

(2021) 07 PAT CK 0031

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 18331 Of 2019

Bharat Prasad Yadav

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 12-07-2021

Acts Referred:

Constitution Of India, 1950 — Article 32, 226, 311(2)
Delhi Police (Punishment And Appeal) Rules, 1980 — Rule 16(3)
Bihar Prohibition And Excise Act, 2016 — Section 37(b)
Evidence Act, 1872 — Section 65A, 65B, 65B(1), 65B(4)

Citation : (2021) 07 PAT CK 0031

Hon'ble Judges : Mohit Kumar Shah, J

Bench : Single Bench

Advocate : Raju Giri, P. K. Verma, Suman Kr. Jha

Final Decision : Allowed

Judgement

1. The instant case has been taken up for consideration through the mode of Video conferencing in view of the prevailing situation on account of

COVID 19 Pandemic, requiring social distancing.

2. The present writ petition has been filed for quashing the order dated 04.04.2019, passed by the Deputy Inspector General of Police, Munger Range,

Munger, whereby and whereunder the petitioner has been dismissed from service. The petitioner has also prayed for quashing of the appellate order

dated 11.07.2019, passed by the Inspector General of Police, Bhagalpur Range, Bhagalpur and the order dated 10.12.2019, passed by the Director

General of Police, Bihar, Patna, whereby and whereunder the Memorial filed by the petitioner has been rejected.

3. The brief facts of the case are that a video clip had become viral on 14.11.2018, wherein the petitioner was seen consuming some substance akin to

liquor and was thus suspended on the very same day vide order dated 14.11.2018, passed by the Superintendent of Police, Sheikhpura. In fact, one F.I.R. bearing Karandey PS case no. 42 of 2018 was also instituted against the petitioner on 15.11.2018 under Section 37(b) of the Bihar Prohibition and Excise Act, 2016. The Superintendent of Police, Sheikhpura, vide letter dated 21.11.2018, had issued a show cause notice to the petitioner calling upon him to file his reply as to why a disciplinary proceeding be not initiated against him. The petitioner had filed his reply denying all the charges, whereafter a preliminary inquiry is stated to have been conducted and a report was submitted by the Superintendent of Police, Sheikhpura on 22.11.2018, wherein it was stated that on 14.11.2018, a video had become viral on WhatsApp, wherein the petitioner was seen drinking liquor, hence for the purposes of inquiry, the room of the petitioner was searched and it was found that the room, which was visible in the viral video is similar to the room of the residence of the petitioner and from the video it appeared that the petitioner was drinking liquor, although liquor is banned in the State of Bihar. The disciplinary authority had then issued a charge-sheet dated 23.11.2018, wherein allegation was leveled against the petitioner regarding him having consumed liquor, although the same was banned in the State of Bihar resulting in him bringing disrepute to the entire Police Department. The petitioner had then filed his reply, whereafter, the inquiry had commenced and after conclusion of the same, the Inquiry Officer had filed his inquiry report dated 20.12.2018, wherein though two witnesses had been examined on behalf of the prosecution, one being the investigating officer of the aforesaid Karandey PS case no. 42 of 2018 and the other being the informant of the said case namely Arjun Prasad, nonetheless they had failed to adduce any concrete or cogent evidence to substantiate the factum of them having either seen the petitioner drinking liquor or being in possession of any tangible proof to prove the fact that the petitioner was drinking liquor on the alleged date and time of occurrence and had on the contrary, merely stated that a video had become viral, wherein the petitioner was seen consuming liquor. No other oral or documentary evidence was adduced by the prosecution except for the inquiry report of the informant of the aforesaid criminal case dated 15.11.2018, which is also of no relevance.

