

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11480 of 2017

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Sushil Kumar Singh Son of Bhagwati Singh, Resident of Village-Mohanpur
Karja, P.S.-Barhara, District-Bhojpur

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Director General of Police, Government of Bihar, Patna.
3. The Deputy Inspector General of Police, Champaran Range, Bettiah,
District-West Champaran.
4. The Superintending of Police, East Champaran, Motihari.
5. The Inspector of Police mufassil Section, East Champaran, Motihari-Cum-
Enquiry Officer.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Aditya Narayan Singh, Adv. Mr. Ajay Kumar Singh, Adv. Mr. Binod Kumar, Adv.
For the Respondent/s	:	Mr. Md. Nashrul Hoda Khan- SC-1 Md. Fazle Karim, AC to SC-

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CORAM: HONOURABLE MR. JUSTICE KUMAR MANISH
CAV JUDGMENT

Date : 03-09-2026

1. Heard the learned counsel for the Petitioner and Learned Counsel appearing on behalf of the State Respondents.

2. By way of the instant writ application, the Petitioner interalia prays for the following reliefs:14 pt

- 1. For setting aside the order passed in Departmental Enquiry No. 04/99 bearing memo no. 888 dated 09.08.2007, by the Superintendent of Police, East Champaran, Motihari whereby and whereunder punishment of dismissal from service has been passed against the Petitioner;14 pt*



2. *For setting aside the order bearing memo no. 202 dated 11.03.2008, passed by the Deputy Inspector of General Police, Champaran Range, Bettiah by which the Appeal preferred by the Petitioner against the order of dismissal has been rejected;*
 3. *For setting aside order bearing memo no. 3478 dated 15.03.2017, passed by the Director General of Police, Bihar, by which Appeal memorial preferred by the Petitioner has been rejected;*
 4. *For directing the respondent authorities to reinstate the Petitioner in service with effect from 09.08.2007, with all consequential benefits;*
 5. *For any other reliefs which the Petitioner is legally entitled to.*
3. Brief facts emerging out of the pleadings are that the Petitioner was working as Constable

No. 765, along with Constable No. 771, namely, Nebulal Prasad and Constable No. 691, namely, Prithvi Nath Dubey. All of them were deputed in Mehshi Circle Guard, East Champaran. On the intervening night of 22/23.03.1998, the petitioner, along with the aforementioned constables, is alleged to have gone to Somlata Theatre without the Guard Havildar. While at the theatre,



Constable Nebulal Prasad opened fire, allegedly to control an unruly mob, resulting in the death of two persons on the spot and injury to one other person

4. In connection with the said occurrence, Mehsi P.S. Case No. 15 of 1998 dated 23.03.1998, was registered against the Petitioner and others, under Sections 302/307/34 of the Indian Penal Code and Section 27 of the Arms Act. On supervision, the case was found true under Sections 304(A)/308/109 of the Indian Penal Code and Section 27 of the Arms Act. The Petitioner was thereafter, taken into custody in connection with the said case.

5. Subsequently, Departmental Enquiry No. 04 of 1999 was drawn up against the petitioner, and a memo of charge dated 28.03.1999 (Annexure-1) was issued against the Petitioner. The Superintendent of Police, East Champaran, Motihari, by order dated 17.02.2004 bearing Memo No. 571 (Annexure-2), inflicted the punishment of dismissal from service on the Petitioner in the said Enquiry No. 04/99.

6. Aggrieved by the aforesaid order, the Petitioner preferred an appeal memorial before the Director General-cum-Inspector General of Police, Bihar, inter alia on the ground that copies of



the statements of witnesses recorded during the departmental enquiry had not been supplied to him.

The said appeal was allowed by the Director General of Police vide order dated 23.10.2006, bearing Memo No. 5567 (Annexure-3), with a specific direction to the disciplinary authority to conduct the enquiry afresh. In pursuant to the said order, the Superintendent of Police, East Champaran, Motihari, by order dated 14.11.2006 bearing Memo No. 3954 (Annexure-4), directed the petitioner to resume his duties and informed him regarding the appointment of a new Enquiry Officer.

