IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 7184 of 2022

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Narendra Kumar Dhiraj Son of Sri Dudheshwar Singh Resident of Village-Muzaffarpur, P.S.-Sahar, P.O.-Baruhi, District-Bhojpur.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Government of Bihar, Patna.
2. The Principal Secretary, Department of Home, Government of Bihar, Patna.
3. The Director General of Police Bihar Police, Patna.
4. The Economic Offence Unit through Addl. Director General of Police Economic Offence Unit, Bihar.
5. The Inspector General of Police, Bihar.
6. The Deputy Inspector General of Police, Munger Range, Munger.
7. The Senior Superintendent of Police, Patna, District-Patna.
8. The Superintendent of Police, Lakhisarai, District-Lakhisarai, Cum-Disciplinary Authority,
9. The Assistant Superintendent of Police, Lakhisarai, District-Lakhisarai-cum-The Enquiry Officer.
10. Sri S.K. Singhal, S/o. not known, Presently Posted as the Director General of Police, Bihar Police, Sardar Patel Bhawan, Bailey Road, Patna.

... ... Respondent/s

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Service Law—Dismissal—from service—petitioner has amassed properties in his and his relatives name, disproportionate to his known source of income—for proving the charges levelled against the petitioner, prosecution has relied on only two documents by way of evidence, firstly FIR and; secondly order of suspension —from enquiry report submitted by the Enquiry Officer it appears that case is of no evidence—no evidence was produced by the prosecution either oral or documentary so as to prove the factum of the actual number of properties and specific details thereof, amassed by the petitioner, disproportionate to his known source of income and its market value etc.—report of the enquiry officer being perverse and based on no evidence, is quashed—order of punishment is a mere narration of facts and does not either deal with the defence put forth by the petitioner nor mentions any specific particulars about the assets/properties amassed by the petitioner, disproportionate to his known source of income and the proof thereof, and is based on a wrong premise that several criminal cases are

pending against the petitioner and petitioner has a bad antecedent, which though was never a charge levelled against the petitioner—enquiry report, order of punishment of dismissal from service and; the appellate order quashed—writ allowed with direction of reinstatement with continuity of service and pay the back wages to petitioner along with all consequential benefits. no material/evidence, whatsoever, has been presented before the Enquiry Officer so as to enable him to arrive at a conclusion that there has been a preponderance of probability to prove the charges on the basis of the materials available on record (Para 12, 18, 19, 21)

2010 (2) SCC 772; 2009 (2) SCC 570; 2006(5) SCC 88; 2000(3) PLJR 10; 2006 (4) SCC 713; CWJC Number 16566/2016; 2010 (13) SCC 427; 2022 (1) PLJR 169; 2023 (1) PLJR 803; 1983 PLJR 92—Relied upon. 2018 (3) PLJR 329—Referred to.

Service Law—Back wages—wrongful termination—from service—reinstatement with continuity of service and 100% back wages is the normal rule—in case the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the court concerned will be fully justified in directing payment of full back wages—petitioner is entitled for full back wages along with all consequential benefits. (Paras 22 and 23)

(2013) 10 SCC 324—Relied upon.

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... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Government of Bihar, Patna.
2. The Principal Secretary, Department of Home, Government of Bihar, Patna.
3. The Director General of Police Bihar Police, Patna.
4. The Economic Offence Unit through Addl. Director General of Police Economic Offence Unit, Bihar.
5. The Inspector General of Police, Bihar.
6. The Deputy Inspector General of Police, Munger Range, Munger.
7. The Senior Superintendent of Police, Patna, District-Patna.
8. The Superintendent of Police, Lakhisarai, District-Lakhisarai, Cum-Disciplinary Authority,
9. The Assistant Superintendent of Police, Lakhisarai, District-Lakhisarai-cum-The Enquiry Officer.
10. Sri S.K. Singhal, S/o. not known, Presently Posted as the Director General of Police, Bihar Police, Sardar Patel Bhawan, Bailey Road, Patna.

... ... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Y.V. Giri, Sr. Advocate
Mr. Brisketu Sharan Pandey, Advocate

For the Respondent/s : Mr. Md. Nadim Seraj (GP- 5)
Mr. Shailesh Kumar, AC to GP-5

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

CAV JUDGMENT

Date: 17-05-2024

The present writ petition has been filed for quashing the order of punishment of dismissal from service dated 10.5.2022, passed by the Superintendent of Police, Lakhisarai, as also the

appellate order dated 25.07.2022, whereby and whereunder the Deputy Inspector General of Police (Personnel), Bihar, Patna has dismissed the appeal preferred by the petitioner. Lastly, the petitioner has challenged the order dated 21.03.2023, passed by the Director General of Police, Bihar, Patna, whereby the memorial filed by the petitioner has been dismissed.

2. The brief facts of the case, according to the petitioner, are that the petitioner joined as Constable on 13.05.1988 and was posted initially at District Force, Aurangabad, whereafter he was posted as Constable at various places and while he was posted in the Nalanda District in the year 1998, he was selected as the President, Bihar Police Men’s Association, Nalanda Branch, Nalanda. Thereafter, also the petitioner had continued to be the office bearer/President of the Bihar Police Men’s Association. In the year 2020 when the respondent no. 10 was appointed as Director General of Police, Bihar, Patna, in contravention to the law laid down by the Hon’ble Apex Court in a case bearing Writ

Petition (C) No. 310 of 1996, the petitioner had filed a writ petition before the Hon'ble Supreme Court of India bearing Writ Petition (Civil) No. 001375 of 2021, *inter alia*, praying therein to quash the Notifications dated 22.09.2020, 19.12.2020 and 18.01.2021, issued by the State of Bihar, whereby and whereunder the respondent no. 10 had been appointed as the Director General of Police, Bihar, Patna. The Hon'ble Supreme Court of India had issued notice in the said writ petition filed by the petitioner, however, in the meanwhile the petitioner was subjected to raid/search by the Economic Offence Unit (hereinafter referred to as 'EOU'), at the behest of the respondent no. 10, by way of personal vendetta and revenge. In fact, the EOU had also conducted search at the house/residence of his six brothers, siblings and nephews. The EOU had then lodged an FIR dt. 20.09.2021, bearing Economic Offence Unit Police Station, Patna Case No. 18 of 2021. The petitioner was then suspended vide order dt. 25.10.2021 and a disciplinary proceeding was initiated against the

petitioner by issuance of memo of charge, vide Lakhisarai District Order No. 266 of 2022 dated 26.03.2022, on the allegation that a criminal case has been instituted by the Economic Offence Unit against the petitioner, his brothers and nephew under Section 13(2) read with Section 13(1)(b) of the Prevention of Corruption Act, 1988 and the petitioner has amassed assets more than a sum of Rs. 9,47,66,745/- during his service period, disproportionate to his known/legal source of income.

