

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1584 of 2020

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Nirmal Kumar, S/o Girish Ram, R/o village- Kasim Bazar Road, P.S.-
Fauzdari Bazar, Dist.- Munger.

... .. Petitioner/s

Versus

1. The State of Bihar through the Director General of Police, Bihar, Patna.
2. The Deputy Inspector General of Police, Bhagalpur Range, Bhagalpur.
3. The Senior Superintendent of Police, Bhagalpur.
4. The Deputy Superintendent of Police-cum-Inquiry Officer (Headquarter-I),
Bhagalpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Satya Prakash Parasar, Adv.
Mr. Pramod Kumar, Adv.

For the State : Mr. Anil Kumar, (AC to SC-8)

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 23-11-2023

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

2. The present writ petition has been filed for
quashing of the Memo No. 1008 dated 28.10.2019 annexed as
Annexure-6 passed by the Director General of Police, Bihar and
further to quash the order dated 16.11.2018 contained in Memo
No. 4758 annexed as Annexure-4 and the order dated
21.11.2017 contained in Memo No. 4742 annexed as Annexure-
D.

3. Learned counsel for the petitioner submits that
the petitioner was working on the post of Sub Inspector when a



complaint was filed against him on the basis of which a formal FIR was drawn and the said FIR was registered as Goradih Case No. 92 of 2017 on the basis of the complaint dated 12.05.2017. Counsel also submits that on the basis of the said FIR, a departmental proceeding was initiated against the petitioner bearing Departmental Enquiry No. 11 of 2017 and the charge memo has been issued to the petitioner on 15.09.2017 after receiving the report dated 26.06.2017 by the Deputy Superintendent of Police, Bhagalpur and on the basis of the said report, inquiry was initiated bearing Departmental Enquiry No. 11 of 2017 in which the enquiry officer has found the petitioner innocent and issued the enquiry report vide Memo No. 299 of 2017 dated 31.10.2017.

4. Learned counsel for the petitioner further submits that upon submission of the enquiry report, the Disciplinary Authority, Bhagalpur has passed final order against him vide Memo No. 4742 dated 21.11.2017 by which the petitioner was imposed the punishment of forfeiture of six months increment as one of the black spot awarded. Counsel also submits that the petitioner has challenged the said disciplinary order before appellate authority and the appellate authority has passed final order issued vide memo No. 1261



dated 06.11.2018 in which order passed by the disciplinary authority has been affirmed. Counsel further submits that against the said order, the petitioner has preferred the appeal/memorial before the Director General of Police but it was also rejected vide Memo No. 1008 dated 28.10.2019 and thereafter, the petitioner has filed the present writ petition.

5. Learned counsel for the petitioner submits that the charge memo which is Annexure-B to the counter affidavit is non jurisdictional as petitioner was working as Sub Inspector whereas, charge memo has been issued by Senior Superintendent of Police, Bhagalpur and for Sub Inspector, Senior Superintendent of Police is not the appointing authority. Counsel further submits that from the enquiry report it is also clear that all the witnesses which were examined are in the nature of formal witness who were used only for exhibiting the documents but content of those documents were not proved and as such none of the evidence could be acknowledged. Counsel for the petitioner also submits that in the enquiry report, the inquiry officer has found the petitioner innocent but the disagreement memo has not been served upon the petitioner which is in gross violation of Rule 18(3) of the Bihar Government Servants (Classification, Control and Appeal)



Rules, 2005 (hereinafter referred to as “Bihar CCA Rules, 2005). Counsel for the petitioner further submits that Inspector General is the appointing authority for Sub Inspector and therefore, the disciplinary order passed by the Superintendent of Police is non jurisdictional.

6. Learned counsel for the petitioner submits that the appellate authority has also not considered the case of the petitioner on merit and passed a routine order without on the basis of materials on record. Counsel also submits that the Director General of Police has rejected the claim of the petitioner only on technical grounds that appeal/memorial is not permissible in case of the petitioner and as such the present writ petition is fit to be allowed and all the orders under challenge are fit to be quashed. Counsel further submits that from the impugned order, Senior Superintendent of Police assumed himself as the appointing authority which is wrong motion of law.