4. The petitioner, in his defence, had submitted before the Inquiry Officer that on 14.11.2018, admittedly, he was on evening patrolling duty along with

the police force, hence it was not possible that he was in an intoxicated condition. It was also stated by the petitioner that the Breath Analyser Test was conducted on the very same day and zero quantity of alcohol was detected. It was also submitted by the petitioner that the person who is alleged to have made the video in question viral, has subsequently admitted that on account of personal animosity with the petitioner, he had morphed the video and made it viral, as such the petitioner was not drinking liquor. Lastly, it was submitted by the petitioner before the Inquiry Officer that during the course of search of the residential quarter of the petitioner, neither any liquor bottle nor any glass nor any smell of liquor was found.

5. The Inquiry Officer, after having gone through the materials on record and having considered the submissions of the prosecution as also the defence, had come to a finding, in his enquiry report dated 20.12.2018, that the allegation regarding the petitioner having consumed liquor, after pouring liquor from a bottle into a glass, at his residential room, has been found to have been proved.

6. The Superintendent of Police, Sheikhpura had then issued a second show cause notice to the petitioner dated 21.12.2018, whereafter the petitioner had submitted his detailed reply and then the Superintendent of Police, Sheikhpura, by his letter dated 29.03.2019 had sent a recommendation to the disciplinary authority of the petitioner i.e. the Deputy Inspector General of Police, Munger Range, Munger, categorically making a recommendation for removal of the petitioner from his services.

7. It appears that acting upon the recommendation of the Superintendent of Police, Sheikhpura, the disciplinary authority of the petitioner i.e. the Deputy Inspector General of Police, Munger Range, Munger had passed an order dated 04.04.2019, inflicting the punishment of dismissal upon the petitioner. The petitioner had then filed an appeal against the order of dismissal dated 04.04.2019 but the same was dismissed by the Inspector General of Police, Bhagalpur Range, Bhagalpur, vide order dated 11.07.2019. The petitioner had also filed a memorial before the Director General of Police, Bihar, Patna, however the same was also dismissed vide order dated 10.12.2019.

8. The learned counsel for the petitioner Sri Raju Giri has submitted that the present case is a case of no evidence, hence the finding of the Inquiry Officer as also the order inflicting punishment of dismissal upon the petitioner are

void, illegal and fit to be set aside. The learned counsel for the petitioner has further submitted that in fact on the very same day of the occurrence, the Breath Analyser Test of the petitioner was conducted, wherein 0.0 mg of alcohol was found, which also goes to substantiate the fact that the petitioner had not consumed liquor on the alleged date and time of occurrence. It is also submitted that neither the person who is the maker of the alleged video clip and who in fact had also made it viral on WhatsApp i.e. Bambam Kumar has been examined by the prosecution nor the mobile by which the viral video was shot has been exhibited in the inquiry proceedings, hence there is no evidence on record to show the complicity of the petitioner in the alleged occurrence. It is also submitted that though the disciplinary authority of the petitioner is the Deputy Inspector General of Police but, upon a recommendation made by the Superintendent of Police, Sheikhpura for removal of the petitioner from his services, the Deputy Inspector General of Police, Munger Range has mechanically acted with a pre-determined mind, which also vitiates the order of dismissal dated 04.04.2019. The learned counsel for the petitioner, on the issue of no evidence, has referred to a judgment rendered by the Hon'ble apex court in the case of Roop Singh Negi v. Punjab National Bank, reported in (2009) 2 SCC 570, paragraphs no. 14, 15 and 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.

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 self same 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.

9. The learned counsel for the petitioner has also referred to a judgment rendered by the Honâ??ble Apex Court in the case of Kuldeep Singh v. The Commissioner of Police and ors., reported in (1999) 2 SCC 10, paragraphs no. 4 to 10 whereof, are reproduced herein below:-

4. Learned counsel for the appellant has contended that the findings recorded by the enquiry officer cannot be sustained as the enquiry itself was held in utter violation of the principles of natural justice. It is also contended that there was no evidence worth the name to sustain

the charge framed against the appellant and, therefore, the findings are perverse particularly as no reasonable person could have come to

these findings on the basis of the evidence brought on record.