7. According to the Petitioner, the newly appointed Enquiry Officer, though directed to hold the enquiry afresh, did not examine a single witness named in the memo of charge and merely relied upon the statements of witnesses recorded by the earlier Enquiry Officer, thereby reducing the fresh enquiry to a formality of merely handing over the earlier statements.

The Enquiry Officer submitted his report dated 18.12.2006 (Annexure-5), holding the charges to be proved. Thereafter, a second show-cause notice dated 17.01.2007, bearing Memo No. 191 (Annexure-6) was issued to the petitioner, calling upon him to show cause against the proposed punishment of dismissal.



The petitioner submitted his reply dated 04.02.2007 (Annexure-7), specifically pleading that on the relevant date he had gone to Somlata Theatre under the orders of the Circle Officer and the Guard-in-charge, Nebulal Prasad. It was also stated that there was no evidence to suggest that he had gone to the said place on his own. The Petitioner also contended that he was never accorded with any opportunity to adduce evidence in his defense.

8. Without considering the reply of the show cause filed by the petitioner and without appreciating that no enquiry had, in substance, been conducted afresh, the Superintendent of Police, East Champaran, Motihari, by order dated 09.08.2007, bearing Memo No. 888 (Annexure-8), once again imposed the punishment of dismissal on the Petitioner.

9. Assailing the aforesaid order of dismissal from service, the Petitioner, once again preferred an appeal before the Director General of Police (Annexure-9), and the same was forwarded to the Deputy Inspector General of Police, Champaran Range, Bettiah, vide Memo No. 2255 dated 27.04.2007. The Deputy Inspector General of Police, without considering the appeal on merits and misconstruing the fact, that it was the Petitioner who started firing culminating into loss of lives of two persons,



dismissed the appeal vide order dated 11.03.2008, bearing Memo No. 202 (Annexure-10).

10. The Petitioner then preferred an appeal memorial dated 15.07.2015 (Annexure-11), reiterating that he had gone to Somlata Theatre under the orders of the Circle Officer, Mehshi, and that only one round of firing took place, that too by Constable Nebulal Prasad.

The Petitioner also pointed out that Constable Prithvi Nath Dubey, against whom the departmental proceeding was also initiated on the very same charge, had died during the pendency of the departmental proceeding, and subsequent to his demise, his son was given appointment on compassionate grounds.

11. Meanwhile, for the criminal case, which was lodged, Sessions Trial No. 28 of 1999, arising out of Mehshi P.S. Case No. 15 of 1998 proceeded, and the Petitioner, along with the other accused persons, was acquitted vide judgment dated 09.08.2016, passed by the Court of Additional Sessions Judge-13, East Champaran, Motihari. Following his acquittal, the petitioner moved an application dated 26.09.2016, before the Director General of Police, Bihar, Patna, praying for his exoneration from the charges.



12. The Director General of Police, Bihar, on misconstruing the facts in totality, recorded that fresh evidence had been collected in the fresh enquiry, on the basis of which the order of dismissal was passed against the Petitioner, thereby dismissing the appeal memorial of the Petitioner vide order dated 15.03.2017, bearing Memo No. 3478 (Annexure-12). The said authority placed greater emphasis on the Petitioner's application dated 26.09.2016 than on the appeal of memorial itself. This order was communicated to the petitioner vide Memo No. 1759 dated 17.05.2017.

13. It is in this background that the petitioner has approached this Court, inter alia, on the grounds that the Enquiry Officer in the fresh enquiry did not examine any witness and relied solely on depositions recorded in the earlier enquiry.

The very foundation of the second round of the departmental enquiry stood vitiated inasmuch as, the Enquiry Officer appointed pursuant to the order of the Director General of Police dated 23.10.2006 (Annexure-3), though specifically directed to conduct the enquiry afresh, did not examine a single witness cited in the memo of charge, and merely appropriated the depositions recorded by the earlier Enquiry Officer in the proceeding that already stood set aside.



It is submitted, that the same, reduced the fresh enquiry to an empty formality and denied the petitioner any real opportunity to test the departmental evidence through cross-examination.

14. Furthermore, the counsel for the Petitioner submits that the charges cannot be said to have been proved in the departmental enquiry when no proper opportunity was accorded to the petitioner to examine his witnesses, the same being the reason for vitiating the enquiry for breach of natural justice.

