

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00754/2018

Reserved on : 04.01.2019

Date of Order : 30.01.2019

C O R A M

HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER

Anusuya Ransingh Sahoo, W/o Sri Priyadarshi Sahoo, Flat No. 101, Shivam Vihar Apartment, Mohalla-Anandpuri, West Boring Canal Road, Patna. At present posted as Superintendent of Police (Weaker Section) CID.

..... Applicant.

By Advocate : Shri J.K.Karn with Shri M.P. Dixit

-Versus-

1. The Union of India through Secretary, Government of India, Ministry of Home affairs, North Block, New Delhi-110001.
2. The Chief Secretary, Bihar, Patna-800001.
3. The Principal Secretary to the Government, Government of Bihar, Home Department-800001.
4. The Additional Secretary, Government of Bihar, Patna-800001.
5. The Joint Secretary, Government of Bihar, Patna-800001.
6. The Pr. Secretary, Home(Police), Bihar, Patna-800001.

..... Respondents.

By Advocate :- Shri Shekhar Singh.

ORDER

Per Mr. J.V. Bhairavia, J.M.:-

In the instant case, the applicant is an

IPS Officer of 2006 batch of Bihar Cadre. She is presently posted as Superintendent of Police (Weaker Section), CID. A Departmental Proceeding was initiated against her on 10.05.2018 under Rule 8(2) of All India services (Discipline & Appeal) Rules, 1969 alleging that while she was

posted as first Commandant-cum-Principal, MPTC, Dumraon during the period from April 2013 to September 2014, she had purchased commodities without constituting Purchase Committee and without taking approval of the senior Officer. It is further alleged that she had purchased commodities from her own money and when fund was received, the bill amount was paid in her own account. Therefore, she has violated Rule 131 of Bihar Financial Rule 2005 and Rule 3 of All India service (Conduct) Rules, 1968. She was given an opportunity to submit written defence within thirty days. In response thereto, the applicant had submitted her defence on 18.06.2018 and 04.07.2018 explaining all the facts and circumstances with regard to purchase of commodities for office purpose and requested that the charge memo should be recalled but the same was rejected vide letter dated 28.08.2018 by a non speaking order.

3. Aggrieved by the said order dated 28.08.2018, the applicant has filed the present OA with a prayer to quash the memorandum dated 10.05.2018 (Annexure - A/1) and letter dated 28.08.2018 (Annexure - A/2) whereby the defence statement of the applicant has been rejected and ordered to appear before the Disciplinary Authority. A further prayer was also made by amending the OA that Three Member Committee report, headed by Shri Mansoor Ahmad dated 09.10.2015 and the same be also quashed and set aside (Annexure A/11).

4. Learned counsel for the applicant submitted, when the applicant was posted as Commandant, MTPC, Dumraon, for discharging her duties as Principal on 29.03.2013, during that time and even much after

that MPTC, Dumraon had no physical existence (there was no premises for office, as such, there was no building, no land, no budgetary head, no allotment of fund as also there was no staff). Therefore, the applicant requested the then DG (Training) to allow her to join at his office at Patna which was accepted by the then DG. Thereafter, an order was issued on 24.04.2013 directing the applicant to take necessary steps for initiation of the MTPC, Dumraon at Dumraon along with looking after the routine work of the Training Directorate at Patna (Annexure A/3 & A/4 dated 24.04.2013 & 20.05.2013 respectively).

5. Learned counsel for the applicant further submitted that thereafter the applicant requested the Government to determine the place from where she should run her office. Finally, the applicant arranged rented house for her residence and requested the DG (Training) Patna to allow her to discharge her duties from her rented residence, vide letter dated 20.01.2014 (Annexure A/5). In response to it, the applicant was ordered by DG (Training) vide order dated 29.01.2014 to discharge her duties from her residence and also ordered to discharge her duty at Training Directorate too. It is further submitted that due to lack of fund, the applicant had spent money from her own pocket to purchase things of bare minimum necessity for establishing the office of MPTC, Dumraon in compliance with the order of the DG (Training). The items and commodities purchased by applicant were the minimum requirement for an office to run the office at MTPC, Dumraon.

6. He further submitted that applicant was repeatedly requested the Police Headquarter for posting of Accountant but remained unanswered. Thereafter, the applicant requested one ASI Mr. Lal Mohan Giri who have good knowledge of accounts to help the applicant in smooth running of office and after his help, the applicant even got salary after ten months from her posting. He further submitted that after one year eleven months, one DSP and after fifteen months one Accountant joined in the battalion only in the month of May-June 2014. On joining of DSP and the Accountant, the applicant immediately, vide letter dated 30.06.2014 (Annexure A/8) ordered in writing to Shri D.N. Singh, the then DSP for creating and maintaining all official records and registers properly as per rules. It is submitted that it is the duty of the DSP and Accountant to maintain such register and account of the office.