3. The learned senior counsel for the petitioner has submitted that the petitioner had then filed his reply dated 02.04.2022, pointing out to the respondent authorities about the illegality prevailing in initiation of the disciplinary proceedings against him as also requesting for supply of evidence pertaining to the charges levelled against him, however, the conducting officer/enquiry officer without paying any heed to the request of the petitioner had issued order dated 29.03.2022, fixing 11.04.2022 as the date for

appearance of the petitioner at Police Centre, Lakhisarai at 11:00 A.M., where the petitioner had appeared and raised objection regarding constitution of false charges and non-supply of documents vide letter dated 11.04.2022. On the same day i.e. on 11.04.2022, the Enquiry Officer had fixed the next date of hearing as 16.04.2022, despite the petitioner having requested for some time since he was suffering from back and spine problem and had been advised complete rest by the medical professional, leading to the petitioner not being able to appear before the Enquiry Officer on 16.04.2022, nonetheless, the Enquiry Officer had fixed the next date of hearing as 25.4.2022, despite the petitioner having again expressed his inability to appear before the Enquiry Officer on account of his illness. On 25.04.2022, the Enquiry Officer had fixed the next date of hearing as 09.5.2022, however, at the behest of the respondent no. 10, on the very next day i.e. 26.04.2022, the hearing of the disciplinary proceeding was preponed to 29.04.2022 and a

letter to the said effect was sent belatedly to the petitioner, resulting in the petitioner being not able to appear before the Enquiry Officer.

4. The Ld. senior counsel for the petitioner has further submitted that though the petitioner had made an application, enclosing the medical certificate for grant of 15 days medical leave, however, the disciplinary authority vide order dated 18.04.2022 had rejected the request for leave made by the petitioner. Thereafter, the Enquiry Officer had abruptly concluded the enquiry proceedings and submitted an enquiry report dated 02.05.2022, finding the allegations levelled against the petitioner to have been proved, whereafter a second show cause notice dated 04.05.2022 was issued to the petitioner directing him to submit his defence clarification/reply within three days, failing which appropriate proceeding would be undertaken. The petitioner had then filed his detailed reply on 07.05.2022, however, without consideration of the same, the impugned order of punishment dated 10.05.2022 has been passed,

dismissing the petitioner from the services of the respondents. The petitioner had then challenged the said order dated 10.05.2022, by filing an appeal, however, the same has also stood dismissed by an order dated 25.07.2022 passed by the Deputy Inspector General of Police (Personnel), Bihar, Patna. The said order dated 25.07.2022 was then challenged by the petitioner before the Director General of Police, Bihar, Patna by filing a memorial, however, the same has also stood dismissed by an order dated 21.03.2023.

5. The Ld. senior counsel for the petitioner has next submitted that the entire disciplinary proceeding has been virtually conducted *ex parte* inasmuch as the request of the petitioner for grant of leave for two months on the ground that he has been medically advised complete bed rest on account of diffused disc bulge was not acceded to, despite the petitioner having furnished medical prescriptions, issued by renowned doctors of the Patna Medical College and Hospital, Patna and the Enquiry Officer had instead proceeded without

dealing with the said request of the petitioner.

6. The learned senior counsel for the petitioner has contended that the order of punishment dated 10.05.2022 is bad in law in as much as it relies only on the FIR registered against the Petitioner and moreover, the same has been passed in violation of the circular dated 18.06.2020 (Annexure P/15), issued by the General Administration Department, inasmuch as there is no finding of the investigating agency regarding the disproportionate assets amassed by the Petitioner. The General Administration Department's circular dt. 18.06.2020 (Annexure P/15) clearly states that memo of charge is to be framed only after conclusion of the preliminary enquiry and submission of chargesheet by the Economic Offence Unit/investigating agency, regarding existence of disproportionate assets. The said circular dated 18.06.2020 also stipulates that the FIR can act only as a circumstantial evidence and not direct evidence in the departmental proceeding. The learned senior counsel for the

petitioner has also stated that a bare perusal of the memo of charge dt. 26.03.2022 would show that the only two documents relied upon by way of evidence, for proving the charges levelled against the petitioner is a copy of the FIR bearing Economic Offence Police Station Case No. 18 / 2021 & a copy of the order of suspension of the petitioner dt. 25.10.2021 and as far as the witnesses, sought to be examined, are concerned, one is stated to be the Reader of the Assistant to the Inspector General of Police (Welfare), Bihar, Patna & the other one is the Reader to the Addit. Superintendent of Police-cum-Investigation Officer, Economic Offence Unit, Bihar, Patna. Thus, it is submitted that virtually there is no evidence of any worth, sought to be relied upon by the respondents, to prove the charges levelled against the petitioner regarding him having amassed assets disproportionate to his known source of income.

7. The learned senior counsel for the petitioner has, at this juncture, referred to the enquiry report dated 02.05.2022 to submit that a bare perusal of

paragraph no. 6 thereof, which deals with the evidence produced by the prosecution, would show that the witness no. 1 i.e. the Assistant Sub-Inspector of Police, namely, Rajesh Kumar Pandey, Confidential Reader and Assistant to the Inspector General of Police (Welfare), Bihar, Patna has merely proved the aforesaid FIR bearing Economic Offence Police Station Case No. 18 of 2021 and the order of suspension dated 25.10.2021, whereas though notice was issued to the witness no. 2, namely, Shri Amritendu, Shekhar Thakur, Confidential Reader to the Additional Superintendent of Police, Economic Offence Unit, Bihar Patna cum Investigation Officer, however his evidence has not been recorded. As far as witness no. 3 i.e. Shri Sanjay Kumar Verma, Deputy Superintendent of Police cum Officer In-Charge, Economic Offence Unit, Bihar, Patna is concerned, his evidence was recorded on 11.04.2022, wherein he has stated that from reliable sources information has been received that the petitioner has amassed properties in his and his relatives name, disproportionate to his known

source of income and for the said allegation an FIR bearing Economic Offence Unit Police Station Case No. 18/2021 dated 20.09.2021 has been lodged against the petitioner under Section 13(2) read with Section 13(1)(b) of the Prevention of Corruption Act, 1988 and further this witness has merely identified the signature made on the FIR. Thus, it is submitted by the Ld. senior counsel for the petitioner that no evidence, either oral or documentary has been led by the prosecution during the course of the disciplinary proceedings so as to prove the allegation levelled against the petitioner of amassing assets disproportionate to his known source of income. It is stated that the Enquiry Officer in his enquiry report dated 02.05.2022 has in his conclusion merely narrated the charges levelled against the petitioner, as mentioned in the charge sheet dated 26.03.2022 and has further stated that the petitioner, by misusing his official position, especially being attached to the Police Men’s Association, has amassed disproportionate assets unknown to his

source/legal source of income totaling to 545% i.e. more than a sum of Rs. 9,47,66,745/- and moreover, several cases pertaining to sand mining as also under the transportation and storage and mineral rules are registered against the petitioner in various police stations, hence the petitioner has maligned the image of police, thus the charges levelled against the petitioner stand proved. Therefore, it is contended by the Ld. senior counsel for the petitioner that the Enquiry Officer has come to a conclusion that the charges levelled against the petitioner has stood proved, however, without any evidence, whatsoever. It is also submitted that no evidence has been produced by the prosecution during the course of the departmental enquiry to show the exact description of the property stated to have been amassed by the petitioner and his relatives and simultaneously show the market value of the same, hence there being no evidence to prove the charges, especially taking into account the materials on record, the conclusion of the Enquiry Officer, being neither based on any

evidence nor based on any material which might have been found, as against the petitioner, is perverse, insignificant and fit to be set aside.

