

Rupesh Kumar Vs. The State of Jharkhand and Ors

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Court : Jharkhand

Decided On : Jul-07-2017

Appellant : Rupesh Kumar

Respondent : The State of Jharkhand and Ors

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S) No. 582 of 2014 with W.P.(S) No. 3740 of 2013 with W.P.(S) No. 1816 of 2014 with W.P.(S) No. 6605 of 2014 with W.P.(S) No. 1820 of 2015 with W.P.(S) No. 2062 of 2015 -----
Md. Samshed Khan, Son of Late Md. Yunus Khan, Resident of village & P.O-Turk Bigha, P.S. Kachhwa, District Rohtas (Bihar). .. Petitioner (in W.P.(S) no. 582 of 2014) Ajay Kumar Chowrsia son of Late Raghunath Prasad Chaurasia, resident of New Area, Illrd Lane, P.O. & P.S. Hazaribagh, Dist-Hazaribagh. .. Petitioner (in W.P.(S) no. 3740 of 2013) Rupesh Kumar, Son of Sri Puran Ram, Resident of Village Harsingh Raydih, Post Office-Budhiyadih, Police Station-Giridih(M), District-Giridih. .. Petitioner (in W.P.(S) no. 1816 of 2014) Shattrughan Prasad Singh, son of Late Rajdeo Prasad Singh, Resident of Village Bisenpur Tarwara, P.O. Bhagalpur, Tarwara, P.S. Mahuwa, Dist- Vaishali, Bihar. .. Petitioner (in W.P.(S) no. 6605 of 2014) Kaushal Kumar Singh, son of Late Suraj Deo Singh, resident of Village- Bagoiyan, Post-Madansath, P.S. Dawoodpur, District-Chhapra (Bihar). At present residing at Baba Path, Hurhuru Road, Post & P.S. Hazaribagh Sadar, Distt- Hazaribagh. .. Petitioner (in W.P.(S) no. 1820 of 2015) Harish Chandra Pal Bhagat, son of Mahesh Bhagat, resident of village- Turiyadih, Post-

Huttar, P.S. Ghagra, District-Gumla. Petitioner (in W.P.(S) no. 2062 of 2015)
Versus 1. The State of Jharkhand.

2. The Home Secretary, the Govt. of Jharkhand, Project Building, P.O. Dhurwa,
P.S. Jagannathpur, District-Ranchi.

3. The Director General of Police, Government of Jharkhand, Project Building,
P.O. Dhurwa, P.S. Jagannathpur, District-Ranchi.

4. The Deputy Inspector General of Police, Chotanagpur Division Hazaribagh,
P.O. & P.S. Hazaribagh, Dist- Hazaribagh.

5. The Superintendent of Police, Hazaribagh, P.O. & P.S. Hazaribagh, Dist-
Hazaribagh. Respondents (in W.P.(S) no. 582 of 2014) 1. State of Jharkhand
through the Principal Secretary, Govt. of Jharkhand having its office at Project
building, P.O. & P.S. Dhurwa, Dist-Ranchi.

2. Director General of Police, Govt. of Jharkhand having its office at Ranchi, P.O.
& P.S. Ranchi, Dist-Ranchi.

3. Inspector General of Police, Bokaro having its office at Bokaro, P.O. & P.S.
Bokaro, Dist-Bokaro. 2 4. Deputy Inspector General, Hazaribagh having its office
at Hazaribagh, P.O. & P.S. Hazaribagh, Dist- Hazaribagh.

5. Superintendent of Police, Hazaribagh having its office at Hazaribagh, P.O. &
P.S. Hazaribagh, Dist- Hazaribagh. Respondents (in W.P.(S) no. 3740 of 2013) 1.
The State of Jharkhand.

2. The Director General of Police, Government of Jharkhand, Police Headquarter,
Post Office- Dhurwa, Police Station- Jagannathpur, District- Ranchi.