7. Learned counsel for the applicant further submitted that thereafter, vide order dated 10/10/2014-21/10/2014 the applicant was transferred to Jehanabad from MTPC, Dumraon. As there was no successor, she could not handed over the charge of MTPC, Dumraon to anyone. The Dy. SP who was posted at MTPC, Dumraon, was also on long leave, so she could not even handed over the commodities to him. The applicant made a number of calls to the Commandant for taking over the charge but all efforts turned futile. Since, the house owner pressurized the applicant to shift out all the commodities from the premises and the Commandant showing no interest in taking over the charge of the commodities, the applicant shifted all the commodities to Patna on 24.08.2015 (Annexure 10) and the same was intimated to the then commandant. It is submitted that

in fact after lapse of four months, on 29.02.2016, the applicant was handed over all the commodities. It is further contended that vide letter dated 04.11.2015, the applicant had also informed the then DG (Training) about her transfer from MTPC Dumraon and joined as SP, Jehanabad. At the time of her transfer, there was no successor and could not hand over the commodities. However, she had instructed the subordinate staff to deposit all the commodities including the Computer set. But it appears that wrong piece of Computer was handed over by the subordinate staff. It is further informed by the applicant that details of commodities purchased by the applicant during her tenure at MTPC Dumraon also be sent to her so she can do the needful to arrange to deposit the said commodities (Annexure A/12).

8. It is submitted that the applicant had received letter dated 05.11.2015 issued by the then IG (HQ) where in she was asked to explain her stand on the allegation made out against her in the letter dated 19.10.2015 of the then IG (Training) . Along with said letter the copy of report of three member committee dated 09.10.2015 (Annexure A/11 series) was also supplied to the applicant. It is stated in the said letter that as per the letter under reference (i.e. letter dated 19.10.2015) the applicant has committed irregularities, illegality in purchasing commodities and she also failed to maintain proper account. Learned counsel for the applicant submitted that the said inquiry as such carried out by the respondents behind the back of the applicant as no explanation or statement has been taken from the applicant and further submitted that the said committee had neither asked her about the status of commodities purchased by her

nor they had even care to take into consideration the letters of the applicant which was addressed to the concerned officer for taking the charge of Government commodities after the transfer from that battalion. Not only that the said committee has also not taken into consideration the orders issued by the applicant to the concerned DSP and the Accountant with respect to proper maintenance of account and the register for commodities purchase for running the MPTC at Dumraon.

9. It is further submitted that on receipt of letter dated 05.11.2015 (Annexure A/11), the applicant met the then DG (Training) immediately and explained him about the status of commodities purchased during her tenure and requested to enquire thoroughly.

10. It is further contended that applicant had time and again informed the Commandant, MPTC Dumraon over phone as also in writing vide letter dated 15.12.2015 to take away the Government commodities by sending the vehicle (Annexure A/13). Subsequently, vide letter dated 19.02.2016, the applicant had informed the Commandant that all the commodities has been handed over to the staff namely Shabbir Ahmad Khan and Accountant Shri Devendra Kumar Sharma, MPTC and also informed that it was not possible for her to bring 19 mm ply which was used for partition for office/residence, door mats, door handle, wire, etc. at her place of transfer. The said letter was written by the applicant in response to office letter dated 24.02.2016 (Annexure A/14).

11. It is further contended that the office of Director General of Police (HQ), Patna, vide letter dated 14.07.2016 and followed by reminder

letter dated 17.08.2016, entrusted upon Shri Vikash Vaibhav, IPS, Assistant to IG (Training) to conduct a detailed inquiry into the allegations of financial irregularity in purchase made during the tenure of the applicant as the then Principal MPTC (Dumaraon) following which Shri Vikash Vaibhav, IPS, Assistant to IG (Training) has carried out a detailed inquiry on the subject. He had considered the report submitted by the Account General, Bihar Patna relating to inspection report No. 82 /15-16, 7th January, 2016, the earlier reports sent to the Police Headquarters by the DGP (Training), dated 19.10.2015 and 14.1.2016, and the report of three members committee headed by Shri Md. Mansoor Ahmad, IPS, the then AIG (Training) dated 9.10.2015, as also all the relevant documents and correspondences made between the applicant and the concerned respondents before the aforesaid reports as well as subsequent correspondences and other details relating to purchases and handing over of the consumable items by the applicant. He further noted that during the earlier inquiries /inspections, the concerned committee had sought no clarification from the concerned officers which has defended the peculiarities resulting in such mode of purchases in subsequent representations and submissions as discussed in his report and from the perusal and consideration of which, the irregularity is not made out as having been made with such malafide intentions as to classify it into the category of cognizable offence. Considering the overall factual matrix, he had submitted his detailed report dated 9.9.2016 to the IG (HQ), Bihar, Patna (Annexure A/15 refers) in which he has concluded as under:-