7. Learned counsel for the State submits that all the points raised by the petitioner that charge memo has been issued by an incompetent authority, in the enquiry report the contents of the documents have not been proved and the final order passed by the Senior Superintendent of Police is not disciplinary



authority and appellate authority has not considered the case of the petitioner at all are not acceptable at all due to the reason that admittedly the services of the petitioner has been guided by the Bihar Police Manual. Counsel also submits that the Bihar Police Manual in its Chapter 25 Vol. I as well as in Appendix-84 prepared in compliance of Rule 25(F) as well as the fundamental procedures of Bihar CCA Rules, 2005 are applicable in the present case. Counsel further submits that admittedly the petitioner was working as Sub Inspector and in Appendix-84, the Superintendent of Police is competent to pass suspension order, reduction in rank order as well as minor punishment and other major punishment other than compulsory retirement or removal or dismissal from the services.

8. Learned counsel for the State further submits that here in the present case, the suspension order and charge memo has been issued by the Superintendent of Police who is the competent authority and that the punishment imposed upon the petitioner comes within the category of minor punishment and for that, the officers at the rank of Superintendent is competent enough. Counsel also submits that from the enquiry report, it becomes crystal clear that the evidence was taken and those witnesses who have adduced their evidences were identified the



document and every conclusion on which the disciplinary authority has passed the order are based on the extract of those documents which were acknowledged by the witnesses present and examined.

9. Learned counsel for the State submits that the said punishment order as well as appellate order are speaking in nature and that the plea of the petitioner that there is violation of Rule 18(3) of the Bihar CCA Rules, 2005 is there shall not apply in case of the petitioner due to the reason that Rule 17 and 18 of Bihar CCA Rules, 2005 are applicable in case of major penalties. Counsel also submits that in case of minor penalties, the provisions laid down under Rule 19 shall apply and as such the present writ petition is fit to be dismissed and orders under challenge are fit to be sustained in the eye of law.

10. Upon going through the arguments of the parties and upon perusal of the records, there are primarily three questions in issue.

11. Firstly, whether the charge memo has been issued by the competent authority or not?

12. Secondly, whether without proving the contents of the documents from the mouth of the witnesses orally examined reliance could be made in a quasi judicial proceeding



or not?

13. Thirdly, whether the order passed by the disciplinary authority and the appellate authority are bad due to the reason that they are not the appointing authority and the said order has been passed in gross violation of Rule 18(3) of the Bihar CCA Rules, 2005?

Answer to First Question:-

14. It is necessary to explain the applicability of the Bihar Police Manual as well as the Bihar CCA Rules, 2005 on the employees working under Bihar Police Manual and in this view of the matter, it is necessary to explain that the Bihar Police Manual, 1978 is the result of the Bengal Police Manual, 1884 and presently, the said Bihar Police Manual, 1978 is prevalent and applicable for all police officials relating to their services as well as disciplinary matter. Chapter 25 of the said Manual is very much relevant which talks about the departmental punishments, its applicable procedure, appeal, review etc. and in the light of the said provisions of the Bihar Police Manual, Appendix-84 has been prepared which categorically states that any minor punishment or other major punishment than compulsory retirement or removal or dismissal of Sub Inspector can be made by the Superintendent of Police.



This issue has been well tested by the Division Bench of this Hon'ble Court in case of *Uday Sharma Vs. The State of Bihar and Others passed in LPA No. 1473 of 2019 in Civil Writ Jurisdiction Case No. 17311 of 2019 dated 10.02.2023* in which it has been categorically held that:-

“The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part or it, whether permanently or for a specified period, and the right or ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the pensioner is found in departmental or judicial proceeding to have been guilty of grave misconduct; or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement:

Provided that-

(underline supplied)

(a) such departmental proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment;

(i) shall not be instituted save with the sanction of the State Government;

(ii) shall be in respect of an event which



took place not more than four years before the institution of such proceedings, and
(iii) shall be conducted by such authority and as such place or places as the State Government may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made;
(b) judicial proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment, shall have been instituted in accordance with sub-clause (ii) of clause (a); and
(c) the Bihar Public Service Commission, shall be consulted before final orders are passed.”

