

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1855 of 2025

Punit Kumar Srivastava Son of Nand Kishor Lal Srivastava Resident of 100 Ram Gulam Tola, Deoria, P.S.-Kotwali Deoria, District-Deoria (Uttar Pradesh) at Present Posted as Sub-Divisional Prosecution Officer, District Prosecution Office, Rohtas, Sasaram (Bihar)

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Home, Government of Bihar, Patna.
2. The Additional Chief Secretary, Home Government of Bihar, Patna.
3. The Secretary, Home Government of Bihar, Patna.
4. The Director, Prosecution, Directorate of Prosecution, Home Bihar.
5. District Prosecution Officer Incharge, Rohtas, Sasaram.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Jnanchandra Bhardwaj, Advocaete
For the Respondent/s : Mr.Kumar Manish, SC-5
Mr. Prashant Kumar, AC to SC-5

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

C.A.V. JUDGMENT

Date : 14-05-2026

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

2. The petitioner has filed the present writ petition for issuance of writ of certiorari to quash the order of transfer vide Notification No. 145 dated 16.01.2025 at Serial No. 2 from the post of Sub Divisional Prosecution Officer, posted in the District Prosecution Office, Rohtas, Sasaram to the office of Vigilance Investigation Bureau, Bihar as law Officer and further prayer for quashing the relieving order No.8/2025



contained in Memo No. 144 dated 04.04.2025 (Annexure-8).

3. Learned counsel appearing for the petitioner submits that the petitioner was appointed as Assistant Prosecution Officer vide Notification No. 1011 dated 25.09.2017 and was subsequently promoted to the post of Sub-Divisional Prosecution Officer vide Notification No. 2513 dated 31.10.2023, both issued by the Directorate of Prosecution, Home Department, Government of Bihar, Patna. It is further submitted that the petitioner, vide Letter No. 20 dated 17.01.2025, made a representation before the Director of Prosecution requesting that he be posted in any District Prosecution Office by rectifying or omitting his name at Serial No. 2 of the transfer notification (Annexure P/1 to the writ petition). A similar representation was also submitted before respondent no. 2, namely, the Additional Chief Secretary, Home Department, Government of Bihar, Patna, as contained in Annexure P/2, but no relief was granted.

4. Learned counsel further submits that this Court, vide order dated 14.11.1995 passed in CWJC No. 5573 of 1995, had directed the State authorities to create a separate prosecution cadre independent of the police department in terms of Section 25 of the Code of Criminal Procedure, so as to ensure



that no Assistant Public Prosecutor remains subordinate to police officers. The said order was challenged by the State of Bihar in LPA No. 294 of 1996, which came to be dismissed by a Division Bench of vide order dated 04.11.1996 (Annexure P/7 to the supplementary affidavit). The Special Leave Petition preferred before the Hon'ble Supreme Court was also dismissed.

5. It is further submitted that pursuant thereto, the Prosecution Manual, 2003 was framed and placed before this Court in MJC No. 2110 of 1997, whereby the Directorate of Prosecution and Prosecution Officers were freed from the administrative and disciplinary control of the police department. Learned counsel submits that, after the enactment of the Code of Criminal Procedure, 1974, the prosecution service was intended to function independently of police control.

6. Learned counsel also submits that in a similar matter, where a Prosecution Officer was posted at Police Training College, Hazaribagh under the administrative control of the Principal-cum-D.I.G. of Police, a Division Bench of this Court, vide order dated 21.05.1992 passed in CWJC No. 4287 of 1992, had stayed such transfer notification and directed appropriate posting (Annexures P/5 and P/6 to the



supplementary affidavit). It is further submitted that despite settled legal position, the respondent authorities are ignoring the law as well as binding precedents of this Court, inasmuch as Prosecution Officers cannot be placed under the administrative and disciplinary control of the police department or its officers. It is further submitted that the petitioner was not even afforded an opportunity to exercise his option for posting.

7. On the other hand, learned counsel for the respondent-State submits that the petitioner is an officer of the Bihar Prosecution Service and is presently holding the post of Sub-Divisional Prosecution Officer. In the interest of prosecution administration, the Government of Bihar, Home Department, Directorate of Prosecution, issued Notification No. 145 dated 16.01.2025 (Annexure-A to the counter affidavit), whereby 13 Prosecution Officers, including the petitioner, were transferred. It is submitted that all such officers, except the petitioner, have joined their respective places of posting.