“ From the overall perusal of the records, inquiry report and submissions made by the officer, it is clear that the process in which

purchases were made during the tenure of the officer as the Principal, MPTC (Dumaraon) was not regular or fully in sync with the financial rules. However, before arriving at conclusion, the position of the officer i.e, Mrs Anusuya Ransingh Sahu, IPS, then Principal, MPTC (Dumaraon) needs to be considered especially in the light of the peculiar and difficult circumstances in which she had been posted as the in-charge of a Unit which was yet to be raised. In my opinion, many of the facets which are found to be irregular may have been committed in the overall bonafide interest of raising a fresh unit from nothing to start with. While the irregularity committed is a matter of record, the fact that there was no proper and regular office set-up during the officer's tenure and that there were no regular accountants of DSPs to assist the task of raising the unit by the newly posted Principal need to be viewed with sympathetic consideration especially in light of the correspondences made by the officer for their postings/deputation. The findings as above are submitted for kind consideration"

12. The learned counsel for the applicant vehemently submitted that the respondents has totally ignored the aforesaid preliminary inquiry report dated 9.9.2016 (Annexure A/15) and not made part of the charge sheet. Therefore, the disciplinary proceeding sought to be initiated is totally misconceived and biased against the applicant.

13. It is further contended that the respondents had again got the matter inquired by the Vigilance Department and the Vigilance Department had submitted their report dated 21.7.2017. It is also observed by the Vigilance Department in their report that during the course of inquiry, they discovered the fact that in the year 2012-2013, MPTC, Dumaraon was not in existence.. In the said year, Smt. Anusuya Ransingh Sahu, IPS was appointed as Principal, MPTC, Dumaraon. On her

appointment, difficulty arose with regard to her joining and starting office set up as there was no office building and controlling officer posted there earlier. Finally, vide order dated 1.4.2013, the then IG (Training), Bihar, Patna accepted the joining of the applicant as Commandant cum Principal, MPTC, Dumaraon and she was allowed to hold office in the office premises of DGP (Training), Patna and from the said office premises, she started the work for establishment of MPTC, Dumaraon. Subsequently, she had taken rented premises at Dumaraon and opened an Account with SBI in her name with A/c No. 30018959544.

Under such difficult situations, somehow or the other, she was able to successfully establish the MPTC, Dumaraon and made the said training centre functional. Thereafter, she was transferred to Jahanabad to the post of SP and she had taken over the charge at Jahanabad in September, 2014. However, no one was posted in her place as Commandant cum Principal of MPTC, Dumaraon. Subsequently, on 21.10.2014, she made over the charge of the post of Commandant cum Principal of MPTC, Dumaraon to SP, Buxar.

The vigilance department has also enquired into the matter. The period under inquiry was considered from the date of taking over the charge of the post of Commandant cum Principal of MPTC, Dumaraon by Smt. Sahu i.e. 1.4.2013 to the date on which she returned the items i.e. 29.2.2016. Considering the entire record and the submissions/explanation of the applicant, it is observed in the Vigilance report that “ it is true that ignorance cannot be a defence, at the same time, it is also true that for any

act, the intention of the person needs to be carefully examined.” It has also been observed in their concluding para that the said official had returned the majority items but there has been symbolic irregularity and lapses of procedures in purchasing of the said items and their payments.

14. It is further contended that the Addl. Secretary, State of Bihar, Vigilance Department, vide its letter dated 5.12.2017 forwarded the copy of the vigilance report dated 21.07.2017 to the Principal Secretary, Home, Bihar, Patna with the opinion that as per the vigilance report and its conclusion, it is clear that on 29.2.2016, Smt. Sahu had handed over the majority items. However, in purchase of the said items, there appears to be symbolic procedural lapses. It is also opined that in the light of the explanation submitted by Smt. Sahu and on examination of the said explanation/defence statement, it is clear that the symbolic procedural lapses was caused due to circumstances beyond her control and it is proper to consider those said facts. Along with this opinion, the Addl. Secretary, Vigilance Department forwarded the copy of vigilance report to the Principal Secretary, Home, Bihar, Patna.

On the basis of aforesaid contentions, the learned counsel for the applicant submitted that even the vigilance department has also not given any definite adverse report against the applicant. On the contrary, vigilance report focused on procedural lapses which were caused due to the unavoidable circumstances. Therefore, the applicant has not committed any misconduct as alleged by the disciplinary authority and without considering the material on record objectively, the impugned charge sheet

has been issued which is against the principle of natural justice and same is required to be quashed and set aside.

15. It is further contended by the applicant that on 18.6.2018, she had submitted her detailed defence statement / explanation in response to charge memorandum before the competent authority (Annexure A/17). It is also pleaded that the applicant had also submitted additional representation / explanation dated 4.7.2018 (Annexure A/18) and requested the competent authority to exonerate her from the alleged charges since she has not committed any misconduct as alleged. The applicant has also submitted a detailed charge-wise explanation in her said defence statement along with supporting documents. However, the respondents have not considered it objectively and without assigning any reason rejected the same vide impugned order dated 28.8.2018 (Annexure A/2). The said impugned decision is erroneous, contrary to the material on record, misconceived as also violation of principles of natural justice.

