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**(2013) 06 PAT CK 0042**  
**In the Patna High Court**  
**Case No : C.W.J.C. No. 11701 of 2011**

Danial Kumar

APPELLANT

Vs

The State of Bihar

RESPONDENT

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**Date of Decision :** 19-06-2013

**Acts Referred:**

**Citation :** (2014) 2 PLJR 465

**Hon'ble Judges :** S.N. Hussain, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

S.N. Hussain, J.—This writ petition had been filed by the petitioner challenging order dated 13.7.2009 (Annexure-13), by which the Inspector General of Police (Training), Jharkhand, Ranchi, dismissed the petitioner from his service and also for directing the respondents to reinstate the petitioner in service with back wages and other consequential benefits. Earlier when this writ petition was taken up for final decision by a Bench of this Court on 21.9.2011, learned counsel for respondent-State of Jharkhand and its authorities raised a preliminary objection of lack of territorial jurisdiction of this Court in deciding the matter. Accordingly, this-writ petition was" dismissed for lack of territorial jurisdiction giving liberty to the petitioner to move the concerned or competent High Court after arriving at the following findings:--

Having heard learned counsel for the petitioner and learned counsel for the State of Jharkhand as well as the State of Bihar, it is an admitted position that the petitioner was last posted at Jamshedpur and the order of dismissal has been passed on the orders of the Director General-cum-Inspector General of Police, Jharkhand which is contained in Annexure-13 since petitioner on creation of the State of Jharkhand became an employee of the State of Jharkhand. Mere fact that the initial cause of action which led to initiation of the proceeding was initiated in the year 1999, when State of Bihar was still not divided or that the petitioner is a resident of State of Bihar will not give a cause of action to this

High Court with regard to Annexure-13. According to the opinion of this Court, the cause of action arises within the territorial jurisdiction of High Court at Jharkhand.

2. Against the aforesaid order of learned Single Judge, the petitioner filed Letters Patent Appeal No. 1995 of 2011, which was allowed by a Division Bench of this Court after hearing the parties vide order dated 19.7.2012 and it was held that the Patna High Court had jurisdiction to entertain and decide the writ petition filed by the appellant in respect of his dismissal from service ordered by the Director General and Inspector General of Police, Jharkhand. The Division Bench set aside the abovementioned order dated 21.9.2011 after arriving at the following finding:--

At the outset, we may note that Section 89 of the Act of 2000 refers to the transfer of the pending cases (except the matters pending in the High Court). The said section can have no applicability to the writ petitions filed after the date of enactment of the Act of 2000. Besides, the jurisdiction under Article 226 of the Constitution is derived by the provisions contained in the said Article, it cannot be curtailed by any parliamentary or legislative enactment.

Article 226 of the Constitution confers power upon the High Court to issue writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari throughout the territories in relation to which it exercises its jurisdiction for enforcement of the rights conferred by Part-III of the Constitution or for any other purpose. Clause (2) thereof empowers the High Court to issue such writ, order or direction to any Government, authority or a person, although the seat of such Government or authority or the residence of such person is not within its territories, if the cause of action wholly or in part arises within the territories within which the High Court has jurisdiction. Thus, Clause (2) of Article 226 of the Constitution has expanded the territorial jurisdiction of a High Court over any part of the country provided the cause of action or part thereof arose within the territories over which the High Court has jurisdiction. In the present case the Patna High Court has jurisdiction over the territories of the State of Bihar. The Patna High Court, therefore, has jurisdiction to issue writ, order or direction to any other Government (in the present case the State of Jharkhand), if the cause of action or part thereof has arose within the territories of the State of Bihar. The subject matter of the present dispute is the disciplinary proceeding and the order of punishment imposed upon the appellant. A disciplinary proceeding is spread over various stages commencing from issuance of charge-sheet and ending with" the order of punishment or exoneration. In the instant case, the disciplinary proceeding was initiated in the territories of the present State of Bihar. The order of punishment was also made in the territory of the present State of Bihar. It is that order made in the State of Bihar which was taken in review by the respondent State of Jharkhand. Therefore, at least a part of cause of action essentially arose within the territories of the present State of Bihar. For the aforesaid reason, we hold that the Patna High Court has jurisdiction to entertain

and decide the writ petition filed by the appellant in respect of his dismissal from service ordered by the Director General and Inspector General of Police, Jharkhand.

