

IN THE HIGH Court OF JUDICATURE AT PATNA
CIVIL REVIEW No. 279 of 2024

In
Civil Writ Jurisdiction Case No.8054 of 2021

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Satyavrat Bharti, Son of Late Rajendra Prasad Resident of Village -Nirsa PS
Nirsa District Dhanbad Jharkhand

... .. Petitioner/s

Versus

1. The State of Bihar through the Director General of Police, Bihar, Patna.
2. The Deputy Inspector General of Police, Munger, Range Munger.
3. The Superintendent of Police, Jamui.
4. The Sub-Divisional Police Officer, Jamui.
5. The Station House Officer, Jamui.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Rajendra Narain Sr. Advocate Mr. Satya Prakash Parasar Advocate
For the Opposite Party/s :		Mr. Suman Kumar Jha AC to AAG-3

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAV JUDGMENT

Date : 15-07-2025

1. The Petitioner has filed an application for review of the order, dated 13th of August, 2024, passed in C.W.J.C. No. 8054 of 2021, by filing the instant application for review on the grounds, stating, inter alia, that this Court while disposing of C.W.J.C. No. 8054 of 2021, dismissed the writ application on wrong assumption of facts and law involved therein, especially on two grounds that the regular departmental proceeding has been conducted before



issuance of punishment order, dated 11th of January, 2014 and secondly that the order of acquittal in criminal case passed in favour of the Petitioner did not effect the departmental proceeding as in departmental proceeding, the authority is under obligation to decide the misconduct of the charged officer on preponderance of probability, while in criminal trial probity of charge is dependent upon the principle of proof beyond any shadow of doubt.

2. It is stated by the Petitioner that Jamui P. S. Case No. 154 of 2013 was instituted on the basis of a complaint submitted by the then Jailor, namely, Arvind Kumar Mishra, stating, inter alia, that an under-trial prisoner, namely, Munna Singh has been brutally assaulted by the Station House Officer, Jamui; Superintendent of Police and his Bodyguard and the Station House Officer, Gidhaur Police Station (Petitioner herein) and as a result of such assault the said person succumbed to his injury. Initially, a case was instituted under Section 304 of the IPC and subsequently charge-sheet was filed against the Petitioner under Section 302 of the IPC.

3. The Petitioner all along dined the said charge



and allegation levelled against him. It was stated by him that the deceased, Munna Singh was not wanted in any case, registered in Gidhaur Police Station. There was no occasion to bring him to the said Police Station and he had no occasion to assault him. On the basis of the charge-sheet submitted against the Petitioner, Sessions Trial No. 171 of 2016 was registered against the Petitioner. On conclusion of trial, the learned Trial Court recorded the judgement of acquittal in favour of the Petitioner on 18th of September, 2019. From the said judgement, it is crystal clear that the Petitioner was not involved in interrogating the deceased, Munna Singh or assaulting him in any manner within the premises of Gidhaur Police Station.

4. The Petitioner further stated that over the self-same incident, a disciplinary proceeding was initiated against the Petitioner and without waiting for criminal charge, the respondent authorities conducted the departmental proceeding in a partisan manner against the Petitioner and framed charges against him in the said departmental proceeding, vide Memo No. 1697, dated 30th of June, 2013.



5. The memo of charge, dated 30th of June, 2013, contains, in all, one head of charge which runs hereunder: -

“जमुई थाना कांड सं०-९५/१३ दिनांक ०६.०६.२०१३ धारा ३६४ए/३४ भा०द०वि० के अभियुक्त मुन्ना सिंह को जमुई थानाध्यक्ष अ०नि० जितेन्द्र कुमार ने पुलिस रिमाण्ड पर दिनांक २०.०६.२०१३ को लिया था एवं रिमाण्ड पर लेने के बाद उसे गिदौर थाना ले गए जहाँ तत्कालीन थानाध्यक्ष सत्यव्रत भारती द्वारा उसके साथ अमानवीय व्यवहार किया। पुलिस रिमाण्ड की अवधि समाप्ति को पश्चात् मुन्ना सिंह को वापस जेल भेजने पर मुन्ना सिंह एवं अन्य कर्मियों ने जेल में हल्ला हंगामा किया। न्यायिक हिरासत में रहने वाले अभियुक्त के साथ अमानवीय व्यवहार किए जाने के कारण इनके व्यवहार से क्षुब्ध होकर मुन्ना सिंह के सगे संबंधियों ने जमुई थाने पर आकर पथराव एवं गाली गलौज भी किया जिसके कारण महिला थाना जमुई की जिप्सी भी क्षतिग्रस्त हो गई।”