8. It is further submitted that the petitioner has been transferred to the Vigilance Investigation Bureau, Patna, as a Law Officer against a sanctioned post, where several Prosecution Officers are already posted and drawing their salaries. Learned counsel submits that the petitioner was duly



relieved by the District Prosecution Officer In-charge, Rohtas (Sasaram), vide Order No. 8/2025, Memo No. 144 dated 04.04.2025, in compliance with the said notification. Learned counsel further submits that as per Resolution Memo No. 4521 dated 03.04.1989 issued by the Department of Personnel and Administrative Reforms, Government of Bihar, a gazetted officer is required to join the transferred place of posting within seven days of receipt of the transfer order, failing which departmental proceedings, including suspension, may be initiated. It is also mandated that the controlling officer must relieve such officer within the stipulated period.

9. It is further contended that Rule 27 of the Bihar Prosecution Manual, 2003 permits posting/deputation of Prosecution Officers in other departments for legal work. The petitioner, being a government servant, is bound by the applicable rules and regulations. Accordingly, it is submitted that the writ petition is devoid of merit and is liable to be dismissed.

10. In response, learned counsel for the petitioner submits that Rule 27 of the Bihar Prosecution Manual, 2003 does not authorize posting of Prosecution Officers under the administrative and disciplinary control of the police



department or its officers, which would be contrary to the settled legal position. It is further submitted that such action is also in violation of Rule 31 of the Prosecution Manual, 2003.

11. After hearing the parties and perusal of the record, it transpires to this Court that with a view to adjudicate this matter, it is necessary to quote the relevant extract of Bihar Prosecution Manual, 2003, which has been published in the Bihar Gazette (Extraordinary) No.177 dated 21st April, 2003. Article 309 of the Constitution of India empowers the appropriate legislature to regulate the recruitment and conditions of service for public servants serving the Union or a State. Admittedly, the petitioner who is an Officer of Bihar Prosecution Service and working as Bihar Prosecution Officer whose services have been guided by the Bihar Prosecution Manual, 2003. Rules 27 and 31 of the said Manual on which the State is relying are as follows:-

“27. कुल स्वीकृत बल का 5 प्रतिशत बल अवकाश, प्रशिक्षण एवं प्रतिनियुक्ति रिजर्व के रूप में उपलब्ध होगा। सरकार/महानिदेशक, अभियोजन द्वारा आवश्यकतानुसार इसी रिजर्व बल में से पदाधिकारियों के अन्य विभागों में स्वीकृत गैर सम्बर्गीय पदों के विरुद्ध विधि संबंधी कार्य करने के लिये नियुक्त/प्रतिनियुक्त किया जायेगा।

31 जिन बिन्दुओं पर इस हस्तक में विशिष्ट प्रावधान नहीं है, उन मामलों में राज्य के समकक्ष अन्य सरकारी कर्मचारियों पर लागू अन्य सामान्य नियमावलियाँ



अभियोजन सम्वर्ग के सदस्यों पर भी लागू होगी।”

12. It transpires to this Court that every Prosecution Officer has to work under the Department of Home and according to Rule 27 of the Bihar Prosecution Manual, 2003, 5 percent of total sanctioned post shall be available as reserve post and their appointment/deputation may be made in other department for doing the legal work.

13. In light of the provisions under Rule 27 of the Bihar Prosecution Manual, 2003, the contention of the petitioner is not sustainable in the eyes of law that, being a Prosecution Officer, he shall always be posted as a District Prosecution Officer, as the Rules governing him, namely the Bihar Prosecution Manual, 2003, itself provide specific provisions for appointment/deputation in other departments as well, wherever the Government or the parent department is in need.

14. So far as the judgment on which the petitioner relied shall not applicable upon the petitioner as those judgments are of 1996 and of 1992 when the Bihar Prosecution Manual has not been enacted. This Court is of the firm view that the services of the petitioner shall be guided by the Bihar Prosecution Manual, 2003 and not by any other law till the said



prosecution manual any of its provision shall not be declared ultravires by the Court of competent jurisdiction. Working in any office on deputation cannot be said to be worked under the administrative and disciplinary control of the said department due to the reason that the petitioner is ultimately the employee of Bihar Prosecution Service and the rule framed under Rule 31 of the Manual shall also binding upon upon.

15. In the light of the discussions and reasons mentioned above, this Court is of the firm view that petitioner has no case and, hence, this writ petition is dismissed.

(Dr. Anshuman, J)

Ashwini/-

AFR/NAFR	
CAV DATE	18.04.2026
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