3. The Deputy Inspector General of Police, Hazaribagh, Post Office, Police Station
& District-Hazaribagh.

4. The Inspector General of Police, North Chhotanagpur Division, Bokaro, Post
Office & Police Station-Chas, District Bokaro.

5. The Superintendent of Police, Hazaribagh, Post Office, Police Station & District-Hazaribagh. Respondents (in W.P.(S) no. 1816 of 2014) 1. The State of Jharkhand.

2. The Director General of Police, Government of Jharkhand, Ranchi, Jharkhand Police Headquarter, Dhurwa, P.O. & P.S. Dhurwa, Ranchi.

3. The Special Secretary, Department of Home, Govt. of Jharkhand, Ranchi, P.O. & P.S. Doranda, Dist-Ranchi.

4. The Deputy Inspector General of Police, North Chhotanagpur Area, Hazaribagh, P.O. & P.S-Mufassil, District-Hazaribagh.

5. The Superintendent of Police, Hazaribagh, P.O. & P.S-Mufassil, District-Hazaribagh.

6. The Superintendent of Police, Ramgarh, P.O. & P.S-Ramgarh, District-Ramgarh.

7. The Deputy Inspector of Police, North Chotanagpur Area, Bokaro, P.O. & P.S. Bokaro, Dist-Bokaro. Respondents (in W.P.(S) no. 6605 of 2014) 1. The State of Jharkhand.

2. The Director General of Police, Govt. of Jharkhand, Police Bhawan, Dhurwa, P.O. & P.S. Jagarnathpur, Distt-Ranchi.

3. The Dy. Inspector General of Police, North Chotanagpur Region, Hazaribagh, District More, Post & P.S. Sadar Hazaribagh, Dist- Hazaribagh.

4. The Superintendent of Police, Hazaribagh, Post & P.S. Sadar Hazaribagh, Dist-Hazaribagh.

5. The Dy. S.P. Hazaribagh (Head Quarter)-1st, Post & P.S. Sadar Hazaribagh, Dist- Hazaribagh. . Respondents (in W.P.(S) no. 1820 of 2015) 1. The State of Jharkhand.

2. The Director General of Police, Government of Jharkhand, Police Bhwan, Dhurwa, P.O. & P.S. Jagannathpur, District-Ranchi. 3.The Inspector General of Police, North Chhotanagpur Region, Bokaro, Post Office & Police Station-Bokaro, District Bokaro.

4. The Deputy Inspector General of Police, North Chhotanagpur Region, Hazaribagh, District More, Post & P.S. Sadar Hazaribag, Distt-Hazaribagh.

5. The Superintendent of Police, Hazaribagh, Post & P.S. Sadar Hazaribag, Distt-Hazaribagh.

6. The Dy. S.P. Hazaribag (Head Quarter)-2nd, Post & P.S. Sadar Hazaribag, Dist-Hazaribagh. Respondents (in W.P.(S) no. 2062 of 2015) 3 ----- CORAM: HONBLE MR. JUSTICE PRAMATH PATNAIK ----- For the Petitioners : Mr. Anil Kr. Sinha , Sr. Adv. (in W.P.(S) no. 582 of 2014) : M/s Rajiv Ranjan, Sr. Adv. & Shrestha Gautam, Adv. (in W.P.(S) no. 3740 of 2013) : Mr.Rajeev Kumar, Adv. (in W.P.(S) no. 1816 of 2014) : Mr. Krishna Murari , Adv. (in W.P.(S) no. 2062 & 1820 of 2015) : Mr. Mukesh Kumar Sinha, Adv. (in W.P.(S) no. 6605 of 2014) For the Respondents : Mr. Chanchal Jain, J.C. to A.A.G. & Mr. Ashish Kr. Shekhar, J.C. to G.P.VI. ----- th CAV on:7 April, 2017 Pronounced on 07/07/2017 Per Pramath Patnaik, J.: Since the reliefs sought for in all the writ petitions more or less identical, with the consent of the respective counsels, all the writ petitions were heard together and are being disposed of by this common order/judgment.