8. The Ld. senior counsel for the petitioner has referred to the following judgments rendered by the Hon'ble Apex Court in order to buttress his arguments in relation to the aforesaid submissions:-

*(i) Judgment rendered by the Hon'ble Apex Court in the case of **State of Uttar Pradesh & Ors. vs. Saroj Kumar Sinha**; reported in **(2010) 2 SCC 772**;*

*(ii) Judgment rendered by the Hon'ble Apex Court in the case of **Roop Singh Negi vs. Punjab National Bank**; reported in **(2009) 2 SCC 570**;*

*(iii) Judgment rendered by the Hon'ble Apex Court in the **M.V. Bijlani vs. The Union of India & Ors.**; reported in **(2006) 5 SCC 88**;*

*(iv) Judgment rendered by this Court in the case of **Kumar Upendra Singh Parimar vs. B.S. Cooperative Land Development Bank Limited & Ors.**; reported in **2000 (3) PLJR 10**;*

*(v)Judgment rendered by this Court in the case of **Anand Kumar vs. The State of Bihar & Ors**; reported in **2018 (3) PLJR 329**;*

(vi) Judgment dated 11.03.2019, rendered by

this Court in the case of ***Shakuntala @ Shakuntala Devi vs. The State of Bihar & Ors.*** *(CWJC No. 16566 of 2016)*.

9. The learned senior counsel for the petitioner has now referred to the order of punishment dated 10.05.2022 to submit that the same is merely a narration of facts and has neither dealt with the defence put forth by the petitioner nor considered his reply dated 07.05.2022, filed in response to the second show cause notice dt. 4.5.2022, nor mentions instances/ specific details of the disproportionate assets amassed by the petitioner and his relatives and the proof thereof, hence the same is also based on no evidence, apart from the same being a cryptic order, not depicting proper application of mind, inasmuch as no cogent, clear and succinct reasons have been furnished for inflicting punishment upon the petitioner, as would be apparent from the relevant portion of the punishment order dated 10.05.2022, which is reproduced herein below:-

"उपर्युक्त तथ्यों के विश्लेषण से स्पष्ट होता है कि संचिका में उपलब्ध अभिलेखों से अपचारी का चरित्र पूर्व से दागदार रहा है एवं

सेवा से मुक्त भी हुए हैं। ये अपने पद का दुरूपयोग कर अपने कुल सेवाकाल में पुलिस मेन्स एसोसिएशन से जुड़े होने का प्रभाव का अनुचित लाभ उठाते हुए स्वंय तथा अपने परिजनों के नाम पर आय के ज्ञात/ वैध स्त्रोतों से करीब 544 प्रतिशत अधिक 9,47,66,745/– रू0 (नौ करोड़ सैतालीस लाख छियासठ हजार सात सौ पैतालीस रूपये) की सम्पति अर्जित किये हैं, जिसके संबंध में अपचारी द्वारा कोई आयकर विवरणी समर्पित नहीं किया गया है। जिसका विस्तार पूर्वक वर्णन आर्थिक अपराध इकाई थाना काण्ड सं0– 18/2021 के प्राथमिकी में किया गया है।

अतः आरोप, प्रदर्श, गवाहों के बयान एवं संचिका में रक्षित कागजात के गहन समीक्षा के

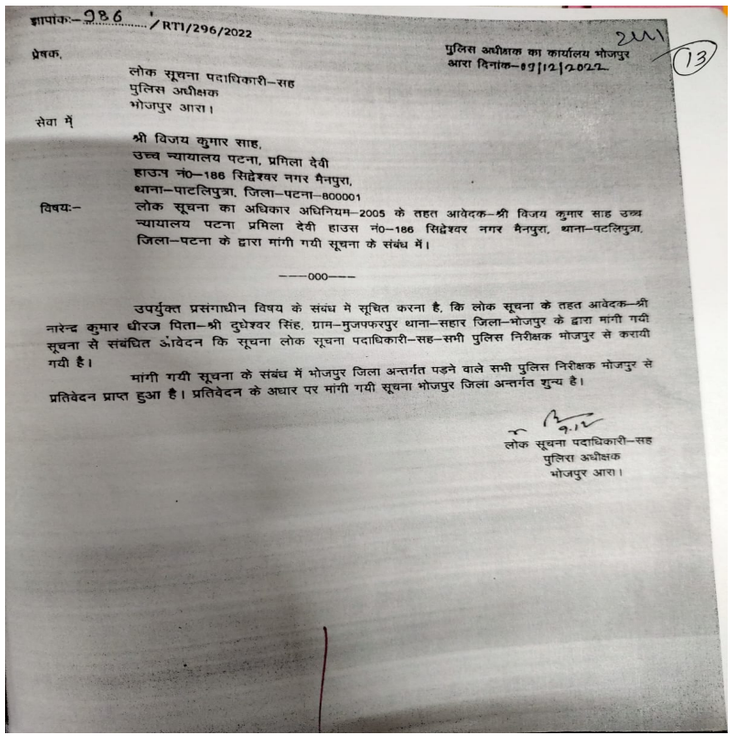
क्रम में स्पष्ट होता है कि अपचारी के विरूद्ध 1. पटना रेल थाना कांड सं0– 81/08, धारा– 147/148/149/323/307/379 भा0द0वि0 एवं 27 आर्म्स एक्ट के आरोप में मुजफ्फरपुर जिलादेश सं0– 166/11 के द्वारा आंशिक रूप से दोषी पाते हुए दो निंदन की सजा। 2. मारपीट, गले से सोनें का चेन तथा पॉकेट से नगदी छीनने के आरोप में अहियापुर थाना कांड सं0– 28/08 दर्ज किया गया। इन्हे पूर्व में स्थानांतरण के बावजूद भी प्रस्थान नहीं करने के आरोप में मुजफ्फरपुर जिलादेश सं0–1788/09, द्वारा दिनांक– 30.09.2009 से बर्खास्त किया गया था। जो पुनः मुजफ्फरपुर जिलादेश सं0–1247/10 से पुन– सेवा में बर्खास्तगी की तिथि से बहाल किया गया। अपचारी का चरित्र एक स्वच्छ छवि के पुलिसकर्मी के लिए सही परिलक्षित नहीं होता है। इनके आचरण से आमजन में पुलिस विभाग की छवि धूमिल होती है तथा इनका प्रभाव आमजनों में नकारात्मक परिलक्षित होता है। जॉच प्राधिकार द्वारा इनके विरूद्ध लगाये गये आरोप प्रमाणित पाया गया है, विभाग की छवि को स्वच्छ बनाये रखने के लिए ऐसे अपराधिक चरित्र एवं अनुशासनहीन पुलिसकर्मी को विभाग में बनाये रखना उचित प्रतीत नहीं होता है।

अतः जॉच प्राधिकार के मंतव्य से सहमत होते हुए अपचारी

सिपाही/72 नरेन्द्र कुमार धीरज के विरूद्ध लगाये गये आरोप के लिए दोषी पाते हुए इन्हें तत्काल प्रभाव से सेवा से बर्खास्त किया जाता है। निलंबन अवधि में इन्हे जो कुछ भी मिला है, उसके अतिरिक्त अन्य कोई वेतनादि का भुगतान नहीं होगा। निलंबन अवधि को अर्द्ध–उपार्जित/असाधारण अवकाश में समायोजित किया जाता है।"

10. The learned senior counsel for the petitioner has thus submitted that the enquiry report itself is nonest in the eyes of law and is fit to be set aside, consequently the order of punishment dt. 10.05.2022, the appellate order dt. 25.07.2022 and the order passed on the memorial filed by the petitioner dated 21.03.2023, all have got no legs to stand and are also fit to be quashed. Nonetheless, it is submitted that since the impugned order of punishment dated 10.05.2022 is based on no evidence, apart from being a cryptic order, not depicting proper application of mind inasmuch as no cogent, clear or succinct reasons have been furnished for inflicting the punishment of dismissal upon the petitioner, the same is required to be set aside on this ground as well. The learned senior counsel for the petitioner has next contended that similarly the impugned order dated 21.03.2023,

passed by the Director General of Police, Bihar, Patna, on the memorial filed by the petitioner is also based on no evidence, apart from it being a cryptic order, not depicting any application of mind, inasmuch as no reason, whatsoever has been furnished, hence the same is also fit to be set aside. Last but not the least, the learned senior counsel for the petitioner has referred to a letter dated 09.12.2022, which is reproduced herein below:-