It is also submitted that the punishment is founded on a pre-determined opinion, rendering the enquiry an empty formality and that the order of punishment is a non-speaking order, unsupported by cogent evidence. It is also submitted that the disciplinary and appellate authorities failed to apply their mind inasmuch as, the charge against the petitioner has been found on the very occurrence, in respect of which, he has been acquitted in the criminal proceedings. The judgment acquitting the Petitioner has been brought on record by way of rejoinder to the counter affidavit.

15. *Per contra*, the learned counsel for the Respondents states that the Petitioner, being Constable No. 765, along with Constable No. 771 Nebulal Prasad and Constable No. 691



Prithvi Nath Dubey, went to the Sonamlata Theatre on his own will and without the Guard Havildar, and opened fire on the public mob, resulting in the death of two persons and injury to others. In furtherance of the alleged incident, Mehshi P.S. Case No. 15 of 1998 dated 23.03.1998, was registered under Sections 302/307/34 IPC and Section 27 of the Arms Act, and, on supervision, the same was found to be true under Sections 304(A)/308/109 IPC and Section 27 of the Arms Act.

Simultaneously Departmental Proceeding No. 04 of 1999 was initiated, and the charges against the Petitioner was found to be proved, resulting into the order of dismissal from service being passed against him.

The Petitioner preferred an appeal before the DGP, Patna, and was allowed vide Memo No. 5567 dated 23.10.2006, with a specific direction of conducting the enquiry afresh. After re-conducting the proceeding, the charges against the Petitioner were found to be proved, and the Superintendent of Police, Motihari, vide Memo No. 888/conf. dated 09.08.2007, passed the order of dismissal against the Petitioner under Rule 824(a) (b)(c) of the Bihar Police Manual.

16. Further the Respondent State contends that in their counter affidavit, the facts stated in the writ petition, concerning



the institution of Mehshi P.S. Case No. 15 of 1998, the initiation and conduct of Departmental Proceeding No. 04 of 1999, the orders passed therein, as well as the result of Sessions Trial No. 28 of 1999, in which the Petitioner has acquitted, are matters borne out from the records and, therefore, require no separate or specific reply.

The said stand of the respondents indicates that both the criminal prosecution and the departmental proceeding arose out of the same occurrence and formed part of the same factual background.

17. Having heard the rival contentions of the both the parties the primary issues which stands out for determination is enunciated hereunder:

- i. Whether, in light of the facts, evidence, witnesses, and circumstances of the case, the charges in the criminal proceedings are substantially identical to those in the departmental proceedings, and such that an acquittal in the criminal case would render the findings in the disciplinary proceedings vulnerable.
- ii. Whether the enquiry conducted "afresh" pursuant to the order of the Director General of Police dated 23.10.2006 (Annexure-3), was, in substance, a fresh enquiry in



compliance with the said direction and the principles of natural justice, or whether it was rendered an empty formality on account of non-examination of witnesses.

18. It is expedient to dwell into the fact that the Petitioner has been honorably acquitted in Sessions Trial No. 28 of 1999, arising out of Mehshi P.S. Case No. 15 of 1998, which was found on the very same occurrence, the very same set of facts, as that contained in the departmental memo of charge.

For the aforementioned issue, reliance has been placed on **G.M. Tank v. State of Gujarat & Anr. reported in (2006) 5 SCC 446**, and on the decision rendered by the Supreme Court of India in **Maharana Pratap Singh v. State of Bihar & Ors. having Civil Appeal No. 5497 of 2025, arising out of SLP(C) No. 9818 of 2017**, which itself concerns with the dismissal of a Bihar Police constable for the proposition that where the departmental and criminal proceedings rest on an identical or substantially similar factual matrix, and the criminal acquittal is on merits and not on a mere technicality or benefit of doubt, sustaining a contrary finding of guilt in the departmental proceeding would be unjust, unfair and oppressive.

19. Nonetheless, this Court is cognizant of the settled position of law that mere acquittal in a criminal trial does not, ipso facto, entitle a



delinquent employee to reinstatement, since the standard of proof and the nature of enquiry in a departmental proceeding are materially different from those governing a criminal trial. However, by appreciating the material facts and circumstances of the given case at hand, it is imperative to adduce the governing principles of law by way of the following judicial pronouncements.