16. It is further contended that the applicant had filed an additional affidavit by way of MA 754 of 2018 to bring on record the copy of letter / opinion dated 6.9.2018 sent by Joint Secretary, General Administrative Department to the Departmental Inquiry Commissioner (Annexure A/19 refers). The learned counsel for the applicant submits that the said opinion dated 6.9.2018 is subsequent to the issuance of charge sheet as also after the impugned decision dated 28.8.2018 (Annexure A/2) where the Disciplinary Authority already decided to continue with disciplinary proceedings by rejecting the defence statement of the

applicant. It is also submitted that the Joint Secretary's opinion dated 6.9.2018 suffers from infirmities and bias, because the analysis of the defence statement of the delinquent done by the said authority is based on presumption as also without any application of mind. In fact, after the impugned decision dated 28.8.2018 seeking to initiate disciplinary proceedings, any subsequent opinion obtained by the respondents is indicative of the facts that the respondents are predetermined to harass the applicant with malafide intention to deprive the applicant from her further career progression.

17. The applicant has written three letters dated 22.5.2015, 3.8.2015 and 24.8.2015 and requested the Principal, MTPC Dumraon to depute responsible staff to take back of the commodities. (Annexure A/20 series refer).

18. It is further contended that as per the provision of Rule 1045 (d) of Police Manual, every entry in the distribution register and its extract shall be signed by the Assistant or DY.SP (HQR). On 30.6.2014, the applicant had ordered the Dy.SP, MPTC, Dumaraon, Shri D.N. Singh to get all the commodities entered in the stock register and distribution register. However, the said Dy.S.P had totally failed to comply with the order dated 30.6.2014 passed by the applicant. (Annexure A/21 refers). Therefore, it is submitted that although it was not the duty of the applicant to maintain the stock register, she maintained absolute control and supervision by issuing written order to responsible official who is responsible to maintain the stock register. The said facts has been established during the vigilance

inquiry. In spite of this, the D.A. failed to appreciate the said vital aspect of the matter and arbitrarily passed the impugned decision (Annexure A/2).

19. It is further contended that the respondents authority failed to consider the fact that the applicant certified in her own writing that in absence of purchase committee, she had purchased certain items, including the curtain for the office at Patna as well as MPTC, Dumraon. The certificate of the applicant is already on the original vouchers and, as such, the same can be verified. The certificate of the applicant is countersigned by the DG (Training). As per provision of Rule 131 (C) of Bihar Finance Rules for each and every voucher of even one rupee is to be sent on line along with BTC form-25. The applicant had sent the same and the same were approved by the concerned authority. The applicant had not violated any provision of relevant financial rule 131 (d) and (f) in the purchases. In fact, there is no charge with regard to violation of Rule 131 (c) in the charge sheet. Arbitrarily, the Joint Secretary in his analysis dated 6.9.2018 erroneously referred about non-compliance of Rule 131 (c).

20. The learned counsel for the applicant further contended that vide letter dated 2.6.2016 had informed the commandant cum Principal, MPTC Dumaraon that the non-consumable items were already handed over on 29.2.2016 and the copy of the book i.e All India Service Manual Vol. III and Constitutional law were untraceable even after thorough search. The cost of the said books amounting to Rs. 3640/- will be paid by the applicant delinquent. Along with the said letter, copy of the letter dated 29.2.2016 was also forwarded (Annexure A/23 series refer). Relying upon the said

letters, the learned counsel for the applicant submitted that the entire conduct of the applicant is just and fair and had always maintained discipline and morality while discharging her official duties. There is no iota of material on record which support the allegations levelled against the applicant. The said truth also came on surface in the findings of the vigilance report dated 21.7.2017 as well as 5.12.2017 as also the inquiry report dated 9.9.2016 submitted by Assistant to IG Training. Therefore, the impugned order (Annexure A/2) is bad in law and fit to be quashed.

21. It is submitted that there is no allegation about any ill motive or bad intention and putting the Government to loss due to her any kind of malafide act. The disciplinary proceedings has been initiated against the applicant without having foundation of misconduct.

It is submitted that the impugned memorandum of charge has been issued on the basis of absolute erroneous report by three members committee. It is submitted that as per the law laid down by Hon'ble Supreme court in the case of Secretary, Ministry of Defence and Others vs. Prakash Chandra Mirdha reported in 2012 [11] SCC 565 their Lordships have been pleased to reiterate the law on the subject of challenge of charge memo / charge sheet / show cause notice and under what circumstances, the same can be quashed and set aside by the Courts/ Tribunal. In para 8 of the said judgment, it is observed by the Hon'ble Supreme court that the law does not permit quashing of the charge sheet in routine manner. In case, the delinquent employee has any grievance in respect of the charge sheet, he must raise the issue by filing representation

and wait for the decision of the disciplinary authority. The Courts / Tribunals may quash the charge sheet after considering the gravity of the charge and all relevant factors involved in the case weighing all the facts both for and against the delinquent employee and must reach the conclusion which is just and proper in the circumstances. It has further been held that a writ lies when some right of a party is infringed. Finally, it has been concluded that the gravity of the misconduct is the relevant factor to be taken into consideration while quashing of the proceedings. Therefore, the learned counsel has vehemently argued that in the present case, there is no charge which can be said to be grave. Not only that the circumstances were such compelling that the alleged procedural lapses were bound to happen in absence of sufficient staff to maintain the register stock and making entries in register and as such the applicant was not responsible for it. There is no misconduct committed by the applicant delinquent and the impugned action of the disciplinary authority is required to be set aside.