2. In W.P.(S) No.582 of 2014, the petitioner has sought for issuance of writ of certiorari for quashing the entire departmental proceeding including the findings of enquiry officer dated 15.09.2011 based upon the enquiry report dated 18.05.2009 and also to quash order of punishment followed by rejection of appeal and revision, although in the same case one Nand Bihari Singhs appeal has been set aside and also for direction upon the respondents to reinstate the petitioner on the post of Hawaldar with all back wages.

3. The brief facts, as disclosed in the writ application is that petitioner was posted as Hawaldar at Padma O.P, Hazaribagh when he was dismissed from services. It has been stated that petitioner was one of the member of instituting a false case

and the specific allegation against him was that he put his signature on the seizure list at the instance of his senior controlling officer. The department fixing the responsibilities as alleged has got it investigated by crime branch and proceeding has been initiated against the petitioner and others. The petitioner further states that vide district order no.2020 dated 25.07.2008 he alongwith others have been put under suspension for helping Inspector, Harish Chandra Pal Bhagat in connection with Barhi (Padma) P.S. Case No.158/2007 in the form of seizure witness. It has been further stated that charge sheet was served upon the petitioner vide memo dated 24.08.2008 vide Annexure-3 to the writ petition. The petitioner 4 vide letter no.15.09.2011 (Annexure-5) has been asked to file reply to the charges. The petitioner finally submitted his reply to the show cause on 14.12.2011 vide Annexure-6 but vide order dated 27.01.2012 he was dismissed from services. Thereafter, the petitioner preferred appeal but the same was affirmed by the Director General of Police, Jharkhand vide order dated 24.11.2012 as evident from Annexure-13 to the writ application.

4. In W.P.(S) No.3740 of 2013, the petitioner has sought for issuance of writ of certiorari for quashing the order dated 27.01.2012 pertaining to dismissal from services, on the basis of an enquiry report without giving any opportunity of hearing and without giving any opportunity to cross examine material witnesses and for quashing the order dated 31.01.2013 whereby the appeal preferred by the petitioner before the appellate authority was dismissed.

5. The brief facts, as disclosed in the writ application is that on 02.08.2007, one Marsal Jeep bearing Registration No.JH3A-1456 which was loaded with 40 bags of coal and was intercepted near the Ichak forest by three police officials namely Devanand Yadav, Roop Narayan Singh and Shatrughan Singh. It has further been stated that aforesaid police officials demanded illegal gratification from one of them namely Lallu Kumar and when the said Lallu Kumar showed his incapability to pay the same, the police official informed the petitioner about the vehicle carrying coal illegally. Thereafter, the petitioner seized the said vehicle and prepared a seizure memo and F.I.R was lodged against Lallu Kumar and his two employees, Chandan Thakur and Pintu bearing Barhi P.S. Case No.158 of 2007 under Section 414 and 34 of the IPC and also under Section 33 of the Indian