20. The Hon'ble Supreme Court in the case of **G.M. Tank v. State of Gujarat & Anr., reported in (2006) 5 SCC 446**, the Supreme Court was concerned with a case where the delinquent government servant, having been found guilty and dismissed from service in a departmental enquiry, was subsequently and honourably acquitted in a criminal trial arising from the very same facts and evidence. Dealing with the effect of such an acquittal on the departmental finding, the Supreme Court, in paragraph 31 has held as follows (paraphrased in substance, the material portion of the reasoning being):

"...In our opinion, such facts and evidence in the department as well as criminal proceedings were the same..." — that where the facts and evidence relied upon in the departmental proceeding and in the criminal case are one and the same, without any material difference between the two, the distinction ordinarily drawn between departmental and criminal proceedings, founded on



differing approaches and differing standards or burden of proof, ceases to have application; and that, notwithstanding a valid finding recorded in the domestic enquiry, an honourable acquittal of the employee, rendered during the pendency of proceedings challenging the dismissal, is a circumstance that must be given due weight, in line with the earlier decision of the Court in Capt. M. Paul Anthony v. Bharat Gold Mines Ltd., (1999) 3 SCC 679.

21. Even in the case of, **Maharana Pratap Singh v. State of Bihar & Ors., Civil Appeal No. 5497 of 2025 arising out of SLP(C) No. 9818/2017**, reported in (2025 INSC 554) it can be seen that the principle in G.M. Tank (supra) has been reiterated and applied by the Supreme Court, in a case remarkably similar on facts. **Maharana Pratap Singh v. State of Bihar & Ors. (supra)**, too, was a case of a Constable of the Bihar Police, dismissed from service in a departmental proceeding arising out of an occurrence which also gave rise to a criminal prosecution, in which the delinquent constable was ultimately acquitted. The Supreme Court, formulated, amongst others, the following question for determination:

"Whether, in light of the facts, evidence, witnesses, and circumstances of the case, the charges in the criminal



proceedings are substantially identical to those in the departmental proceedings, such that an acquittal in the criminal case would render the findings in the disciplinary proceedings vulnerable?"

22. Answering the said question, and reaffirming the ratio in **G.M. Tank (supra)**, the Supreme Court held, in substance, that while a mere acquittal in a criminal case does not by itself entitle an employee to have his dismissal set aside, where the charges, evidence, witnesses and circumstances in the departmental and criminal proceedings are identical or substantially similar, upholding a contrary finding of guilt in the departmental enquiry would be unjust, unfair and oppressive.

The Court further held that expressions such as "benefit of doubt" and "honourable acquittal" are not to be treated as mere formalities or labels — the duty of the Court is to look to the substance of the judgment of acquittal, and not merely to the terminology employed therein.

The Supreme Court also held that failure on the part of the State to produce the complete departmental enquiry file, when specifically called upon to do so, attracts an adverse inference under Section 114 (g), of the Indian Evidence Act, 1872.

23. Charges which are vague, indefinite or lacking material particulars vitiate the resultant disciplinary finding; and denial to the delinquent



employee of a real and effective opportunity to cross-examine a material departmental witness causes prejudice sufficient enough, to vitiate the enquiry, notwithstanding that the technical rules of evidence applicable to a criminal trial do not, as such, govern a departmental proceeding.

24. On applying the aforementioned principles of law, which has been laid down by way of the afore noted judicial pronouncements, it is relevant to point out the memo of charge contains the same allegation which has been registered against the Petitioner in the criminal case.

In fact, the very genesis of the memo of charge happens to be the registration of FIR bearing Mehshi P.S. Case No. 15 of 1998 dated 23.03.1998 under sections 302, 307/34 of IPC section 27 of the Arms Act.

25. At this juncture, it is not out of place to mention that the departmental proceeding and Mehshi P.S. Case No. 15 of 1998, which ultimately gave rise to Sessions Trial No. 28 of 1999, arose out of the same occurrence of the night intervening 22/23.03.1998 at Somlata Theatre. The allegations in both proceedings emanated from the same factual background and occurrence.