22. On the other hand, the Respondents have filed their written statement and denied the contention of the applicant. It is submitted that that Inspector General of Police, Patna vide their letter dated 18.02.2016 [Annexure R/1] requested the Home Department, Bihar, Patna to take necessary action against the applicant for financial irregularities in purchasing of items as the then Principal, MTPC, Dumaron. On the basis of the said report, the respondents have decided to issue memorandum for initiation of Departmental Proceeding against the applicant and the applicant was directed to submit her written reply vide memo dated

10.05.2018. At the same time, it was also decided to refer the matter to Vigilance Department for inquiry. The matter was referred to Vigilance Department to make an inquiry by Vigilance Investigating Bureau vide letter dated 18.04.2016 [Annexure R/3). The Additional Secretary, Vigilance Department, Bihar, Patna vide letter dated 05.012.2017 [Annexure A/4] forwarded report received from Vigilance Investigation Bureau.

23. It is further stated that the applicant has submitted her written reply on 18.06.2018 and also submitted an application to Chief Secretary, Bihar on 04.07.2018. The matter of the applicant was duly scrutinized and defence statement of the applicant was not found satisfactory. Thereafter, it was decided to initiate Departmental Proceedings against the applicant vide decision dated 28.8.2018 under Rule 8 of the All India Service (D&A) Rules, 1969, and accordingly, Departmental Inquiry Commissioner, General Administration Department, Bihar, Patna has been appointed as Conducting Officer and Shri Sidharth Mohan Jain (IPS), SP State Crime Record Bureau, Patna has been nominated as presenting officer in the said departmental proceedings.

It is further submitted that vide letter dated 6.9.2018, the Home Department, (Police Branch) had sent its opinion to departmental inquiry commissioner, GAD, Patna Bihar (Annexure R/5 refers).

24 Learned counsel for the respondents submitted that the charge sheet was issued to the applicant for the irregularities committed by her during her posting as Commandant, MTPC, Dumraon. The impugned memorandum was issued after receiving three men committee report

dated 8.10.2015 and after approval of the Government (Annexure R/6 refers). It is contended that as per the said report, it is reported that during the tenure of the applicant from 8.4.2013 to 9.9.2014, the cash book, contingency register and other registers regarding accounts section were not duly maintained and current status of the items was not clear in absence of stock and issue register. The purchase were also found to have been irregular since the mandatory committee required to purchase had not been constituted as per rules and further most of the amounts had not been credited into the account of the firm from whom purchases were made. There are no irregularities in issuing the charge sheet. Therefore, he prayed for dismissal of the OA.

25. It is further submitted that the claim of the applicant that three members committee had submitted the inquiry report without consulting her with regard to subject under inquiry/inspection was not maintainable since the inquiry was not directed against any specific individual, but was limited to the details of all the purchases made since the inception of the MPTC, Dumaraon.

26. It is submitted that departmental proceedings have been initiated against the applicant on firm ground. There are sufficient material against the applicant for initiation of the departmental proceedings.

27. The L/C for respondents further submitted that the respondents have filed MA No. 517 of the 2018 for vacation of interim relief granted by this Tribunal and in the said application, it is contended that due opportunities have been granted to the applicant delinquent to

submit her explanation /detailed defence statement. All the relevant documents were supplied along with the charge sheet to the applicant. The defence statement has been submitted by the applicant delinquent before the disciplinary authority. As such no prejudice is caused to the delinquent applicant. Therefore, there is no irregularity in initiation of departmental proceedings against the applicant. The learned counsel for the respondents further submitted that in the judgment passed by the Hon'ble Apex Court in the case of UOI & others vs. Upendra Singh, reported in 1993 (3) SCC 357, it is observed that "in the case of charges framed in a disciplinary inquiry, the Tribunal or the Court can interfere only if on the charge framed (read with imputation or particulars of the charges, if any) , no misconduct or other irregularity can be said to have been made out or the charges framed are contrary to any law. At this stage, this Tribunal has no jurisdiction to go into the correctness or the truth of the charges is a matter for the disciplinary authority to go into".

It is further submitted that in the said judgment "the respondent has full opportunity to reply to the charge sheet and to raise all the points available to him including those which are now urged on his behalf. This was not the stage at which the Tribunal ought to have entertained such an application for quashing the charge sheet. The appropriate course for the respondents to adopt is to file his reply to the charge sheet and invite the decision of the disciplinary authority thereon." Therefore, it is submitted that the applicant has preferred this OA on a very early stage of disciplinary proceedings and the prayer sought is not maintainable.