5. Learned counsel appearing on behalf of the Union of India has, on the other hand, contended that the enquiry was held in consonance

with the principles of natural justice and during the course of the enquiry, full opportunity was given to the appellant to defend himself. As

far as the evidence is concerned, it is contended that though it is true that none of the complainants was examined but on account of Rule

16(3) of the Delhi Police (P&A) Rules, 1980, it was not required to produce the complainant in person as the Rule itself contemplated

that in the absence of a witness whose presence could not be procured without undue delay, inconvenience or expense, his statement,

already made on an earlier occasion, could be placed on record in the departmental enquiry and the matter could be decided on that

basis. It was under this Rule that the previous joint statement of the complainants was brought on record without examining any of them.

Learned counsel for the respondents contended that the scope of judicial review in disciplinary proceedings is extremely narrow and

limited. The Court cannot, it is contended, re-examine or reappraise the evidence and substitute its own conclusion in place of the

conclusions arrived at by the enquiry officer or the disciplinary authority on that evidence.

6. It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at

the departmental enquiry by the disciplinary authority or the enquiry officer as a matter of course. The Court cannot sit in appeal over

those findings and assume the role of the appellate authority. But this does not mean that in no circumstance can the Court interfere. The

power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as

well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were

such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictates of the superior

authority.

7. In *Nand Kishore Prasad v. State of Bihar* [(1978) 3 SCC 366 : 1978 SCC 458 : AIR 1978 SC 1277 : (1978) 3 SCR 708] it was held that

the disciplinary proceedings before a domestic tribunal are of quasi-judicial character and, therefore, it is necessary that the Tribunal

should arrive at its conclusions on the basis of some evidence, that is to say, such evidence which and that too, with some degree of

definiteness, points to the guilt of the delinquent and does not leave the matter in a suspicious state as mere suspicion cannot take the place

of proof even in domestic enquiries. If, therefore, there is no evidence to sustain the charges framed against the delinquent, he cannot be

held to be guilty as in that event, the findings recorded by the enquiry officer would be perverse.

8. The findings recorded in a domestic enquiry can be characterised as perverse if it is shown that such findings are not supported by any

evidence on record or are not based on the evidence adduced by the parties or no reasonable person could have come to those findings on

the basis of that evidence. This principle was laid down by this Court in *State of A.P. v. Rama Rao* [(1964) 2 LLJ 150 : AIR 1963 SC 1723 :

(1964) 3 SCR 25] in which the question was whether the High Court under Article 226 could interfere with the findings recorded at the

departmental enquiry. This decision was followed in *Central Bank of India Ltd. v. Prakash Chand Jain* [(1969) 2 LLJ 377 : AIR 1969 SC

983] and *Bharat Iron Works v. Bhagubhai Balubhai Patel* [(1976) 1 SCC 518 : 1976 SCC (L&S) 92 : 1976 Lab IC 4 : AIR 1976 SC 98

: (1976) 2 SCR 280]. In *Rajinder Kumar Kindra v. Delhi Admn.* [(1984) 4 SCC 635 : 1985 SCC (L&S) 131 : AIR 1984 SC 1805 :

(1985) 1 SCR 866] it was laid down that where the findings of misconduct are based on no legal evidence and the conclusion is one to

which no reasonable man could come, the findings can be rejected as perverse. It was also laid down that where a quasi-judicial tribunal

records findings based on no legal evidence and the findings are its mere ipse dixit or based on conjectures and surmises, the enquiry

suffers from the additional infirmity of non-application of mind and stands vitiated.

9. Normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of

“guilt” is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny.

10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is

arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be

perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be,

the conclusions would not be treated as perverse and the findings would not be interfered with.

10. Lastly, the learned counsel for the petitioner has referred to a judgment rendered in the case of State of U.P. v. Saroj Kumar Sinha reported in

(2010) 2 SCC 772, paragraphs no. 28 to 30 and 37 to 39 whereof, are reproduced herein below :-

“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.