Forest Act on the charge of theft of 40 bags of coal. It has been further stated that brother of the accused Lallu Kumar sent an application to the DGP, Jharkhand stating that his brother had been falsely implicated in the aforesaid case. In furtherance of the aforesaid complaint, an investigation was carried out by the respondent no.5, who submitted report on 23.06.2008 (Annexure-1) stating that the aforesaid complaints are baseless and untrue. When the petitioner was posted as in-charge of Padma outpost, served with a charge sheet dated 05.07.2008 (Annexure-2) whereby a charge was levelled against him that he unlawfully arrested and detained some persons carrying coal as they did not concur to the illegal demand made by some other officials. The petitioner submitted his explanation denying the charges 5 levelled against him. An enquiry was initiated against the petitioner on the aforesaid charges but the petitioner was never called for by the enquiry officer to present his case nor notice was served upon the petitioner. It has been further stated that on the basis of an application filed by the delinquents in concurrent departmental proceedings, the enquiry officer had suspended the proceeding dated 20.12.2009 and returned the records of the proceeding to the office of respondent no.5. The conducting officer continued the proceeding on the basis of statement of witnesses and other material evidence the petitioner was held guilty of the charges levelled against him. On 15.03.2011 a second show cause was issued against the petitioner whereby it was informed that one Mr. Naushad Alam had been appointed as the enquiry officer vide Annexure-5 to the writ application. The enquiry officer after leading evidence against the petitioner had provided an enquiry report dated 15.04.2010 vide Annexure-5/A, which suggested that the petitioner was guilty of the charge so levelled against him. The petitioner filed reply dated 6.10.2011 vide Annexure-6 to the writ application, stating that enquiry has been conducted without giving any opportunity of hearing and cross examining the material witnesses nor he was served with any notice. The petitioner was served another show cause notice dated 19.10.2011, wherein he was directed to submit his statement in defence within 15 days, which he replied vide letter dated 08.12.2011. But vide order dated 27.01.2012 the respondent no.4 dismissed the petitioner from services on the basis of proved charges. The petitioner thereafter preferred an appeal before the appellate authority and the same was dismissed vide order dated 31.01.2013 (Annexure-

13). It has also been stated that a criminal case has also been instituted against the petitioner vide Sadar Case No.693 of 2008, which is pending in the court of Judicial Magistrate, Hazaribag and the said criminal case has been instituted for the same charges on the basis of testimony of the same witnesses. The petitioner further states that one Radhey Shyam Das, who is a co-accused in the aforesaid criminal case vide Sadar Case No.693 of 2008 has been exonerated and reinstated in services as per the order dated 22.11.2012 passed by respondent no.3 in appeal. Being aggrieved by and dissatisfied with the impugned orders, the petitioner having no other efficacious and alternative remedy, has approached this Court under Article 226 of the Constitution of India for redressal of his grievance. 6

6. In W.P.(S) No.1816 of 2014, the petitioner has sought for issuance of writ of certiorari for quashing the entire departmental proceeding No.44 of 2008 (Annexure-1) whereby petitioner has been recommended for dismissal and also for quashing of punishment issued by Superintendent of Police, Hazaribagh vide letter dated 16.09.2012 (Annexure-5) and for quashing of the letter dated 03.07.2013 (Annexure-7). The petitioner has further prayed for direction upon the respondents to reinstate the petitioner in services with all back wages.

7. The brief facts, as disclosed in the writ application is that petitioner was one of the member of instituting a false case and the specific allegation against him was that he put his signature on the seizure list. It has also been stated that a criminal case has also been instituted against the petitioner vide Sadar Case No.693 of 2008, and the C.I.D has started investigation and submitted a report and found the petitioner guilty in the alleged occurrence. It has further been submitted that the petitioner alongwith other officials have been found guilty in the departmental proceeding and charges has been framed against the petitioner. On the basis of enquiry report submitted on 6.6.2012 before the Superintendent of Police, Hazaribag, vide Annexure-1 to the writ petition, petitioner has been found guilty of the alleged charges. On the basis of enquiry report show cause was served upon the petitioner on 25.08.2012 vide Annexure-2 to the writ petition. The petitioner filed reply to the show cause on 09.09.2012 as evident from Annexure-3 to the writ application, but vide order dated 12.09.2012 the Superintendent of Police, Hazaribag (respondent no.5) on the alleged charges passed the order of punishment for dismissal vide Annexure-4 to the writ application. Thereafter, the

petitioner preferred appeal before the Deputy Inspector General of Police, Hazaribag but the same was affirmed vide order dated 03.07.2013 as evident from Annexure-7 to the writ application. The petitioner preferred a revision application on 13.07.2013 before the Director General of Police, Jharkhand but the same was rejected.