28. The L/c for the respondents submitted that disciplinary proceedings are meant not merely to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad element. The interest of delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he / she is not guilty for the charges, his / her honour should be vindicated at the earliest possible moment and if found guilty, in that case, the C.O should be dealt with promptly according to the law. It is further submitted that the Disciplinary Authority vide letter dated 28.08.2018 the State Govt. has sought opinion from the Home Department, Bihar Patna with respect to report of vigilance and defence statement as well as the explanation submitted by the applicant and in response to it vide communication dated 06.09.2018, the Home Department [Police] sent their opinion to the Departmental Enquiry Commissioner, GAD, Bihar Patna [Annexure-R/5]. Therefore, it is submitted that the interim relief granted by the Tribunal be vacated and the OA be dismissed.

29. On behalf of the applicant, rejoinder has been filed and rebutted the contentions of the respondents. Additionally, it is submitted that if any adverse report has been submitted by Shri Vikash Vaibhav, the same must have been brought on record. In fact, in the report dated 9.9.2016, he has categorically observed that no irregularity has been made out and this is the reason the State of Bihar has not brought out the aforesaid report. The respondents have not denied the facts that the said preliminary report dated 9.9.2016 has not been the part of the charge sheet. The respondents have not placed any material and supplied any

document with respect to the consideration of the said report. Therefore, the procedure adopted by the respondents to initiate disciplinary proceedings is in violation of the principles of natural justice and hence it is vitiated on the ground

30. Heard the learned counsel for the parties and perused the records.

31. It is noted that the applicant is a member of the Indian Police Service. The applicant was posted as Commandant-cum-Principal, MPTC, Dumaraon for the period 01.04.2013 to 09.09.2014. Thereafter, she was transferred to another place. The applicant was served with a charge sheet dated 10.5.2018 (Annexure A/1) along with imputation of misbehaviour and misconduct.

It is noticed that the charges levelled against the applicant was that she had not followed the procedure for purchase of commodities during her posting as Principal, MPTC, Dumraon during the period from 1.4.2013 to 9.9.2014. It is noticed that in the present case, there is no allegation about embezzlement of misappropriation of fund. The major charges levelled against the applicant about procedural lapses. It is appropriate to take notice of article of charges which are as under :-

Article -I : - In the statement given by Shri D.N.Singh, Dy. Superintendent of Police, M.P.T.C. Dumaraon, it was mentioned about commodities related to 11 committees. These were not physically found in the institute. The said items were of a period of posting of Shrimati Sahu dated 01.04.2013 to September, 2014 in the year 2013-14 and 2014-15. From this it is clear that the item purchased by Smt. Sahu were

not physically found in the Institute. This shows lack of control and supervision on the part of Smt. Sahu.

Article – II : - That a detailed report given by a Committee under the Chairmanship of Shri Mansoor Ahmad, IPS regarding allotment and expenditure and purchase of commodities in the year 2013-14, 2014-15 and 2015-16. It is stated that during the tenure of Smt. Sahu [dated 01.04.2013 to Sept., 2014] cash book with respect to Account Section, contingency register, and stock & distribution register related to G.P. were not maintained. Thereby the procedure regarding accounts has been overlooked for which Smt. Sahu is responsible.

Article-III : - For most of the purchases made during the tenure of Smt. Sahu, , payments of money was done in her own bank account. For purchases, no Purchase Committee as per government rules was constituted and rules and procedure relating to purchases were also not followed. It is clear from the inquiry report of the Vigilance Investigation Bureau that Smt Sahu did not follow the financial rules and there was irregularity in the process of purchase of commodities. Smt. Sahu had passed several vouchers obtained in a day from single agency which is in violation of Rule 131 (d) and (f) of Bihar Finance Rules.

Article-IV :- The amount allotted under the head “Hospitality Expense” has been utilised by Smt. Sahu from Patna which indicates that she was running her office from Patna, the said conduct indicates her arbitrariness.

Article-V :- Smt. Sahu spent her own money to purchase the commodities and got the bill paid in her own account on getting the allotment. Smt. Sahu has committed irregularities and negligence in the process s of purchase of items and payment of amount which shows her arbitrariness and neglect of duty which is violation of rule 3 of All India Service (Conduct) Rules, 1968. (Annexure A/1 which is impugned herein).

32. Ordinarily the Tribunal do not interfere with the decision of disciplinary authority for initiation of disciplinary proceedings against the employee. The scope of judicial review of such decision is very limited as law laid down by Hon’ble Apex Court in the case of UOI & Ors vs Upendra Singh reported in 1994 (3) SCC

357, as also UOI & Another vs. Ashok Kacker 1995 Supplementary (1) SCC 180.

At the same time, it is also apt to take note of law laid down by the Hon'ble Apex Court in the case of Allahabad Bank and Ors vs. Krishna Narayan Tiwary reported in 2017 (1) SCC (L&S) 335 = 2017 (2) SCC 308 wherein it is held that *“ It is true that a writ court is very slow in interfering with the findings and facts recorded by the departmental authority on the basis of evidence available on record. But it is equally true that in a case where the disciplinary authority records a findings that is unsupported by any evidence whatsoever or a finding which no reasonable person could have arrived at, the writ court would be justified if not duty-bound to examine the matter and grant relief in appropriate cases. the writ court will certainly interfere with disciplinary enquiry or the resultant orders passed by the competent authority on that basis if the enquiry itself was initiated on account of violation of principle of natural justice, as is alleged to be position in the present case. Non-application of mind by the enquiry officer or the disciplinary authority, non-recording of reason in support of conclusion arrived at by them are also grounds on which the writ courts are justified in interfering with the orders of punishment”*.