6. It is further stated by the Petitioner that before giving reply to the aforesaid charge, another case was registered against him and other other police officers being Jamui Town P.S. Case No. 154 of 2013 after the said Munna Singh succumbed to his injuries.

7. On account of death of Munna Singh, it is contended on behalf of the Petitioner that another memorandum of charge was submitted to the Petitioner in



accordance with Rule 17 of Bihar CCA Rules, 2005, alleging misconduct on the part of the Petitioner on account of unnatural death of the said Munna Singh. The Petitioner was not directed to show-cause as to why the departmental proceeding shall not be continued for the death of Munna Singh due to the assault allegedly perpetrated upon the deceased in the premises of Gidhaur Police Station. Thus, the Petitioner contends that without holding any regular disciplinary proceeding and in violation of Constitutional mandate under Article 311(2)(b) of the Constitution, the respondent authorities passed an order of dismissal against the Petitioner on 11th of January, 2014. The Petitioner preferred a regular appeal before the Inspector General of Police, Bhagalpur against the aforesaid order of dismissal but the said appeal was also dismissed, vide order, dated 21st of August, 2024. The Petitioner then filed a memorial before the Director General of Police, Bihar, Patna, agitating the grievance of illegal and arbitrary action of the respondent authorities, vide memorial, dated 12th of February, 2015, wherein it is specifically contended by the Petitioner that the basis for initiation of disciplinary



proceeding is criminal charge based on Jamui Town P. S. Case No. 154 of 2013 and since the Petitioner was in course of pursuing the legal remedy in accordance with law, the respondent did not wait for the result in criminal case, nor they thought it fit to give the Petitioner an opportunity to file his show-cause and disciplinary proceeding was conducted on the garb of the power under Article 311(2)(b) of the Constitution of India without following the established procedure and principle of departmental proceeding. The judgement passed in criminal case on 18th of September, 2019 clearly proves that the Petitioner was not involved in any kind of misconduct in connection with Jamui Town P.S. Case No. 154 of 2013. The disciplinary authority, without considering the judgment of the criminal trial, passed extreme order of dismissal against the Petitioner.

8. In the above factual background, the Petitioner has prayed for review of the order passed by this Court on 13th of August, 2024, in C.W.J.C. No. 8054 of 2021.

9. It is needless to say that this Court dismissed the writ Petitioner by a detailed order on 13th of August,



2024.

10. The learned Advocate appearing on behalf of the Petitioner refers to a decision of the Hon'ble Supreme Court in ***Sudesh Kumar v. State of Harayana and Ors.***, reported in ***(2005) 11 SCC 525***. Paragraphs 5 and 6 of the said judgment states: -

“5. It is now established principle of law that an inquiry under Article 311(2) is a rule and dispensing with the inquiry is an exception. The authority dispensing with the inquiry under Article 311(2)(b) must satisfy for reasons to be recorded that it is not reasonably practicable to hold an inquiry. A reading of the termination order by invoking Article 311(2)(b), as extracted above, would clearly show that no reasons whatsoever have been assigned as to why it is not reasonably practicable to hold an inquiry. The reasons disclosed in the termination order are that the complainant refused to name the accused out of fear of harassment; the complainant, being a foreign national, is likely to leave the country and once he left



the country, it may not be reasonably practicable to bring him to the inquiry. This is no ground for dispensing with the inquiry. On the other hand, it is not disputed that, by order dated 23-12-1999, the visa of the complainant was extended up to 22-12-2000. Therefore, there was no difficulty in securing the presence of Mr Kenichi Tanaka in the inquiry.