37. We are of the considered opinion that the aforesaid observations are fully applicable in the facts and circumstances of this case. Non-

disclosure of documents having a potential to cause prejudice to a government servant in the enquiry proceedings would clearly be denial

of a reasonable opportunity to submit a plausible and effective rebuttal to the charges being enquired into against the government servant.

38. The aforesaid proposition of law has been reiterated in *Tirlok Nath v. Union of India* [1967 SLR 759 (SC)] wherein it was held that

non-supply of the documents amounted to denial of reasonable opportunity. It was held as follows: (SLR pp. 764-65)

“Had he decided to do so, the documents would have been useful to the appellant for cross-examining the witnesses who deposed

against him. Again had the copies of the documents been furnished to the appellant he might, after perusing them, would have exercised his

right under the rule and asked for an oral inquiry to be held. Therefore, in our view the failure of the inquiry officer to furnish the

appellant with copies of the documents such as the first information report and the statements recorded at the Shidipura house and during

the investigation must be held to have caused prejudice to the appellant in making his defence at the inquiry.”

39. The proposition of law that a government employee facing a departmental enquiry is entitled to all the relevant statements, documents

and other materials to enable him to have a reasonable opportunity to defend himself in the departmental enquiry against the charges is too

well established to need any further reiteration. Nevertheless given the facts of this case we may re-emphasise the law as stated by this Court

in *State of Punjab v. Bhagat Ram* [(1975) 1 SCC 155 :

“6. The State contended that the respondent was not entitled to get copies of statements. The reasoning of the State was that the

respondent was given the opportunity to cross-examine the witnesses and during

the cross-examination the respondent would have the opportunity of confronting the witnesses with the statements. It is contended that the synopsis was adequate to acquaint the respondent with the gist of the evidence.

7. The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the government servant is afforded a reasonable opportunity to defend himself against charges on which inquiry is held. The government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the government servant. Unless the statements are given to the government servant he will not be able to have an effective and useful cross-examination.

8. It is unjust and unfair to deny the government servant copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges levelled against the government servant. A synopsis does not satisfy the requirements of giving the government servant a reasonable opportunity of showing cause against the action proposed to be taken.â??

11. Now, coming to the issue of evidentiary value of the electronic evidence, the learned counsel for the petitioner has referred to a judgment rendered by the Honâ??ble Apex Court in the case of Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, (2020) 7 SCC

1 : (2020), paragraphs no. 60, 61 and 84 whereof, are reproduced herein below :-

60. It may also be seen that the person who gives this certificate can be anyone out of several persons who occupy a â??responsible official positionâ? in relation to the operation of the relevant device, as also the person who may otherwise be in the â??management of relevant activitiesâ? spoken of in sub-section (4) of Section 65-B. Considering that such certificate may also be given long after the electronic record has actually been produced by the computer, Section 65-B(4)

makes it clear that it is sufficient that such person gives the requisite certificate to the "best of his knowledge and belief". [Obviously, the word "and" between knowledge and belief in Section

65-B(4) must be read as "or", as a person cannot testify to the best of his knowledge and belief at the same time.]

61. We may reiterate, therefore, that the certificate required under Section 65-B(4) is a condition precedent to the admissibility of evidence

by way of electronic record, as correctly held in *Anvar P.V.* [*Anvar P.V. v. P.K. Basheer*, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 :

(2015) 1 SCC (Cri) 24 :

(2015) 1 SCC 108] , and incorrectly "clarified" in *Shafhi Mohammad* [*Shafhi Mohammad v. State of H.P.*, (2018) 2 SCC 801 : (2018)

2 SCC 807 : (2018) 2 SCC (Civ) 346 : (2018) 2 SCC (Civ) 351 : (2018) 1 SCC (Cri) 860 : (2018) 1 SCC (Cri) 865] . Oral evidence in the

place of such certificate cannot possibly suffice as Section 65-B(4) is a mandatory requirement of the law. Indeed, the hallowed principle in

Taylor v. Taylor [*Taylor v. Taylor*, (1875) LR 1 Ch D 426] , which has been followed in a number of the judgments of this Court, can also

be applied. Section 65-B(4) of the Evidence Act clearly states that secondary evidence is admissible only if led in the manner stated and not

otherwise. To hold otherwise would render Section 65-B(4) otiose.