33. In the present case, on examination materials on record it reveals that before issuance of charge-sheet by the Disciplinary Authority, the office of D.G.P. [Hq], Patna and office of I.G. had conducted different enquiries with respect to verify the conduct of the applicant for purchasing the commodities and its maintenance as also its existence/availability in the MPTC Office. It further reveals that the applicant was posted as Commandant cum Principal at MPTC, Dumraon on 1.4.2013. At the relevant time, as there was no office set up for MPTC at Dumaraon. As such, the Office of I.G. Training/D.G., Training had not provided any infrastructure facility or any staff for setting up new MPTC [Military Police Training Centre] at

Dumaraon. Therefore, initially the applicant was allowed to run office of MPTC, Dumaraon from the Office DG (Training), Patna itself.

Subsequently, vide order dated 24.4.2013, the then DG (Training) directed her to take necessary step for initiation of the MPTC, Dumaraon at Dumaraon only. However, there was no office premises allotted at Dumaraon to start the training centre at Dumaraon. Therefore, vide letter dated 20.5.2013, the applicant had requested her superior to determine the place from where she may run her office at Dumaraon. (Annexur A/4 refer). Further, vide letter dated 20.1.2014, she had informed the DG (Training), Patna that she had taken a rented residential house at Dumaraon for it she is getting HRA. In the said letter, she further sought permission to run MPTC Dumaraon office from her rented residential house since she had not been provided any other office set up to discharge her function as Commandant cum Principal, MPTC Dumaraon. (Annexure A/5 refers).

It is further noticed that, vide order dated 29.1.2014, the DG (Training), Patna had issued permission to the applicant to run MPTC office from her residence due to non-availability of government office premises at Dumaraon. Additionally, she was also directed to discharge her function at Training Directorate, Patna too.

34. It is also not in dispute that at the relevant time, there was no separate budget was allotted for MPTC, Dumaraon. Subsequently, the same was granted by the concerned authority. During the intervening period, the applicant had not received the salary but she had to spend money from her pocket to meet the necessary expenditure to establish the new MPTC Office set up at Dumaraon.

The applicant was the sole person at MPTC, Dumaraon, so she had to look after all works related to the Battalion like allotment of land, preparation of the map for the Battalion, making correspondence for

allotment of funds and other miscellaneous work single-handedly. To run the office, she had to purchase certain basic commodities of bare requirement and in this regard, she had requested the higher authorities for deputing / posting staff to support her, including Dy.S.P, Accountant etc.

35. The applicant had also requested the higher authorities to constitute the purchase committee for immediate purchase of commodities. However, no immediate assistance had been provided to her. To make MPTC, Dumaron functional, she had placed orders for purchase of commodities with government approved supplier and purchased certain items from her own money for MPTC, Dumaraon. Subsequently, on receipt of fund, only the amounts spent by her, were reimbursed and deposited to her own bank account.

36. The applicant has pleaded that as per the provision of Rule 1045 of Police Manual, the Dy. S.P. Training and Accountant are responsible to maintain stock register of the commodities and other things of the office as well as account for its purchase.

37. It is not in dispute that after continuous follow up with the higher authorities for more than 11 months, one Dy. S.P and an accountant were posted at MPTC Dumaraon. On their posting, immediately the applicant, vide her order dated 30.6.2014, directed the Dy. S.P, MPTC, Dumaraon for maintaining all official records and register properly as per the rules [Annexure A/8 referred] as the said subordinate staff were responsible to maintain all the records and accounts of the MPTC, Dumaraon.

38. Subsequently, the applicant was transferred from MPTC, Dumaraon to Jahanabad as S.P (Weaker Section) CID, Jahanabad on Sept., 2014 as per the notification no. 7382 dated 9.9.2014 and movement order 8135 dated 10.10.2014. At the time of her transfer, there was no successor to take over the charge at MPTC, Dumaraon. However, one Shri Rajendra Prasad IPS took over the charge as Principal MPTC, Dumaraon only on 29.11.2014. By this time, the applicant had already resumed her duty at her transferred place, i.e. Jahanabad, the charge of the items (Commodities) purchased for MPTC, Dumaraon could not be given to the officer who had taken over the charge of Principal, MPTC, Dumaraon. For handing over the commodities, the applicant had intimated the newly posted Principal, MPTC, Dumaraon, vide letter dated 22.5.2015 and 3.8.2015 that due to lack of separate building of MPTC the commodities which she had purchased for MPTC, Dumaraon, are with her and had requested him to get it collected by sending the accountant within a fortnight alongwith the list of items purchased during her tenure and the same can be handed over. It further reveals that the said letter has not been given due heed by the concerned subordinate staff nor it was brought to the notice of Account Section during the audit.