15. In the light of the above discussion, this issue has been decided in favour of the respondent and against the petitioner that charge memo has been issued by a competent authority.

Answer to Second Question:-

16. In light of this issue that the materials which are contents of the facts present in the documents has not been proved by the formal witness and in this regard the case of ***Roop Singh Negi Vs. Punjab National Bank and Others***



reported in (2009) 2 SCC 570 in which it has been categorically held that in a quasi judicial proceeding, once the documents has been exhibited/acknowledged by the witness, there is no need of formal proof of facts to be narrated by the independent witnesses. Here in the present case, the documents on the basis of which the inference has been drawn were acknowledged by the witnesses on the basis of which the conclusion has been drawn by the disciplinary authority cannot be said to be illegal and therefore, this issue also decides against the petitioner that in quasi judicial proceeding, content of documents are necessary to be proved by the formal witness.

Answer to the Third Question:-

17. In the light of this issue is concerned about the applicability of Rule 18(3) of the Bihar CCA Rules, 2005, it is made clear that under Bihar CCA Rules, 2005, there are separate proceedings indicated in the Bihar CCA Rules 2005 i.e. proceeding for imposing major penalties and proceeding for imposing minor penalties and from the provisions laid down Rule 17 and 18 are for imposing punishment of major penalties whereas, Rule 19 is the provision for imposing minor penalties therefore, this contention of the petitioner that Rule 18(3) shall apply is not the correct view.



18. It transpires to this Court that Rule 18(3) of the Bihar CCA Rules, 2005 is directly not applicable, but upon going through the provisions of Rule 19(1), it transpires that when the enquiry officer exonerates any delinquent and the disciplinary authority is on disagreement then in that case, the disciplinary authority has to record its own finding if the evidences on record is sufficient for the purposes and he shall forward a copy of the enquiry report together with its own finding to the delinquent and provide opportunity to file representation or submission to the disciplinary authority within 15 days. Here in the present case, it transpires to this Court that from the disciplinary order, the disciplinary authority has passed final order in disagreement with the report of the enquiry officer, but has not prepared any disagreement memo nor granted opportunity to the petitioner to file representation on this matter within 15 days which are in gross violation of Rule 19 read with Rule 18(3) of the Bihar CCA Rules, 2005 and hence, the third issue has been decided in favour of the petitioner and against the respondent.

19. Since the disciplinary authority order is not fit to be sustained due to violation of Rule 19 read with Rule 18(3) of the Bihar CCA Rules, 2005 then automatically the appellate



order shall also not sustained. So far as the order passed by the Director General of Police is concerned, it has been rejected on technical grounds and therefore, with a view that the said order may not create any problem in future to the petitioner, this Court deemed it fit that the said order passed by the Director General Of Police shall also be quashed and Memo No. 1008 dated 28.10.2019 annexed as Annexure-6 passed by the Director General of Police, Bihar; order dated 16.11.2018 contained in Memo No. 4758 annexed as Annexure-4 and the order dated 21.11.2017 contained in Memo No. 4742 annexed as Annexure-D are also hereby quashed.

20. The respondent authorities are at liberty to proceed further against the petitioner from the enquiry report in compliance of Bihar CCA Rules, 2005 afresh, but all proceedings directed to be completed within 6 months from the date of the production of the order.

21. With the above observations and directions, this writ petition hereby stands allowed.

(Dr. Anshuman, J.)

Divyansh/-

AFR/NAFR	
CAV DATE	
Uploading Date	29.11.2023
Transmission Date	