8. In W.P.(S) No.6605 of 2014, the petitioner has prayed for quashing the order dated 23.10.2011 as contained in Ramgarh Dist. Order no.791/2011 passed by respondent no.6 whereby petitioner has been dismissed from services and also for quashing the order dated 26.03.2012 whereby the appeal preferred by the petitioner has been rejected. The 7 petitioner has further prayed for direction upon the respondents to reinstate the petitioner in services with all back wages.

9. The brief facts, as disclosed in the writ application is that petitioner was posted as Police Driver 602 with the Superintendent of Police, Hazaribagh at the time of alleged occurrence. It has been stated that the petitioner along with other police officials had detained three people and against them a false case bearing Barhi P.S. Case No.157 of 2007 had been lodged under Section 414 and 34 of the I.P.C and also under Section 33 of the Indian Forest Act. It has been submitted that on the basis of complaint dated 17.09.2007 before the D.I.G., Hazaribag, an enquiry was conducted by the SDPO, Barhi and on the basis of enquiry report departmental proceeding was initiated against the petitioner. Petitioner vide order dated 11.10.2008 (Annexure-3) was placed under suspension by the Superintendent of Police, Hazaribagh. It has further been submitted that on the basis of enquiry report, the Superintendent of Police, Hazaribagh vide memo dated 15.09.2011 (Annexure-5) served second show cause to the petitioner to file his reply. The petitioner filed his reply on 6.10.2011 denying all the charges levelled against him vide Annexure-6 to the writ petition but the Superintendent of Police, Hazaribagh vide order dated 23.10.2011 (Annexure-7) dismissed the petitioner from services which was affirmed by the respondent no.2 vide order dated 26.03.2012 vide Annexure-8. The petitioner also made representation dated 13.08.2013 for early disposal of memorial.

10. In W.P.(S) No.1820 of 2015, the petitioner has prayed for quashing the order dated 17.10.2011 passed by respondent no.4, the S.P. Hazaribag, whereby petitioner has been dismissed from services from the post of Constable no.292 and also for quashing the order dated 26.03.2012 passed by the DIG, Hazaribag, whereby the appeal preferred by the petitioner has been rejected. The petitioner has further prayed for direction upon the respondents to reinstate the petitioner in services with all back wages.

11. The brief facts, as disclosed in the writ application is that petitioner while posted as Constable an FIR bearing Barhi (Padma) P.S. Case No.158 of 2007 was lodged under Section 414/34 of the IPC r/w Section 33 of the Forest Act. It has been stated that a parallel complaint was made before the DGP, Jharkhand and vide memo dated 25.7.2008 eight persons including the petitioner were suspended. It has been further submitted that aforesaid case was investigated by the Dy. S.P as well as S.P. Hazaribag and since petitioner was the formal party in the raiding team he was transferred to Garhwa after revocation of suspension. Vide order dated 24.08.2008 petitioner was served memo of charge with further contemplation to start departmental proceeding vide Annexure-5. The petitioner filed reply dated 03.09.2008 before the Dy. S.P (Head Quarter) requesting him to keep the proceeding in abeyance as parallel criminal proceeding against the same set of facts is sub-judice before the learned Magistrate being Sadar P.S. Case No.693/2008 lodged by the C.I.D. The disciplinary authority vide order dated 17.10.2011 (Annexure-10) without considering the reply as well as the enquiry report having no clear finding, passed the impugned order of dismissal which was affirmed by the appellate authority on 26.03.2012 vide Annexure-11 to the writ application.

12. In W.P.(S) No.2062 of 2015, the petitioner has prayed for quashing the order dated 27.01.2012 passed by respondent no.4, whereby petitioner has been dismissed from services from the post of Sub Inspector of Police and also for quashing the order dated 22.11.2012 passed by the respondent no.3, whereby the appeal preferred by the petitioner has been rejected. The petitioner has further prayed for direction upon the respondents to reinstate the petitioner in services with all back wages.

