SCC 103."

8. Further, it is necessary to quote the relevant paragraph 34, 35 and 36 of the judgement rendered in the case of ***Uday Pratap Singh Vs. the State of Bihar, through Chief Secretary and Ors.*** reported in **2017(4) PLJR 195** as under :-

"34. The illegality does not stop here rather a plain reading of such initiation vide Annexure-6 would show that there is no appointment of a Presenting Officer rather the



Enquiry Officer himself has acted as the Presenting Officer to examine the documents which is a usurpation of jurisdiction vested under rule 17(14) of „the Disciplinary Rules” on the Presenting Officer. Rule 17(14) casts a mandatory duty on the Presenting Officer to lead evidence and examine the witnesses which has not been discharged instead the Enquiry Officer has taken this duty upon himself. This usurpation of responsibility vested in a Presenting Officer, by the Enquiry Officer has been deprecated and reference in this regard is made to a judgment of the Supreme Court reported in (2010) 2 SCC 772 (State of Uttar Pradesh vs. Saroj Kumar Sinha). At paragraph 28 of the judgment the Supreme Court has the following words of advise for the enquiry officer:

“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.”

35. In continuation I would also refer to a judgment reported in 1996 (1) PLJR 401 (Panchanan Kumar vs. The Bihar State Electricity Board) in which case though a Presenting Officer was appointed but he failed to



discharge his obligation and in his absence his role was assumed by the Enquiry Officer. The opinion of the Bench at paragraph 11 of the judgment would be relevant for the issue at hand:

“11. Considering the rival contentions of the parties, this Court is of the opinion that in the instant case the inquiry has been vitiated inasmuch as the enquiry officer himself has acted as the presenting officer even though the presenting officer was appointed by the Electricity Board. There is no explanation why the said presenting officer did not appear before the enquiry officer to present the case of the department. In the peculiar facts of this case, the action of the enquiry officer to present the case himself on behalf of the department and also to take upon himself the duty of enquiring the correctness or otherwise of the said case clearly shows that the enquiry officer, in the instant case, has failed to discharge his duty as a fair and impartial enquiry authority. He has rolled up within himself the role of both the presenting officer and the enquiry officer and as such has acted in a manner which is not consistent with the principles of natural justice.”

36. It is undisputed that there was no Presenting Officer present either to lead or to prove the evidence whatsoever, collected against the petitioner. The Enquiry Officer in such circumstances could not have assumed this duty upon himself to examine the evidence to hold it sufficient enough for upholding the charges.”

9. In addition to that, this Court also feels it necessary to quote the relevant paragraph 11 of the recent judgement



rendered in ***LPA No. 507 of 2017 (Upendra Pandit vs. the State of Bihar and Ors.)*** as under :-

"11. In the opinion of the Court, Rule 17 (3) and (4) of the Rules of 2005 are very clear when they provide that where it is proposed to hold an inquiry against the government servant under the said Rules, the disciplinary authority shall draw up or cause to be drawn up the substance of the imputation of misconduct or misbehaviour in support of each article of charge, the same shall contain a statement of relevant facts, list of documents and list of witnesses by which the articles of charges are proposed to be sustained. Thus, non supply of the list of documents and the list of witnesses to the appellant in the instant case on which the disciplinary authority proposed to sustain the charges levelled against the appellant in the disciplinary proceeding as also the proceeding being conducted without appointment of a Presenting Officer was a clear and serious lapse of the provisions of Rule 17 of the Act of 2005. The requirement of Rule 17 (3) and (4) not having been fulfilled, the order of punishment of dismissal from service of the appellant cannot be sustained. Both the orders of dismissal dated 29.12.2005 and the order dated 30.04.2008 rejecting the appeal preferred by the appellant are both set aside. The order of the learned Single Judge also cannot be sustained and is hereby set aside."

10. In light of the above, it is clear that in all three judgments, the Hon'ble Court has held that any departmental proceeding conducted in the absence of a Presenting Officer is



legally flawed. Therefore, based on these two issues that the CCA Rules 2005 apply to the petitioner's case and that the departmental proceeding was conducted in the absence of a Presenting Officer, it is concluded that the proceedings are bad in law.

11. As such, the order dated 26.01.2014 passed by the Deputy Inspector General, Tirhut Range, Muzaffarpur (Annexure -4 to the Writ Petition), order dated 27.05.2014 issued vide Memo No. 1092 passed by the Inspector General of Police, Muzaffarpur (Annexure -4A to the Writ Petition) and order dated 20.11.2014 issued vide Memo No. 5029 in Disciplinary Proceeding Appeal No. 29 of 2013 (as contained in Annexure-8 to the Writ Petition) are hereby quashed and set aside.

12. This Court, however, does not quash the chargesheet issued against the petitioner. It is open to the respondent authorities to conduct an enquiry afresh based on the said chargesheet, but such enquiry must be held strictly in accordance with law. It is also made clear that if such an enquiry is initiated, it must be concluded within a period of eight months from the date of receipt or production of a copy of this judgment. If no such inquiry is concluded within the stipulated



period, the chargesheet will automatically stand quashed upon the expiration of the aforementioned period.

13. With the above observation/direction, this Writ Petition is thus allowed to the extent indicated above. There will be no order as to cost.

(Dr. Anshuman, J)

Ashwini/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	10/02/2025
Transmission Date	NA