For the aforesaid reason, we allow this Appeal. The impugned order dated 21st September, 2011 made by the learned Single Judge is set aside. C.W.J.C. No. 11701 of 2011 is revived and remitted to the learned Single Judge for hearing and decision on merits.

3. The earlier order of the Single Bench of this Court dated 21.9.2011 having been set aside by the Division Bench in the aforesaid letters patent appeal and this writ petition having been remitted for being heard and decided on merits to a Single Judge, the matter was reheard and learned counsel for all the three sets of parties, namely, the petitioner, the State of Jharkhand and its authorities as well as the State of Bihar and its authorities placed their respective arguments.

4. the claim of the petitioner is that he was a member of Bihar State Police Force holding the position of Sub-Inspector and at the relevant time in the year 1998 he was posted as Officer-in-charge at Saksohra Police Station, which is 12 kms. away from Barh Sub-Division of Patna district. The petitioner being Officer-in-charge of the said Police Station used to do regular patrolling and while on similar patrolling on 20.4.1998 at 08 P.M. he noticed a young lady, who identified herself as Ritu Kumari, daughter of Sri Jadunandan Prasad of Village-Bakra of Bind Police Station in questionable circumstances in front of a clinic named Laxmi Nursing Home of Dr. Jaikundal Prasad and since she could not give any satisfactory answer, she was taken to the Police Station alongwith Dr. Jaikundal Prasad and one Vijay Kumar, medical shop owner next to Laxmi Nursing Home, who claimed to be uncle of Rinku Kumari. As there was no separate room at the Police Station, they were asked to wait in the office of the Police Station until the father of the said girl arrived.

5. It is further claimed that immediately thereafter the petitioner contacted the Officer-in-charge of Bind Police Station and requested him to inform Sri Jadunandan Prasad, father of the girl, who was resident of Village-Bakra within Bind Police Station and ask him to go to Saksohra Police Station for taking away his daughter. However, the father of the girl did not reach in the night and hence the girl and the other two persons were left under the care of an elderly Choukidar Anandi Paswan and only in the next morning at 07 A.M., Sri Jadunandan Prasad arrived at the Police Station and the girl was handed over to her father in presence of Vijay Kumar and alongwith them, the said Vijay Kumar and Dr. Jaikundal Prasad were also allowed to leave the Police Station. All the aforesaid steps were taken in accordance with the procedure prescribed and neither the girl nor her father nor the other two persons made any complaint of maltreatment/misbehavior by the petitioner or any staff of the Police Station nor they instituted any criminal case against any of them on any ground.

6. Learned counsel for the petitioner stated that about one year thereafter

complaint dated 10.1.1999 was sent by the Advocate of National Women's Commission, whereafter a preliminary enquiry was held by the Sub-Divisional Police Officer, Barh, who submitted his report on 24.5.1999, according to which Superintendent of Police, Patna (Rural) issued charge- sheet dated 26.5.1999 for dereliction of duty and doubtful conduct alleging that the petitioner and Munshi of the Police Station in drunken state took the said girl Rinku Kumari to the Police Station from the front of the Nursing Home, where she was awaiting for her father and, thereafter, shut the girl in a room in the Police Station and tried to rape her, in which he failed and only after taking a bribe of Rs. 3,000.00 the petitioner let her go with her father.

7. Learned counsel for the petitioner submitted that the said charge-sheet was neither served, upon the petitioner, who was then posted in Gaya district nor the subsequent notice dated 30.8.1999 was ever served upon the petitioner and even evidence of the Sub-Divisional Police Officer, Barh was taken on 25.7.2000 without any notice to the petitioner. However, when the petitioner subsequently appeared before the enquiry officer on 15.10.2000, charge-sheet and exhibits were given to him, whereafter he submitted his reply on 29.10.2000 denying the allegation and demanding re-examination of the witnesses, but the Conducting Officer, without giving any opportunity to the petitioner and without holding any enquiry or fixing any date of enquiry, submitted a report on 26.11.2000 holding the petitioner to be guilty of the charges alleged against him.