13. The brief facts, as disclosed in the writ application is that petitioner while posted as S.I in Padma O.P under the Barhi P.S, an FIR bearing Barhi (Padma) P.S. Case No.158 of 2007 was lodged under Section 414/34 of the IPC r/w Section 33 of the Forest Act. It has been stated that a parallel complaint was made before the DGP, Jharkhand and vide memo dated 25.7.2008 eight persons including the petitioner were suspended. It has been further submitted that aforesaid case was investigated by the Dy. S.P as well as S.P. Hazaribag and since petitioner was the formal party in the raiding team he was transferred to Garhwa. The petitioner was served memo of charge vide order dated 24.08.2008 (Annexure-5) with further contemplation to start departmental proceeding. The petitioner filed reply dated 28.08.2008 before the Dy. S.P (Head Quarter) requesting him to keep the proceeding in abeyance as parallel criminal proceeding against the same set of facts is sub- judice before the learned Magistrate being Sadar P.S. Case No.693/2008 lodged by the C.I.D. The disciplinary authority vide order dated 27.01.2012 (Annexure-13) without considering the reply as well as the enquiry report having no clear finding, passed the impugned order of dismissal which was affirmed by the appellate authority on 22.11.2012 vide Annexure-14 to the writ application.

14. Learned senior counsels for the petitioners during course of hearing have vehemently submitted that the impugned order of punishment of dismissal is not sustainable because of the fact that no show cause notice has been issued prior to the infliction of punishment. Learned senior counsel further submit that from perusal of the findings of the enquiry officer in para 3 of the enquiry report it appears that the enquiry officer has acted on behalf of prosecution and he cannot be a prosecutor as well as judge of his own finding, and therefore, the enquiry report is perverse. In this regard learned senior counsel for the petitioners has relied upon the judgment of the Honble Apex Court reported in (2010) 2 SCC772(State of Uttar Pradesh and Ors. vs. Saroj Kumar Sinha). Learned senior counsel further submits that on perusal of the Annexure-10 it would be crystal clear that the co- delinquent has been given lesser punishment whereas petitioners have been visited with major punishment. Learned senior counsel further submits that the enquiry report is based upon the statement of witnesses who were examined behind the back of the petitioners. In this regard learned

senior counsel for the petitioners has relied upon the judgment of the Honble Apex Court reported in AIR 1969 SC983(Central Bank of India Ltd. vs. Prakash Chand Jain). Therefore, there has been procedural irregularity, which has materially affected the outcome of the enquiry, because the petitioners were not allowed to cross examine the witnesses. On the doctrine of parity of treatment, the argument has been advanced by the learned senior counsel for the petitioners that one Constable Nand Bihari Singh, whose order of dismissal has been converted into withdrawal of increment of salary for one year, hence the impugned order is grossly disproportionate, excessive and not commensurate to the proven charges and, therefore, it is not legally sustainable. Learned senior counsel for the petitioner further submits that the charges levelled against the petitioners are vague since the charges relates to lodging of F.I.R and it suffers for want of imputation. In this regard learned senior counsel for the petitioners has placed his reliance on the judgment of the Honble Apex Court reported in (2009) 12 SCC78(Union of India and Ors. vs. Gyan Chand Chattar) (para 35-36). Learned senior counsel further submits that no conclusive opinion has been given by the enquiry officer so as to apportion guilt upon the petitioners, only the 10 enquiry officer has opined that prima facie the petitioners have been found guilty.

15. Per contra, a counter affidavit has been filed by the respondents denying the averments made in the writ application. In the counter affidavit, it has been submitted that petitioners have not come before this Court with clean hands and suppressed the material facts. It has further been submitted that petitioners have misused their official capacity and wrongly lodged FIR against the accused mentioned in the FIR bearing Barhi (Padma) P.S. Case No.158 of 2007. The petitioners unlawfully demanded from one Mahesh Kumar and due to non fulfillment of demand the accused persons were falsely implicated in this case by the petitioners. In the counter affidavit it has been submitted that one complaint filed by Lallu Kumar against the petitioners stating that he is a business man and has an own industry for making pots of different metal and he along with his staff going to Hazaribagh by a Marshal bearing No.JH-13A-1456 and some petal pots were also loaded in that vehicle having value of Rs.2,25,000/-. In the said complaint it was also mentioned that during his journey for Hazaribagh he stayed at Koderma, where his relative Arun Kumar Kasera was residing due to MCC