84. But Section 65-B(1) starts with a non obstante clause excluding the application of the other provisions and it makes the certification, a

precondition for admissibility. While doing so, it does not talk about relevancy. In a way, Sections 65-A and 65-B, if read together, mix up

both proof and admissibility, but not talk about relevancy. Section 65-A refers to the procedure prescribed in Section 65-B, for the purpose

of proving the contents of electronic records, but Section 65-B speaks entirely about the preconditions for admissibility. As a result, Section

65-B places admissibility as the first or the outermost checkpost, capable of turning away even at the border, any electronic evidence,

without any enquiry, if the conditions stipulated therein are not fulfilled.

12. Thus, referring to the aforesaid judgment rendered by the Hon'ble Apex Court in the case of *Arjun Panditrao Khotkar* (*supra*), it is the

submission of the learned counsel for the petitioner that none of the procedure

required to be followed, has been followed by the prosecution in the ongoing departmental inquiry for the purposes of proving the C.D. containing the video clip in question, hence the same has neither got any evidentiary value nor is admissible as evidence, thus the present case is a case of no evidence, therefore the order of dismissal dated 04.04.2019, the appellate order dated 11.07.2019 and the order passed on the Memorial of the petitioner dated 10.12.2019 are perverse, illegal and fit to be set aside.

13. Per contra, the learned counsel for the State Sri Suman Kr. Jha, AC to AAG-3 has submitted that a bare perusal of the entire materials on record would show that there is no procedural irregularity in the conduct of the departmental Â proceeding, hence this Court would not sit in appeal and re-appreciate the evidence, thus no interference is required by this Court. It has also been submitted that the Inquiry Officer has found the charges regarding the petitioner consuming liquor on the alleged date and time of occurrence to have been proved beyond doubt, as such nothing remains to be proved, accordingly the present writ petition is fit to be dismissed. Lastly, it is submitted that the petitioner had on his own got the Breath Analyser Test conducted and the department has got nothing to do with it, hence the same has got no evidentiary value in the eyes of law.

14. I have heard the learned Counsel for the parties and have gone through the materials on record. From the facts and circumstances of the case, it appears that the present cases arises out of an allegation leveled against the petitioner regarding him having consumed liquor at his residential quarter on 14.11.2018 and a video clip thereof was shot by one Bambam Kumar and made viral on whatsapp leading to lodging of an FIR dated 15.11.2018 and initiation of a departmental proceeding against the petitioner. The charges were framed by the respondents vide memo dated 23.11.2018, whereafter the departmental inquiry had commenced, wherein two prosecution witnesses were examined, who are admittedly hearsay witnesses and have merely stated that they had come to know that a viral video clip on whatsapp was in circulation and the petitioner was seen drinking liquor in the said video clip. Apart from this, one inquiry report of the informant of the aforesaid Karandey PS case no. 42 of 2018 and one C.D. have been exhibited by the prosecution, however as far as the said inquiry report is concerned, the same only speaks about the viral video on whatsapp and

nothing more and as far as the C.D. is concerned, the same has not been proved during the course of the inquiry by resorting to the procedure

established by law, as such is inadmissible by way of evidence, as per the Evidence Act, 1892. This Court further finds that neither the aforesaid

Bambam Kumar, who is stated to be the maker of the video clip, has been examined by the prosecution as a witness nor his mobile has been

recovered, much less exhibited and moreover, no eye-witness to the alleged incident has been examined by the prosecution in the aforesaid

departmental inquiry, resulting in the entire inquiry proceedings having been rendered nugatory on account of no evidence being available on record to

substantiate the allegations leveled against the petitioner.