The respondents, in their counter affidavit, have also referred to the criminal case, the departmental proceeding and the result of the criminal trial as matters borne out from the records. Thus, it is not in



dispute that the criminal prosecution and the departmental proceeding arose out of the same occurrence and were founded on substantially overlapping factual allegations.

26. The petitioner was acquitted in Sessions Trial No. 28 of 1999 by judgment dated 09.08.2016. It is the specific case of the petitioner, as pleaded in his reply to the counter affidavit, that the acquittal was on merits and not merely on the ground of benefit of doubt.

The petitioner has further asserted that, upon appreciation of the evidence adduced during the criminal trial, no material sufficient to substantiate the charge against him was found. The respondents have not specifically controverted the said assertion by filing any further affidavit.

The acquittal of the petitioner, arising out of the same occurrence which formed the basis of the departmental proceeding, is, therefore, a relevant circumstance to be taken into consideration while examining the sustainability of the impugned departmental action.

27. Moreover, independently of the effect of the acquittal, the manner in which the fresh departmental enquiry was conducted pursuant to the order of the Director General of Police dated 23.10.2006, bearing Memo No. 5567 (Annexure-3), raises a serious issue relating to compliance with the principles of natural justice.



The earlier departmental proceeding had been set aside and a fresh enquiry was directed to be conducted, the grievance of the petitioner being that the statements of the departmental witnesses had not been supplied to him. However, according to the specific case of the petitioner, which finds support from the enquiry report dated 18.12.2006 (Annexure-5), the newly appointed Enquiry Officer did not independently examine the witnesses cited in the memo of charge and proceeded on the basis of the statements recorded during the earlier enquiry.

Consequently, the petitioner was deprived of an effective and meaningful opportunity to test the departmental evidence and to cross-examine the witnesses. Such a procedure which was adopted, prima facie also defeated the very purpose of the order directing a fresh enquiry and rendered the fresh proceeding vulnerable on the ground of violation of the principles of natural justice.

28. In view of the aforesaid facts and circumstances and the governing principles of law enunciated hereinabove, this Court finds it appropriate to hold that the enquiry purportedly conducted afresh, pursuant to the order dated 23.10.2006 (Annexure-3), was not, in substance, a fresh enquiry, but a mere continuation, in form, of the earlier vitiated proceeding, inasmuch as, no witness was examined



afresh and the petitioner was denied any real opportunity of cross-examination.

Further, the departmental proceeding and the criminal prosecution arose out of the same occurrence and were founded on substantially overlapping factual allegations.

29. It is needless to state that the petitioner was acquitted in Sessions Trial No. 28 of 1999 by judgment dated 09.08.2016. The said acquittal, arising out of the same occurrence, is a relevant circumstance to be taken into account while examining the sustainability of the departmental action.

30. Having regard to the fact that the departmental proceeding and the criminal prosecution arose of the same occurrence, and, more importantly, that the fresh departmental enquiry was conducted without independently recording the evidence of the departmental witnesses and without according the Petitioner an effective opportunity of cross-examination, the impugned departmental actions cannot be sustained in law.

31. In view of the findings recorded hereinabove, this writ petition stands **allowed in the following terms:**

- (i) The order dated 09.08.2007 bearing Memo No. 888 (Annexure-8), passed by the Superintendent of Police, East Champaran, Motihari; the order dated 11.03.2008, bearing Memo No. 202



(Annexure-10), passed by the Deputy Inspector General of Police, Champaran Range, Bettiah; and the order dated 15.03.2017, bearing Memo No. 3478 (Annexure-12), passed by the Director General of Police, Bihar, Patna, are hereby quashed and set aside.

(ii) The respondents are directed to reinstate the petitioner in service. The question as to the manner in which the intervening period is to be treated and the consequential monetary benefits, if any, shall be determined by the competent authority in accordance with law by passing of a reasoned order.

(iii) The question of payment of back wages, and the quantum thereof, is left open to be determined by the respondents.

32. Accordingly, for the reasons recorded hereinabove, the writ petition is allowed in the aforesaid terms.

33. There shall be no order as to costs.

(Kumar Manish, J)

sanjeev/-

AFR/NAFR	AFR
CAV DATE	17.08.2026
Uploading Date	03.09.2026
Transmission Date	