ज्ञापांक:– 986 /RTI/296/2022

प्रेषक,

लोक सूचना पदाधिकारी–सह
पुलिस अधीक्षक
भोजपुर आरा।

पुलिस अधीक्षक का कार्यालय भोजपुर
आरा दिनांक–07/12/2022

सेवा में

श्री विजय कुमार साह,
उच्च न्यायालय पटना, प्रमिला देवी
हाउस नं0–186 सिद्धेश्वर नगर मैनपुरा,
थाना–पाटलिपुत्रा, जिला–पटना–800001

विषयः– लोक सूचना का अधिकार अधिनियम–2005 के तहत आवेदक–श्री विजय कुमार साह उच्च न्यायालय पटना प्रमिला देवी हाउस नं0–186 सिद्धेश्वर नगर मैनपुरा, थाना–पटलिपुत्रा, जिला–पटना के द्वारा मांगी गयी सूचना के संबंध में।

———000———

उपर्युक्त प्रसंगाधीन विषय के संबंध मे सूचित करना है, कि लोक सूचना के तहत आवेदक–श्री नारेन्द्र कुमार धीरज पिता–श्री दुधेश्वर सिंह, ग्राम–मुजफरपुर थाना–सहार जिला–भोजपुर के द्वारा मांगी गयी सूचना से संबंधित आवेदन कि सूचना लोक सूचना पदाधिकारी–सह–सभी पुलिस निरीक्षक भोजपुर से करायी गयी है।

मांगी गयी सूचना के संबंध में भोजपुर जिला अन्तर्गत पड़ने वाले सभी पुलिस निरीक्षक भोजपुर से प्रतिवेदन प्राप्त हुआ है। प्रतिवेदन के अधार पर मांगी गयी सूचना भोजपुर जिला अन्तर्गत शुन्य है।

लोक सूचना पदाधिकारी–सह
पुलिस अधीक्षक
भोजपुर आरा।

By referring to the aforesaid letter dated 09.12.2022, it has been stated that the Public

Information Officer cum Superintendent of Police, Bhojpur, Ara, has supplied the information demanded by the petitioner with regard to the number of cases pending against the petitioner, to which it has been stated that no criminal case is pending qua the petitioner herein, hence it is submitted that the order of punishment dated 10.05.2022 as also the appellate order dated 25.07.2022 and the order dated 21.03.2021 passed by the Director General of Police, on the memorial filed by the petitioner are all based on wrong premise that several criminal cases are pending against the petitioner and he has a bad antecedent.

11. *Per contra*, the learned counsel for the respondent-State has submitted that there is no procedural irregularity in conduct of the departmental proceedings qua the petitioner, hence this Court would not sit in appeal and re-appreciate the evidence, thus the present writ petition is bereft of any merit, hence is fit to be dismissed. It is further submitted, by referring to

the counter affidavit filed in the present case, that a criminal case bearing Economic Offence Case No. 18 of 2021 was lodged against the petitioner on 20.09.2021 under Section 13(2) read with Section 13(1)(b) of the Prevention of Corruption Act, 1988, for amassing property worth several crores by misusing his post and position, when he was posted at Patna District Force from 15.08.2011 to 16.12.2021 as a Constable and was also holding the post of State President of Bihar Police Men's Association. It is stated that the petitioner had amassed disproportionate assets to the tune of Rs. 9,47,66,745/-, whereafter the petitioner was placed under suspension vide order dated 25.10.2021 and then a departmental proceeding bearing Lakhisarai District Departmental Proceeding No. 3 of 2022 was initiated against the petitioner and a charge sheet was served on the petitioner vide order dated 26.03.2022. One Shri Syed Imran Rasool, ASP, Lakhisarai was appointed as the Conducting Officer and Shri Lalit Kishor, RSM, Police line, Lakhisarai was appointed as the Presenting Officer. The

Enquiry Officer, after conducting the disciplinary proceedings in accordance with law and granting ample opportunity to the petitioner had submitted his enquiry report dated 02.05.2022, finding the charges levelled against the petitioner to have been proved. Thereafter, a second show cause notice dated 04.05.2022 was served upon the petitioner, to which the petitioner had filed his reply on 07.05.2022 and then the order of punishment of dismissal from service was passed by the Superintendent of Police, Lakhisarai vide order dated 10.05.2022. The petitioner had filed an appeal, however, the same has also stood dismissed vide order dated 25.07.2022 passed by the Deputy Inspector General of Police (Personnel), Bihar, Patna. The petitioner is stated to have then filed a memorial, however, the same has also been dismissed by an order dated 21.03.2023, passed by the Director General of Police, Bihar, Patna. It has been contended by the learned counsel for the respondents that the order of punishment dated 10.05.2022 as also the appellate order dated

25.07.2022 and the order dated 21.03.2023 passed on the memorial filed by the petitioner are well reasoned and detailed orders, which have been passed upon proper application of mind and after considering the defence put forth by the petitioner, hence no infirmity can be found with the same, thus the present writ petition is fit to be dismissed.

12. I have heard the learned counsel for the parties and gone through the materials on record. A bare perusal of the enquiry report dated 02.05.2022 would show that only two witnesses have been examined and while the first witness i.e. the Assistant Sub-Inspector of Police, namely, Rajesh Kumar Pandey, Confidential Reader and Assistant to the Inspector General of Police (Welfare), Bihar, Patna has merely proved the aforesaid FIR bearing Economic Offence Police Station Case No. 18 of 2021 and the order of suspension dated 25.10.2021, the second witness i.e. Shri Sanjay Kumar Verma, Deputy Superintendent of Police cum Officer In-Charge, Economic Offence Unit, Bihar, Patna, has in his

evidence stated that from reliable sources information has been received that the petitioner has amassed properties in his and his relatives name, disproportionate to his known source of income and for the said allegation an FIR bearing Economic Offence Unit Police Station Case No. 18/2021 dated 20.09.2021 has been lodged against the petitioner U/s. 13(2) read with Section 13(1)(b) of the Prevention of Corruption Act, 1988, apart from him having identifed the signature made on the FIR. This Court further finds that the prosecution has relied on only two documents by way of evidence, for proving the charges levelled against the petitioner, first being copy of the FIR bearing Economic Offence Police Station Case No. 18 / 2021 and second being the order of suspension of the petitioner dt. 25.10.2021.