8. Learned counsel for the petitioner averred that the disciplinary authority issued second show cause notice on 31.12.2000 to the petitioner, who submitted his second show cause reply on 4.2.2001 claiming to be innocent and also stated that no enquiry was ever held in accordance with law. However, ignoring the claim of the petitioner, the disciplinary authority passed the final order dated 26.12.2002 punishing the petitioner by impounding one increment.

9. The petitioner did not challenge the said order of punishment, but co-accused Arun Kumar Singh, who was given a much harsher punishment, challenged the same before this Court vide C.W.J.C. No. 942 of 2004, which was dismissed by a Bench of this Court vide order dated 17.1.2008 with the following observations/directions:--

This Court on 15.3.2005 had queried from the respondents as to what happened ultimately to the proceedings initiated against Officer Incharge, Danial Kumar. Today more than two and half years later learned counsel for the State submits that he has no instruction and prays for time to take instruction. This Court would not like to dwell upon the reason why the respondents are reluctant to disclose the fate of the Officer Incharge. The court draws its adverse inference. In any event, even if the Officer Incharge has not been visited with the consequence of the nature with which the petitioner has been visited with, that cannot bring any succor to the petitioner. In the state of uncertainty faced by this Court with regard to the accomplice of the petitioner, this Court considers it necessary to appropriately direct that the proceedings against the Officer

Incharge, if pending, be completed within one month from the date of receipt and/or production of a copy of this order and report be filed in this Court. If the proceedings have been completed and the accomplice of the petitioner has had the benefit of the same this Court requires the respondents to re-examine the matter in the light of the order of this Court and the findings arrived at herein after issuance of notice to the concerned delinquent and hearing him.

In the present case, the Enquiry Officer has arrived at the finding that the petitioner and his accomplice caught hold of a 18 years old girl in the market place, brought her to the Police Station and kept her there for the whole night and that she was released next morning after obtaining acknowledgement in writing in the background of demand of illegal gratification. The fact that no conclusive evidence was available of his state of intoxication or attempt of molestation when his defence of absence from the Police Station has been delivered, satisfies this Court that there is no occasion for the Court to interfere with the order of punishment. The findings in a departmental proceeding are not to be tested on the touchstone of the Indian Evidence Act but on preponderance of probability. The petitioner was a member of a uniformed disciplined force. He was the protector. When the protector turned into the predator he deserves no sympathy.

10. In compliance of the aforesaid order, notice dated 20.5.2008 was issued by the disciplinary authority to the petitioner to file his defence for revision of order of punishment, whereafter the petitioner filed his show cause on 5.7.2008 claiming to be innocent and praying for exoneration as no enquiry had been conducted in accordance with law. Thereafter, the disciplinary authority sent letter dated 8.11.2008 to the Headquarter and on 18.3.2009 the D.I.G., Central Zone, asked the disciplinary authority to send all the documents to the Director General of Police at Ranchi for review. The said order was complied, whereafter the Police Headquarter at Ranchi sent notice dated 20.4.2009 to the petitioner, in response to which he went to the said office on 13.5.2009 and gave in writing that he had already filed his show cause on 5.7.2008 and had nothing more to say. Thereafter, the Director General of Police, Ranchi passed the impugned order holding that charges against the petitioner stood proved and imposing punishment of dismissal upon him. The said order was communicated vide memo dated 13.7.2009 by the Inspector General of Police (Training), Jharkhand. Accordingly, affidavit dated 20.7.2009 had been filed in the aforesaid writ case by the disciplinary authority, namely, the Sr. Superintendent of Police showing imposition of the said punishment.

11. Learned counsel for the petitioner asserted that according to Rule 166 of Bihar Boards Miscellaneous Rules, 1958, enquiry was mandatory, but no such enquiry in accordance with law was ever held by the authority concerned and even before imposing punishment of dismissal no enquiry was held against the petitioner and only notice was given to the petitioner and without considering the petitioner's show cause, the aforesaid punishment of dismissal had been given

to the petitioner, which was against the specific provisions of law. Furthermore, the provision of Article 311(2) of the Constitution of India had also been violated.

12. On the other hand, learned counsel for respondent-State of Jharkhand and its authorities contested the claim of the petitioner and stated that very grave charges were levelled against the petitioner and co-accused with exactly similar allegations, hence the other co-accused having been held guilty of the same charges and punished with dismissal, which was affirmed up to the High Court, the petitioner also deserved the same punishment as had been held by a Bench of this Court while dismissing the writ petition of the co-accused bearing C.W.J.C. No. 942 of 2004.