6. A reasonable opportunity of hearing enshrined in Article 311(2) of the Constitution would include an opportunity to defend himself and establish his innocence by cross-examining the prosecution witnesses produced against him and by examining the defence witnesses in his favour, if any. This he can do only if inquiry is held where he has been informed of the charges levelled against him. In the instant case, the mandate of Article 311(2) of the Constitution has been violated depriving reasonable opportunity of being heard to the appellant.”

11. On the same principle, the Petitioner refers to a five Judges Bench decision of the Hon’ble Supreme Court in the case of ***Union of India & Anr. v. Tulsiram***, reported



in *AIR 1985 SC 1416*.

12. Referring to the said judgment, it is contended by the learned Advocate appearing on behalf of the Petitioner that the second proviso of Article 311(2) will apply only where the conduct of a government servant is such as he deserves the punishment of dismissal, removal or reduction in rank. In the instant case, the Petitioner was dismissed without providing any memorandum of charge attributing Petitioner's role in custodial death of Munna Singh in connection with Jamui Town P.S. Case No. 154 of 2013. On this ground, the Petitioner has prayed for reviewing the order passed by the Writ Court in C.W.J.C. No. 8054 of 2021, under the provisions of Order XLVII Rule 1 of the Code of Civil Procedure.

13. Order XLVII Rule 1 of the Civil Procedure Code runs thus: -

“1. Application for review of judgment— (1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,



(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record of for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.”

14. Section 114 of the Code of Civil Procedure

states:-



“114. Review. - Subject as aforesaid, any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed by this Court, or

(c) by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.”

15. Order XLVII Rule 1 clearly states that an aggrieved person may apply for a review of judgment to the Court which passed the decree or made the order under following circumstances: -

(i) from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge;

(ii) Such important matter or evidence could not be produced by him at the time when the decree was passed or



order made; or

*(iii) on account of some mistake
or error apparent on the face of the record
of for any other sufficient reason.*

16. In the ***State of Telangana v. Mohd. Abdul Qasim***, reported in ***(2024) 6 SCC 461***, the Hon'ble Supreme Court held that Section 114 of the Code of Civil Procedure, 1908 speaks of the circumstances, instances and situations under which a review can be filed. The words "*as it thinks fit*" cannot be interpreted to mean anything beyond what is conferred under Order 47 Rule 1. In other words, Section 114 has to be read along with Order 47 Rule 1. While they are to be read together, Section 114 is more procedural, whereas Order 47 Rule 1 is substantially substantive.

17. In the instant case, the Petitioner does not come forward with any ground of discovery of new and important matter or evidence which after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order was passed in writ petition.

18. The words "*due diligence*", though one of fact, places onus heavily on the one who seeks a review. It has to



be seen from the point of view of a reasonable and prudent man. Though an element of flexibility is given to any evidence or matter on its discovery, it has to be one which was not available to the Court earlier. It could not have been produced despite due diligence, meaning thereby that it should have been available and, therefore, in existence at least at the time of passing the decree. Mistake or error apparent on the face of record would debar the Court from acting as an appellate Court in disguise, by indulging in a re-hearing. A decision, however erroneous, can never be a factor for review, but can only be corrected in appeal. Such a mistake or error should be self-evident on the face of record. The error should be grave enough to be identified on a mere cursory look, and an omission so glaring that it requires interference in the form of a review. Being a creature of the statute, there is absolutely no room for a fresh hearing. The Court has got no role to involve itself in the process of adjudication for a second time. Instead, it has to merely examine the existence of an apparent mistake or error. Even when two views are possible, the Court shall not indulge itself by going into the merits.



19. Relying on the above principle laid down in *Mohd. Abdul Qasim* (supra), this Court has no other alternative but to hold that the grounds mentioned by the Petitioner in the instant application for review can only be agitated in appeal. Even assuming that the Court committed and error in misreading the provision of Article 311(2)(b) of the Constitution. Such error cannot be rectified in review.

20. In the instant case, the grounds raised by the Petitioner did not satisfy the requirements of Order XLVII Rule 1 of the Code of Civil Procedure.

21. Therefore, I have no other alternative but to hold that the instant review is not maintainable and the same is dismissed on contest.

22. However, there shall be no order as to costs.

(Bibek Chaudhuri, J)

skm/-

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