13. Now coming to the enquiry report dated 02.05.2022, it is apparent that the first three paragraphs deal with the charges levelled against the petitioner whereas paragraph no. 4 mentions the documents which are being relied upon for the

purposes of proving the charges levelled against the petitioner i.e. a copy of the FIR bearing Economic Offence Police Station Case No. 18 / 2021 and a copy of the order of suspension of the petitioner dt. 25.10.2021. Paragraph no. 5 of the said enquiry report dated 02.05.2022 deals with the character of the delinquent while paragraph no. 6 thereof deals with the evidence produced by the prosecution i.e. regarding two witnesses examined by the prosecution, who have merely proved the FIR bearing Economic Offence Unit Police Station Case No. 18 of 2021 and the order of suspension dated 25.10.2021. Paragraph no. 7 of the enquiry report dated 02.05.2022 deals with the defence of the petitioner and thereafter, the conclusion of the Enquiry Officer is recorded. This Court finds that the Enquiry Officer in his conclusion has dealt with the charges levelled against the petitioner and has also recorded the fact that though the petitioner was informed about the enquiry proceedings and the dates fixed therein, however, he did not submit his final defence reply, hence he has come to a

conclusion that since the petitioner has got nothing to say in his defence, the charges stand proved, however, without any evidence to back such findings arrived at by him. At this Juncture, it would be relevant to reproduce the relevant part of the concluding portion of the enquiry report dated 02.05.2022 herein below:-

> *"इस विभागीय जॉच के क्रम में भी अपचारी को कार्यालय ज्ञापांक–872/अनु0 दिनांक– 11.04.22 के द्वारा संचिका जॉच की अगली तिथि दिनांक– 16.04.22 को निर्धारित करते हुए इस विभागीय जॉच में अपना बचाव स्पष्टीकरण समर्पित करने हेतु नोटिस हस्तगत कराया गया। इसी तरह कार्यालय ज्ञापांक– 874/दिनांक 11.04.22, ज्ञापांक– 914/अनु0 दिनांक– 16.04.22, ज्ञापांक– 1006/अनु0 दिनांक– 26.04.22, ज्ञापांक– 1094/अनु0 दिनांक 29.04.22 के द्वारा भी संचिका जॉच की तिथि निर्धारित करते हुए जॉच की तिथि पर उपस्थित होकर अपना बचाव स्पष्टीकरण समर्पित करने हेतु निर्देशित किया गया परन्तु अपचारी प्रत्येक नोटिस को स्वयं प्राप्त करने के बावजूद भी इस विभागीय जॉच में अपना अंतिम बचाव स्पष्टीकरण नहीं समर्पित किये हैं। जिससे प्रतीत होता है कि अपचारी निलंबित सिपाही नरेन्द्र कुमार धीरज को अपने बचाव में आगे कुछ नहीं कहना है। संचिका में उपलब्ध अभिलेखों से अपचारी का चरित्र पूर्व से दागदार रहा हैं। जो अपने पद का भ्रष्ट दुरूपयोग कर अपने कुल सेवाकाल में पुलिस मेन्स एसोसिएशन से जुड़े होने का प्रभाव का अनुचित लाभ उठाते हूए स्वंय तथा अपने परिजनों के नाम पर आय के ज्ञात/वैध स्त्रोतों से करीब 544 प्रतिशत अधिक 9,47,66,745/– रू0 (नौ करोड़ सैतालीस लाख छियासठ हजार सात सौ पैतालीस रूपये) की सम्पति अर्जित किये हैं। जिसके संबंध में*

अपचारी द्वारा कोई आयकर विवरणी समर्पित नहीं किया गया है । अपचारी के भाई/भतीजा में विजेन्द्र कुमार विमल के अतिरिक्त किसी अन्य के द्वारा कोई आयकर रिटर्न दाखिल नहीं किया गया । इससे यह स्पष्ट है कि अपचारी नरेन्द्र कु0 धीरज और उनके परिजनों के द्वारा धनशोधन कर गलत तरीके से परिसम्पत्ति अर्जित किया गया है। अपचारी नरेन्द्र कु0 धीरज के परिजनों के विरूद्ध बालू उत्खनन, परिवहन एवं भण्डारण एवं खनिज नियमावली के अधीन भोजपुर जिले के विभिन्न थानों में कई काण्ड अंकित है, जिसका विस्तार पूर्वक वर्णन आर्थिक अपराध इकाई थाना काण्ड सं0–18/2021 के प्राथमिकी में किया गया है। अपचारी का यह आचरण भ्रष्टाचार निरोध अधिनियम–1988 (यथासंशोधित 2018) के अन्तर्गत एक संज्ञेय अपराध है, जो अपचारी के भ्रष्ट सरकारी सेवक होने को परिलक्षित करता है। जिससे आम जनता में पुलिस की छवि धुमिल हुई है।

उपर्युक्त तथ्यों से अपचारी के उपर लगाये गये आरोप के लिए अपचारी दोषी प्रतीत होते हैं।"

14. A bare perusal of the enquiry report dated 02.05.2022 would show that there is no evidence, whatsoever to prove the charges levelled against the petitioner. It is a trite law that the Enquiry Officer performs a quasi-judicial function, who upon analyzing the documents himself arrives at a conclusion that there had been a preponderance of probability to prove the charges on the basis of the materials available on record, however, in the present case, it is apparent from the enquiry report that the prosecution has failed to bring on record

any material/evidence to prove the charges levelled against the petitioner, thus the present case is a case of no evidence, hence the conclusion arrived at by the Enquiry Officer regarding the charges levelled against the petitioner to have been proved is not only perverse but also not based on any cogent materials available on record so as to indict the petitioner, hence the enquiry report dated 02.05.2022 is liable to be set aside. Yet, another aspect of the matter is that the Enquiry Officer in his enquiry report dated 02.05.2022 has stated that since the petitioner had failed to submit his final defence reply, the same shows that the petitioner has got nothing to say in his defence, hence the charges qua the petitioner stands proved, which is also contrary to law inasmuch as it is a well settled law that an Enquiry Officer, acting in a quasi-judicial authority, is in the position of an independent adjudicator, hence he is not supposed to be a representative of the department/disciplinary authority/ government and his function is to examine the evidence presented

by the department, even in absence of the delinquent official or in absence of him having filed any defence statement, in order to see as to whether the unrebutted evidence is sufficient to hold that the charges stand proved, however, in the present case the aforesaid procedure has not been observed. In this regard, this Court would like to refer to a judgment rendered by the Hon'ble Apex Court in the case of ***Saroj Kumar Sinha*** (supra); paragraphs no. 27, 28, 29 and 30 whereof are reproduced herein below:-

> *"27. A bare perusal of the aforesaid sub-rule shows that when the respondent had failed to submit the explanation to the charge-sheet it was incumbent upon the inquiry officer to fix a date for his appearance in the inquiry. It is only in a case when the government servant despite notice of the date fixed failed to appear that the inquiry officer can proceed with the inquiry ex parte. Even in such circumstances it is incumbent on the inquiry officer to record the statement of witnesses mentioned in the charge-sheet. Since the government servant is absent, he would clearly lose the benefit of cross-examination of the witnesses. But nonetheless in order to establish the charges the Department is required to produce the necessary evidence before the inquiry officer. This is so as to avoid the charge that the inquiry officer has acted as a prosecutor as well as a judge.*

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.

29. Apart from the above, by virtue of Article 311(2) of the Constitution of India the departmental enquiry had to be conducted in accordance with the rules of natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee.

30. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry 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 object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service."

15. This Court deems it apt to refer to yet another judgment rendered by the Hon'ble Apex Court in the case of ***Roop Singh Negi*** (supra); paragraphs no. 14 to 23 whereof are reproduced herein below:-

> *"**14**. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.*
>
> ***15**. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the enquiry officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. The appellant being an employee of the Bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there*

was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.