13. Learned counsel for respondent-State of Jharkhand and its authorities submitted that, admittedly, the petitioner received show cause from the Police Headquarter of Jharkhand in the year 2009, but he did not file any show cause reply, hence there was no occasion for the authorities at Jharkhand to look into the show cause filed by the petitioner before the disciplinary authority about 9 years back and as such the petitioner did not deserve any sympathy.

14. Considering the averments made by learned counsel for the parties and the materials on record, it is not in dispute that earlier an enquiry was held by the Conducting Officer, who submitted his enquiry report dated 26.11.2000 holding the petitioner to be guilty of the charges, whereafter second show cause notice was given to the petitioner on 31.12.2000 by the disciplinary authority, in response to which the petitioner had filed his second show cause reply on 4.2.2001. But the disciplinary authority passed order dated 26.12.2002 holding the petitioner to be guilty of the charges levelled against him, which were found to have been proved in the enquiry report. This order of the disciplinary authority dated 26.12.2002 holding the petitioner to be guilty has never been challenged by the petitioner, hence the petitioner has clearly accepted his guilt.

15. It is also not in dispute that although the proceedings were different, but same charges were levelled against the petitioner and his co-accused, namely, the Munshi Arun Kumar Singh and the disciplinary authority punished the said co-accused with dismissal from service, which order was upheld by the appellate authority on 27.11.2003 and even this Court, while deciding C.W.J.C. No. 942 of 2004 filed by the said co-accused vide order dated 17.1.2008, upheld the said punishment and also directed the authorities to get the matter of the petitioner also reviewed in the light of the said order. In these circumstances, the petitioner was entitled to the same punishment as the charges and evidence were exactly the same and the petitioner cannot get any benefit only because he was higher in rank than his co-accused.

16. It cannot be disputed that the Director General of Police/Inspector General of Police was fully entitled in law to revise the order of punishment and in addition to that a Bench of this Court in its order dated 17.1.2008 passed in C.W.J.C. No. 942 of 2004 had specifically directed the concerned authority to review the

matter. Hence the said authority was justified in sending notice to the petitioner, who, admittedly, received the same and appeared in the office of the said authority on 13.5.2009. It is also an admitted fact that no reply of the said notice was filed by the petitioner before the Headquarter at Jharkhand nor any claim was raised before the said authority that a fresh enquiry was to be made in the said circumstances. Hence, in these circumstances, the authority concerned was quite justified in passing the impugned order dated 13.7.2009 holding the charges against the petitioner to be proved and imposing punishment of dismissal from service.

17. So far the question of enquiry is concerned, admittedly, an enquiry had been held earlier by the Conducting Officer, in which the petitioner had been held guilty, whereafter he was punished and he, thereafter, never raised any grievance against the said enquiry report. In the said circumstances, the authorities were justified in passing the aforesaid impugned order on the basis of the aforesaid enquiry report as no fresh enquiry was legally required.

18. In these circumstances, this Court is satisfied that the authorities have complied with the provisions of Rule 166 of Bihar Boards Miscellaneous Rules, 1958 and have not violated any provision of Article 311 of the Constitution of India. Furthermore, they have also complied the specific directions given by a Bench of this Court in order dated 17.1.2008 passed in C.W.J.C. No. 942 of 2004.

19. So far the case laws relied upon by learned counsel for the petitioner in case of Phulbari Tea Estate Vs. Its Workmen, , in case of Jagannath Prasad Sharma Vs. State of Uttar Pradesh and Others, , in case of Sur Enamel and Stamping Works (P) Ltd. Vs. Their Workmen, , in case of Central Bank of India Ltd. Vs. Prakash Chand Jain, , in case of State of Bombay (Now Maharashtra) Vs. Narul Latif Khan, as well as in case of Bareilly Electricity Supply Co. Ltd. Vs. The Workmen and Others, , are concerned, they are not applicable in the instant facts and circumstances as this is not a case of absence of any departmental enquiry. Thus, this Court does not find any merit in this writ petition, which is, accordingly, dismissed.

Navin Sinha, J.

I agree.