15. This Court also finds that the entire inquiry proceeding is based on surmises and conjectures, inasmuch as the prosecution has failed to bring on

record any evidence regarding the factum of the petitioner drinking liquor on the alleged date and time of occurrence. It is equally evident from the

report of the Inquiry Officer dated 20.12.2018 that though the charge leveled against the petitioner is regarding the petitioner drinking liquor but the

Inquiry Officer has come to a conclusion that the petitioner was pouring liquor from a bottle into his glass and then had consumed liquor from the

glass, which further smacks off non-application of mind on the part of the Inquiry Officer as also his biased attitude and premeditated mind, resulting in

submission of a perfunctory Inquiry report, based on no evidence. Consequently, this Court is of the view that a bare perusal of the Inquiry report

dated 20.12.2018 would show that even the Inquiry Officer did not find any evidence to substantiate the charges leveled against the petitioner, hence

the inquiry report, on the very face of it, is non-est in the eyes of law, void and stands vitiated, hence is quashed. As a consequence of quashing of the

Inquiry report dated 20.12.2018, the impugned order of punishment dated 04.04.2019 has got no legs to stand since the same also rests on no evidence,

thus the same is also quashed. It would suffice to state that the present case is squarely covered by the law laid down by the Honâ??ble Apex Court

in the cases of RoopÂ SinghÂ NegiÂ (supra),Â KuldeepÂ SinghÂ (supra),Â Saroj Kumar Sinha (Supra) and Arjun Panditrao Khotkar (supra).

16. Last but not the least, this Court also finds that the order of punishment dated 04.04.2019, passed by the Deputy Inspector General of Police,

Munger suffers from one other lacuna i.e the same being based on a pre-conceived opinion, inasmuch as the Superintendent of Police, Sheikhpura by his letter dated 29.03.2019 had recommended to the disciplinary authority to remove the petitioner from service and that is what has exactly been done by the disciplinary authority i.e. the Deputy Inspector General of Police, Munger Region, in a mechanical manner, without applying his independent mind, hence on this ground as well, the order of dismissal dated 04.04.2019 is perverse and fit to be set aside.

17. Since, the Inquiry report dated 20.12.2018 and the order of punishment dated 04.04.2019 have already been quashed and moreover, the view expressed by the disciplinary authority in its order of punishment dated 04.04.2019 have been mechanically endorsed in the appellate Order dated 11.07.2019 and the Order passed by the Director General of Police, Bihar, Patna dated 10.12.2019, by which the memorial of the petitioner has been dismissed, the appellate order dated 11.07.2017 and the order passed on the memorial of the petitioner dated 10.12.2019 have got no legs to stand, hence are also set-aside.

18. Now, coming to the issue of back wages, this Court finds that since the entire disciplinary proceedings have been attended with malafides and since the action of the disciplinary authority reek of a design to somehow inflict punishment of dismissal upon the petitioner herein, this Court deems it fit and proper to grant 100% back wages to the petitioner herein along with all other consequential benefits, as admissible to the petitioner herein, in view of the law laid down by the Honâ??ble Apex Court in the case of Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya & Ors., reported in (2013) 10 SCC 324 as also in view of the gross injustice meted out to the petitioner by the respondents which are demonstrated sufficiently from the records of the case.

19. Having regard to the facts and circumstances of the case and for the reasons stated hereinabove, the order of punishment dated 04.04.2019, the appellate order dated 11.07.2019 and the order passed on the memorial filed by the petitioner dated 10.12.2019 are set aside and it is held that the petitioner would be entitled to full back wages along with all other admissible consequential benefits.

20. The writ petition stands allowed.