16. *In Union of India v. H.C. Goel [AIR 1964 SC 364 : (1964) 4 SCR 718] it was held: (AIR pp. 369-70, paras 22-23)*

> *"22. ... The two infirmities are separate and distinct though, conceivably, in some cases both may be present. There may be cases of no evidence even where the Government is acting bona fide; the said infirmity may also exist where the Government is acting mala fide and in that case, the conclusion of the Government not supported by any evidence may be the result of mala fides but that does not mean that if it is proved that there is no evidence to support the conclusion of the Government, a writ of certiorari will not issue without further proof of mala fides. That is why we are not prepared to accept the learned Attorney General's argument that since no mala fides are alleged against the appellant in the present case, no writ of certiorari can be issued in favour of the respondent.*
>
> *23. That takes us to the merits of the respondent's contention that the conclusion of the appellant that the third charge framed against the respondent had been proved, is based on no evidence. The learned Attorney General has stressed before us that in dealing with this question, we ought to bear in mind the fact that the appellant is acting with the determination to root out*

corruption, and so, if it is shown that the view taken by the appellant is a reasonably possible view this Court should not sit in appeal over that decision and seek to decide whether this Court would have taken the same view or not. This contention is no doubt absolutely sound. The only test which we can legitimately apply in dealing with this part of the respondent's case is, is there any evidence on which a finding can be made against the respondent that Charge 3 was proved against him? In exercising its jurisdiction under Article 226 on such a plea, the High Court cannot consider the question about the sufficiency or adequacy of evidence in support of a particular conclusion. That is a matter which is within the competence of the authority which deals with the question; but the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not. Applying this test, we are inclined to hold that the respondent's grievance is well founded, because, in our opinion, the finding which is implicit in the appellant's order dismissing the respondent that Charge 3 is proved against him is based on no evidence."

17. *In Moni Shankar v. Union of India [(2008) 3 SCC 484 : (2008) 1 SCC (L&S) 819] this Court held: (SCC p. 492, para 17)*

"17. The departmental proceeding is a quasi-judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The courts exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the Department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely, preponderance of probability. If on such evidences, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of unreasonableness is giving way to the doctrine of proportionality."

18. *In Narinder Mohan Arya v. United India Insurance Co. Ltd. [(2006) 4 SCC 713] whereupon both the learned counsel relied, this Court held: (SCC p. 724, para 26)*

"26. In our opinion the learned Single Judge and consequently the Division Bench of the High Court did not pose unto themselves the correct question. The matter can be viewed from two angles. Despite limited jurisdiction a civil court, it was entitled to interfere in a case where the report of the enquiry officer is based on no evidence. In a

suit filed by a delinquent employee in a civil court as also a writ court, in the event the findings arrived at in the departmental proceedings are questioned before it, it should keep in mind the following:

(1) the enquiry officer is not permitted to collect any material from outside sources during the conduct of the enquiry. (See State of Assam v. Mahendra Kumar Das [(1970) 1 SCC 709].

(2) In a domestic enquiry fairness in the procedure is a part of the principles of natural justice. (See Khem Chand v. Union of India [AIR 1958 SC 300] and State of U.P. v. Om Prakash Gupta [(1969) 3 SCC 775].

(3) Exercise of discretionary power involves two elements—(i) objective, and (ii) subjective and existence of the exercise of an objective element is a condition precedent for exercise of the subjective element. (See K.L. Tripathi v. SBI [(1984) 1 SCC 43].

(4) It is not possible to lay down any rigid rules of the principles of natural justice which depend on the facts and circumstances of each case but the concept of fair play in action is the basis. (See Sawai Singh v. State of Rajasthan [(1986) 3 SCC].

(5) The enquiry officer is not permitted to travel beyond the charges and any punishment imposed on the basis of a finding which was not the subject-matter of the charges is wholly illegal. (See Export Inspection Council of India v. Kalyan Kumar Mitra [(1987) 2 Cal LJ 344].

(6) Suspicion or presumption cannot take the place of

proof even in a domestic enquiry. The writ court is entitled to interfere with the findings of the fact of any tribunal or authority in certain circumstances. (See Central Bank of India Ltd. v. Prakash Chand Jain [AIR 1969 SC 983] and Kuldeep Singh v. Commr. of Police [(1999) 2 SCC 10].”

***19**. The judgment and decree passed against the respondent in Narinder Mohan Arya case [(2006) 4 SCC 713] had attained finality. In the said suit, the enquiry report in the disciplinary proceeding was considered, the same was held to have been based on no evidence. The appellant therein in the aforementioned situation filed a writ petition questioning the validity of the disciplinary proceeding, the same was dismissed. This Court held that when a crucial finding like forgery was arrived at on an evidence which is non est in the eye of the law, the civil court would have jurisdiction to interfere in the matter. This Court emphasised that a finding can be arrived at by the enquiry officer if there is some evidence on record. It was furthermore found that the order of the appellate authority suffered from non-application of mind.*

***20.** This Court referred to its earlier decision in Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. [(1999) 3 SCC 679 : 1999 SCC (L&S) 810] to opine: (Narinder Mohan Arya case [(2006) 4 SCC 713 : 2006 SCC (L&S) 840] , SCC p. 729, paras 41-42)*

“41. We may not be understood to have laid down a law that in all such circumstances the decision of the civil court or the criminal court would be binding on the disciplinary authorities as this Court in a large number of decisions

points out that the same would depend upon other factors as well. See e.g. Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh [(2004) 8 SCC 200] and RBI v. S. Mani [(2005) 5 SCC]. Each case is, therefore, required to be considered on its own facts.

42. It is equally well settled that the power of judicial review would not be refused to be exercised by the High Court, although despite it it would be lawful to do so. In RBI [(2005) 5 SCC] this Court observed:

> *'39. The findings of the learned Tribunal, as noticed hereinbefore, are wholly perverse. It apparently posed unto itself wrong questions. It placed onus of proof wrongly upon the appellant. Its decision is based upon irrelevant factors not germane for the purpose of arriving at a correct finding of fact. It has also failed to take into consideration the relevant factors. A case for judicial review, thus, was made out.' "*

In that case also, the learned Single Judge proceeded on the basis that the disadvantage of an employer is that such acts are committed in secrecy and in conspiracy with the person affected by the accident, stating: (Narinder Mohan Arya case [(2006) 4 SCC] , SCC p. 730, paras 44-45)

> *"44. ... No such finding has been arrived at even in the disciplinary proceedings nor was any charge made out as against the appellant in that behalf. He had no occasion to have his say thereupon. Indisputably, the writ court will bear in mind the distinction between some evidence or no evidence but the question which*

was required to be posed and necessary should have been as to whether some evidence adduced would lead to the conclusion as regards the guilt of the delinquent officer or not. The evidence adduced on behalf of the management must have nexus with the charges. The enquiry officer cannot base his findings on mere hypothesis. Mere ipse dixit on his part cannot be a substitute of evidence.

45. The findings of the learned Single Judge to the effect that 'it is established with the conscience (sic) of the Court reasonably formulated by an enquiry officer then in the eventuality' may not be fully correct inasmuch as the Court while exercising its power of judicial review should also apply its mind as to whether sufficient material had been brought on record to sustain the findings. The conscience of the court may not have much role to play. It is unfortunate that the learned Single Judge did not at all deliberate on the contentions raised by the appellant. Discussion on the materials available on record for the purpose of applying the legal principles was imperative. The Division Bench of the High Court also committed the same error."

21. *Yet again in M.V. Bijlani v. Union of India [(2006) 5 SCC 88 : 2006 SCC (L&S) 919] this Court held: (SCC p. 95, para 25)*

"25. ... Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial

function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."