Bandi and the next day the complainant started his journey to Hazaribagh the vehicle was intercepted by a Bolero and 5 to 6 persons come down and they snatched the Driving license, Pan card, one Nokia mobile set and a sum of Rs.2350/- in case from the complainant and his staff and also demanded Rs.10,00,000/- for their release. The respondent further submits that after 3 to 4 days Barhi (Padma) P.S. Case No.158 of 2007 has been instituted by the petitioners against the complainant and his staffs. It is submitted that a departmental enquiry/proceeding was instituted by high officials of the police department and during the course of this proceeding various notices were issued to the petitioners but in spite of all, the petitioners never appeared before the conducting officer and the petitioners did not avail the opportunity afforded to them. Thereafter many witnesses as well as complainant Lallu Kumar were examined and the petitioners also put their defence before the conducting officer. After considering the opinion of the conducting officer and other material which were brought before the DIG, Hazaribagh for consideration, DIG Hazaribagh found the petitioners guilty and as such the petitioners have been dismissed from services. 11 16. A supplementary counter affidavit has been filed by the respondents wherein it has been submitted that departmental proceeding has been initiated after enquiry report dated 23.06.2008. No departmental proceeding was in existence before the above enquiry report and the departmental proceeding No.35 of 2008 was initiated after the aforesaid enquiry.

17. Learned counsel for the State has reiterated the submission made in the counter affidavit filed on 26.10.2016 in W.P.(S) No.582/2014. Learned counsel for the State during course of hearing has vehemently submitted that a F.I.R being Sadar P.S. Case No.693 of 2008 dated 29.07.2008 under Section 342/386/379/469/471/120(B)/34 IPC has been lodged by the C.I.D against the petitioners and the charges levelled against the petitioners that they have lodged a false case against Amit Kumar @ Lallu Kumar, Chandan Thakur & Pintu Sao and made them accused in Barhi P.S. Case No.158 of 2007. The charges further are that they have threatened Amit Kumar @ Lallu Kumar, Chandan Thakur and Pintu Sao and demanded extortion amount and have put them under immense physical torture as per Annexure- A to the supplementary counter affidavit. It has further been submitted that charge sheet has been filed against the petitioners vide

charge sheet dated 18.06.2012 in Sadar P.S. Case No.693 of 2008 dated 29.07.2008. It has further been submitted that earlier a F.I.R. being Barhi P.S. Case No.158 of 2007 has been lodged against Amit Kumar @ Lallu Kumar, Chandan Thakur & Pintu Sao at the instance of the petitioners. The said false F.I.R has been lodged as because the Amit Kumar @ Lallu Kumar, Chandan Thakur & Pintu Sao did not fulfill the demand of the petitioners. It has further been submitted that charge sheet has been submitted vide Charge sheet dated 18.06.2008 in Barhi (Padma) P.S. Case No.158 of 2007. It has further been submitted that criminal proceeding in both the cases are pending before the court below. It has further been submitted that petitioners were issued notices to appear before the enquiry officer and give reply to the show cause and also to cross examine the witnesses and also a wireless message were sent to the petitioners. The witnesses namely Anant Kumar Singh, T.A. Mallik and Gazi Safdr Hyat deposed on 25.10.2008 but the petitioners did not cross examine them. Again notices were sent on 15.01.2009 to appear before the enquiry officer and cross examine the witnesses. Witnesses namely Lallu Kumar @ Amit Kumar, Mahesh Kumar and Pintu Sao deposed on 25.01.2009 but the petitioners did not cross 12 examine them. It has further been submitted that the order of dismissal has been converted into withdrawal of two increments in the case of Radhey Shyam Das and Nand Bihari Singh by the appellate authority. Learned counsel for the State by reiterating the counter affidavit has submitted that the charges levelled against the petitioners have been proved and after sufficient opportunity given to the petitioners, impugned order of punishment has been passed. There has been no procedural irregularity and proper departmental enquiry has been conducted. Since the charges levelled against the petitioners appear to be grave, punishments imposed have nexus to the proven charges.