22. *Yet again in Jasbir Singh v. Punjab & Sind Bank [(2007) 1 SCC 566] this Court followed Narinder Mohan Arya v. United India Insurance Co. Ltd. [(2006) 4 SCC 713], stating: (Jasbir Singh case [(2007) 1 SCC 566] , SCC p. 570, para 12)*

> *"12. In a case of this nature, therefore, the High Court should have applied its mind to the fact of the matter with reference to the materials brought on records. It failed to do so."*

23*. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be*

arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof."

16. In a judgment rendered by the Hon'ble Supreme Court of India in the case of ***M.V. Bijlani (supra)***, the law has been very succinctly laid down with regard to the aforesaid aspect of the matter. It would be gainful to reproduce paragraphs no. 14, 20 and 23 to 26 thereof, herein below:-

"14. From a perusal of the enquiry report, it appears to us that the disciplinary authorities proceeded on a wrong premise. The appellant was principally charged for non-maintenance of ACE-8 Register. He was not charged for theft or misappropriation of 4000 kg of telegraph copper wire or misutilisation thereof. If he was to be proceeded against for misutilisation or misappropriation of the said amount of copper wire, it was necessary for the disciplinary authority to frame appropriate charges in that behalf. Charges were said to have been framed after receipt of a report from CBI (Anti-Corruption Bureau). It was, therefore, expected that definite

charges of misutilisation/misappropriation of copper wire by the appellant would have been framed. The appellant, therefore, should have been charged for defalcation or misutilisation of the stores he had handled if he was to be departmentally proceeded against on that basis. The second charge shows that he had merely failed to supervise the working of the line. There was no charge that he failed to account for the copper wire over which he had physical control.

20. The enquiry officer proceeded as if in the departmental proceedings the appellant was charged with misappropriation of property. The witnesses not only spoke of theft of copper wire, but also stated about the existence of muster roll diaries. According to one Daya Shankar, the work shown in the diaries was correct. According to him, apart from erection of 300 lb iron wire in Section Geedam-Bijapur, 150 lb was erected in the entire section. He stated that broken pieces of wire found were sent to Jagdalpur through SIT diary. According to him, the work of erecting copper wire started from 5-11-1969 and continued up to March 1970. One Shri K.C. Sariya who was the successor of the appellant stated about the maintenance of the muster rolls and ACE-8 Register. According to him, stores pertaining to estimate were accounted for and ACE-8 sheets attached to estimate file. He further stated that ACE-8 sheets were in the estimate file. One Shri K.D. Shrivastava had stated that there was report of copper wire theft by one Shri Kashiram.

23. Evidently, the evidences recorded by the enquiry officer and inferences drawn by him were not commensurate with

the charges. If it was a case of misutilisation or misappropriation, the appellant should have been told thereabout specifically. Such a serious charge could not have been enquired without framing appropriate charges. The charges are otherwise vague. We have noticed hereinbefore that the High Court also proceeded on the basis that the non-maintenance of diary amounted to misutilisation of copper wire.

24. Mr Verma, when questioned, submitted that the appellant might have utilised the same on unsanctioned works. If that be so, a specific charge to that effect should have been framed.

25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.

26. The report of the enquiry officer suffers from the aforementioned vices. The orders of the disciplinary authority as also the Appellate Authority which are based on the said enquiry report, thus, cannot be sustained. We have also noticed the way in which the Tribunal has dealt with the matter. Upon its findings, the High Court also commented that it had not delved deep into the contentions raised by the appellant. The Tribunal also, thus, failed to discharge its functions properly."

17. This Court would also like to refer to a judgment rendered by the Hon'ble Patna High Court in the case of ***Kumar Upendra Singh Parimar*** (supra), paragraphs no. 12, 15, 16, 18 and 19 whereof are reproduced herein below:-

"12. Under those rules there are detailed provisions for holding regular departmental enquiry. In holding of a departmental enquiry it is required to prove the charges against the delinquent employee by producing departmental witnesses and the by examining them by the enquiry officer. If the delinquent employee does not attend the enquiry even then the department has to prove the charge by examining the witnesses in support of its own documents. In the departmental enquiry no onus is cast upon the delinquent employee to prove the charges. The charges have to be proved by the department. If no witness is called by the department in support of the charges in that case it should be held that the department has not proved its case and in

such a situation the enquiry officer cannot record the findings with regard to guilt against the delinquent employee just because the delinquent employee is absent.

15. Reference in this connection may be made to the Constitution Bench Judgment of the Apex Court in the case of Union of India vs. H.C. Goel, reported in A.I.R. 1964 S.C. 364.

His Lordships Gazendra Gadkar, J. His Lordship's then was, summarised the law in this respect as follows:-

"It may be 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 trials as to disciplinary enquiries held statutory rules. under the statutory rules."

16. Since the aforesaid principle laid down by the Constitution Bench of the Supreme Court has been subsequently followed in many other cases, and has not been departed from till today, this Court cannot accept the bald statement urged by the learned counsel for the respondent that since the charges are based upon the documents so no witnesses need be examined to bring home the charges.

18. This Court cannot accept this argument for the reasons already indicated when an enquiry has been ordered by the disciplinary authority and an enquiry officer has been appointed it is not for the petitioner to demand that the department must produce witnesses to prove its case. The onus is never on the delinquent employee, on the other hand,

onus is on the department to prove the charges and it is for them to produce their witnesses in support of his case against the delinquent employee.

19. Therefore, in the facts of this case, this Court is constrained to hold that by not producing any evidence in support of its case, the respondent authorities have failed to prove the charges against the delinquent employee. Where charges have not been proved the enquiry report loses all its importance and the punishment imposed on the petitioner cannot be sustained. When a person is thrown out of employment, it must be on the basis of a procedure which is reasonable, just and fair. (See D.K. Jadav vs. J.M.A. Industries Ltd., reported in (1993)3 SCC page 259: 1994(2) PLJR (SC)55."

18. Thus, this Court finds that the enquiry report dated 02.05.2022, submitted by the Enquiry Officer, is based on no evidence inasmuch during the course of the said enquiry, only two formal witnesses had been examined, who had proved the FIR bearing Economic Office Unit PS Case No. 18 of 2021 and the order of suspension of the petitioner dated 25.10.2021 and as far as documentary evidence is concerned, merely a copy of the aforesaid FIR and the order of suspension dated 25.10.2021 was relied upon by the prosecution, however, no evidence was produced by the

prosecution either oral or documentary so as to prove the factum of the actual number of properties and specific details thereof, amassed by the petitioner, disproportionate to his known source of income and its market value etc., thus, this Court finds that the prosecution has miserably failed to prove the allegations levelled against the petitioner, apart from the fact that no material/evidence, whatsoever, has been presented before the Enquiry Officer so as to enable him to arrive at a conclusion that there has been a preponderance of probability to prove the charges on the basis of the materials available on record. Therefore, in the facts of this case, this Court is constrained to hold that by not producing any evidence in support of its case, the respondent authorities have failed to prove the charges against the petitioner, hence the enquiry report loses all its importance, moreso on account of the same being based on no evidence. Consequently, the report of the enquiry officer dated 02.05.2022, being perverse and based on no evidence, is quashed.

19. Now, coming to the order of punishment dated 10.05.2022, passed by the Superintendent of Police, Lakhisarai, this Court finds that the same is a mere narration of facts and does not either deal with the defence put forth by the petitioner, by way of his reply dated 07.05.2022 to the second show cause notice dated 04.05.2022, nor mentions any specific particulars about the assets/properties amassed by the petitioner, disproportionate to his known source of income and the proof thereof, hence the same is also based on no evidence, apart from being a cryptic order not depicting proper application of mind inasmuch as no cogent, clear or succinct reasons have been furnished therein for inflicting punishment of dismissal upon the petitioner ,which is an indispensable part of a decision making process. Reference in this regard be had to a judgment rendered by the Hon'ble Apex Court in the case of ***Oryx Fisheries Private Limited vs. Union of India & Ors.***, reported in ***(2010) 13 SCC 427***, the judgment rendered by the Hon'ble Patna High Court in the case of

Jeneshwar Sinha vs. The State of Bihar & Ors.; reported in ***2022(1) PLJR 169***, the judgment rendered by a coordinate Bench of this Court in the case of **Dr. Kamla Singh vs**. **The State of Bihar**; reported in **2023(1) PLJR 803** and the one rendered by the Hon'ble Patna High Court in the case of ***Dr. Rabindra Nath Singh vs. The State of Bihar & Ors.***; reported in ***1983 PLJR 92***. Thus, this Court finds that the impugned order of punishment dated 10.05.2022 is not sustainable in the eyes of law, not only on the ground that the same is a cryptic and an unseasoned order, depicting complete non-application of mind which has failed to take into account the defence put forth by the petitioner apart from no clear, cogent or succinct reason having been furnished by the disciplinary authority for coming to a decision warranting infliction of punishment upon the petitioner, but also on the ground that the same is based on a perfunctory enquiry report which has already stood quashed, hence the order of punishment dated 10.05.2022 is quashed. This

Court also finds that the disciplinary authority while passing the impugned order of punishment dated 10.05.2022 has not only relied on certain extraneous materials but has also travelled beyond the charges levelled against the petitioner vide chargesheet/memo of charges dated 26.03.2022, thus the punishment imposed on the basis of a finding which was never the subject matter of the charges is wholly illegal. In the present case, the order of punishment dated 10.05.2022 is based on a wrong premise that several criminal cases are pending against the petitioner and he has a bad antecedent, which though was never a charge levelled against the petitioner vide the memo of charges dated 26.03.2022, hence on this ground as well the order of punishment dated 10.05.2022 is fit to be set aside. Reference in this connection be had to a judgment rendered by the Hon'ble Apex Court in the case of ***M.V. Bijlani*** (supra), as also the one rendered by the Hon'ble Apex court in the case of ***Narinder Mohan Arya vs. United India Insurance Company Limited & others***; reported

in ***(2006) 4 SCC 713***; paragraph no. 26 whereof is reproduced herein below:-

> *"26. In our opinion the learned Single Judge and consequently the Division Bench of the High Court did not pose unto themselves the correct question. The matter can be viewed from two angles. Despite limited jurisdiction a civil court, it was entitled to interfere in a case where the report of the enquiry officer is based on no evidence. In a suit filed by a delinquent employee in a civil court as also a writ court, in the event the findings arrived at in the departmental proceedings are questioned before it, it should keep in mind the following: (1) the enquiry officer is not permitted to collect any material from outside sources during the conduct of the enquiry. (See State of Assam v. Mahendra Kumar Das [(1970) 1 SCC 709]. (2) In a domestic enquiry fairness in the procedure is a part of the principles of natural justice. (See Khem Chand v. Union of India [1958 SCR] and State of U.P. v. Om Prakash Gupta [(1969) 3 SCC 775]. (3) Exercise of discretionary power involves two elements—(i) objective, and (ii) subjective and existence of the exercise of an objective element is a condition precedent for exercise of the subjective element. (See K.L. Tripathi v. State Bank of India [(1984) 1 SCC 43]. (4) It is not possible to lay down any rigid rules of the principles of natural justice which depend on the facts and circumstances of each case but the concept of fair play in action is the basis. (See Sawai Singh v. State of Rajasthan [(1986) 3 SCC 454]. (5)* ***The enquiry officer is not permitted to travel beyond the charges and any punishment imposed on the basis of a finding which was not the subject-matter of the charges is wholly illegal.*** *[See Director (Inspection & Quality Control) Export Inspection Council of India v. Kalyan Kumar Mitra [(1987) 2 Cal LJ 344]. (6) Suspicion or presumption cannot take the place of proof even in a domestic enquiry. The writ court is entitled to interfere with the findings of the fact of any tribunal or authority in certain circumstances. (See Central Bank of India*

Ltd. v. Prakash Chand Jain [(1969) 1 SCR 735 : AIR 1969 SC 983] , Kuldeep Singh v. Commr. of Police [(1999) 2 SCC 10].”

20. The order of the appellate authority dated 25.07.2022 as also the one passed by the Director General of Police, Bihar, Patna dated 21.03.2023 on the memorial filed by the petitioner also suffers from the same vice, which has been dealt with by this Court in the preceding paragraphs, hence they are also liable to be set aside apart from the fact that the same have got no legs to stand in view of quashing of the enquiry report dated 02.05.2022 and the order of punishment dated 10.05.2022.

21. Having regard to the facts and circumstances of the case and for the forgoing reasons, the enquiry report dated 02.5.2022, the order of punishment of dismissal of the petitioner from service dated 10.05.2022, passed by the Superintendent of Police, Lakhisarai, the appellate order dated 25.07.2022, passed by the Deputy Inspector General of Police (Personnel), Bihar, Patna and the order dated 21.03.2023 passed by Director General of Police, Bihar, Patna, on the memorial filed by the petitioner are quashed.

22. In view of setting aside of the enquiry report dated 02.05.2022, the order of punishment of dismissal from service dated 10.05.2022, the appellate order dated 25.07.2022 and the order dated 21.03.2023, passed on the memorial filed by the petitioner, the next question which would now arise is as to whether the petitioner would be entitled to back wages, especially in a case like the present one, wherein this Court has found the case of the petitioner to be a case of wrongful termination from service. In this regard, it would be apt to refer to a judgment rendered by the Hon'ble Apex court in the case of ***Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya & Ors.,*** reported in ***(2013) 10 SCC 324,*** paragraphs No. 38 to 38.7 whereof are reproduced herein below:-

> *"38. The propositions which can be culled out from the aforementioned judgments are:*
>
> *38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.*
>
> *38.2. 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/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

38.3. Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11 A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct

found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

38.5. The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimising the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

38.6. In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalisation of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure

and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer i.e. the employee or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin Works (P) Ltd. v. Employees 7.

38.7. The observation made in J.K. Synthetics Ltd. v. K.P. Agrawals that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three-Judge Benches 7,8 referred to herein above and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee /workman.

23. Thus, in cases of wrongful termination of service, reinstatement with continuity of service and 100% back wages is the normal rule. Another factor to be considered is that in case the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or

is guilty of victimizing the employee or workman, then the court concerned will be fully justified in directing payment of full back wages. This Court finds that the present case is a case of gross injustice meted out to the petitioner by the respondents and the materials on record sufficiently demonstrates that the principles of natural justice have been given a go by and the petitioner has been victimized, as such this Court is of the view that as a consequence of quashing of the enquiry report dated 02.5.2022, the order of punishment of dismissal of the petitioner from service dated 10.05.2022, the appellate order dated 25.07.2022 and the order dated 21.03.2023 passed by Director General of Police, Bihar, Patna, on the memorial filed by the petitioner, the petitioner is entitled for full back wages along with all consequential benefits.

24. Having regard to the facts and circumstances of the case and for the foregoing reasons, the writ petition stands allowed with a direction to the respondents to reinstate the petitioner back in

service, with continuity of service and pay the back wages to him along with all consequential benefits within a period of three months from today.

(Mohit Kumar Shah, J)

S.Sb/-

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CAV DATE	22.02.2024
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