18. After hearing learned counsel for the respective parties and on perusal of the relevant records, the impugned order of punishment of dismissal from services of the petitioners in different writ applications warrant interference, due to the reasons stated hereinbelow: (I) The petitioners having rendered considerable length of service have been inflicted with the order of punishment of dismissal from services, basing on the findings of the enquiry officer. The genesis of the case pertain to lodging of false F.I.R by the petitioners, which was enquired into by the

departmental authorities and subsequently in the departmental proceeding the enquiry officer found the petitioners to be prima facie guilty of the charges, though no conclusive findings have been given by the enquiry officer. (II) One of the ground on which this Court is inclined to interfere in the impugned order of punishment that two of the officials one Inspector Radhey Shyam Das and Constable Nand Bihari Singh, those who have been roped in the same set of allegations, have been let off with lesser punishment, whereas petitioners have been subjected to major punishment of dismissal from services. It would be apposite to refer to the decision of the Honble Apex Court reported in (2013) 3 SCC73(Rajendra Yadav vs. State of M.P) wherein at paragraph-9, it has been held as under:

9. The doctrine of equality applied to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The disciplinary authority cannot impose punishment which is disproportionate i.e. lesser punishment for serious offences and stringent punishment for lesser offences. (III) Here, It would also be apposite to refer to the decision of the Honble Apex Court reported in (2013) 12 SCC372(Lucknow Kshetriya Gramin Bank vs. Rajendra Singh) wherein at paragraph-17, it has been held as under:

17. If there is a complete parity in the two sets of cases, imposing different penalties would not be appropriate as inflicting of any/higher penalty in one case would be discriminatory and would amount to infraction of the doctrine of equality enshrined in Article 14 of the Constitution of India. That is the ratio of Rajendra Yadav case, already taken note above. On the other hand, if there is some difference, different penalty can be meted out and what should be the quantum is to be left to the appellate authority. However, such a penalty should be commensurate with the gravity of misconduct and cannot be shockingly disproportionate. As per the ratio of Obettee (P) Ltd. case even if the nature of

misconduct committed by the two sets of employees is same, the conduct of one set of employees accepting the guilt and pleading for lenient view would justify lesser punishment to them than the other employees who remained adopted the mode of denial, with the result that charges stood proved ultimately in a full-fledged enquiry conducted against them. In that event, higher penalty can be imposed upon such delinquent employees. It would follow that choosing to take a chance to contest the charges such employees thereafter cannot fall back and say that the penalty in their cases cannot be more than the penalty which is imposed upon those employees who accepted the charges at the outset by tendering unconditional apology.

19. In view of the aforesaid reasons, the impugned orders of punishment of dismissal passed in the aforesaid writ applications, vide Annexures-5 (in W.P.(S) No. 582 of 2014), Annexures-10 and 13 (in W.P.(S) No. 3740 of 2013), Annexures-1, 5 and 7 (in W.P.(S) No. 1816 of 2014), Annexures-7 and 8 (in W.P.(S) No. 6605 of 2014), Annexures-10 and 11 (in W.P.(S) No. 14 1820 of 2015) and vide Annexures-13 and 14 (in W.P.(S) No. 2062 of 2015) are hereby quashed and set aside and the matter is remitted to the respondents to consider the case of the petitioners afresh, on the quantum of punishment and pass appropriate orders within a period of three months from the date of receipt/communication of a copy of the order.

20. With the aforesaid direction, the writ applications stand allowed. (Pramath Patnaik, J.) Saket/-

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