39. It is further noticed that only on 18.9.2015, the DGP (Training) had made a visit to MPTC, Dumaraon and it was brought to his notice that certain items which had been purchased which are registered in purchase register, however, the said items were found traceless and without any corresponding entries in the stock or contingency register. Thus, the DGP (Training), on 22.9.2015 directed the IG (Training) to form a committee to

make an inquiry into all the purchases made since the inception of MPTC, Dumaraon and to physically verify the current status of the items. the Accountant General was requested for conduct of an audit of MPTC, Dumaraon. Accordingly, three members committee was constituted on 23.9.2015 headed by Shri D.N. Singh, Dy. SP, MPTC, Dumaraon to update the records of all purchases made at MPTC, Dumaraon by 8.10.2015.

It is also noticed that another three members committee headed by Shri Mansoor Ahmad, IPS, then AIG (Training) was formed vide letter dated 24.9.2015 to inquire about the current status of the items purchased by the applicant during her posting at MPTC, Dumaraon and also about the purchase of subsequent year in the said MPTC, Dumaraon.

It further reveals from the record that the three members committee headed by Shri D.N. Singh had submitted the report. It is observed in the said report that cash book and contingency register along with stock and issue register for the period of tenure of the applicant, the then Principal, MPTC, Dumaraon were not found duly maintained and the same was maintained after joining of the accountant on 24.6.2014.

The another three members committee headed by Shri Mansoor Ahmad, in their report dated 9.10.2015, observed that the items that were purchased by the applicant with the statement (paid by me) were not physically found in the office.

40. On receipt of such report, the applicant was informed vide letter 18.9.2015 by the DGP (Training) to return the items which were purchased for MPTC, Dumaraon during her tenure. In response to it, the

applicant had handed over the 9 items, including the computer to the Accountant. Since the enquiry was conducted without giving any opportunity to the applicant with regard to purchase/custody of the commodities for MPTC, Dumaraon, and reports were submitted before the authorities concerned, however the applicant came to know from other sources about such report. Thereafter, she immediately submitted her explanation vide letter dated 5.11.2015 about existence of purchased items. On repeated request of the applicant, the office of MPTC, Dumaraon had deputed the staff to take delivery of the remaining commodities and on 29.2.2016 the said remaining items were handed over to the staff of the MPTC, Dumaraon. The said fact was also brought to the knowledge of concerned authority by the applicant by way of separate letters.

41. Subsequently, the D.G. Police Headquarter, had appointed one Shri Vikash Vaibhav, IPS, Assistant to IG (Training) to enquire about the financial irregularities in the purchases made tenure of the applicant, the then Principal, MPTC, Dumaraon. After a thorough inquiry, Shri Vikash Vaibhav, IPS submitted his report dated 9.9.2016 to the IGP (Headquarter), Bihar, Patna wherein he opined as follows:-

“ From the overall perusal of the records, inquiry report and submissions made by the officer, it is clear that the process in which purchases were made during the tenure of the officer as the Principal, MPTC (Dumaraon) was not regular or fully in sync with the financial rules. However, before arriving at conclusion, the position of the officer i.e, Mrs Anusuya Ransingh Sahu, IPS, then Principal, MPTC (Dumaraon) needs to be considered especially in the light of the peculiar and difficult circumstances in which she had been posted as the in-charge of a Unit which was yet to be raised. In my opinion, many of the facets which are found to be irregular may have been committed in the overall bonafide interest of raising a fresh unit from nothing to start with. While the irregularity committed is a matter of record, the fact that there was no proper and regular office set-up during the officer's tenure and that there were no regular accountants of DSPs to assist the task of raising the unit by the newly posted Principal need to be viewed with sympathetic consideration especially in light of the correspondences made by the officer for their postings/deputation. The findings as above are submitted for kind consideration”

42. It is further noticed that the on the request of Office of I.G. Police, Headquarter also requested the Home Department [Police] Bihar Patna, vide its letter dated 18.02.2016 to take necessary action against the applicant by enclosing the photocopy of report of D.G.P [Training] dated 19.10.2015, 04.01.2016 and the explanation submitted by the applicant dated 09.11.2015. It is also noticed that vide letter dated 10.03.2016, the I.G. Hqr. Had also forwarded the copy of letter dated 29th Feb., 2015 of the applicant regarding handing over the items to the present Principal, MPTC, Dumaraon to Home Department [Police].

43. The respondents, State Government vide, letter dated 18.4.2016 directed vigilance department to inquire into the matter. In response to it, the Vigilance department has conducted a detail inquiry and submitted their report dated 21.7.2017 along with opinion dated 5.12.2017 (Annexure A/16 refers) is as under :-

“As per the vigilance report and its conclusion, it is clear that on 29.2.2016, Smt. Sahu had handed over the majority items. However, in purchase of the said items, there appears to be procedural lapses in purchase and maintenance of commodities. At the same time, in the light of the explanation submitted by Smt. Sahu and on examination of the entire record, it is clear that the said procedural lapses were caused due to circumstances beyond her control and therefore, it is proper to take into account those said facts. “

44. After receipt of the aforesaid vigilance report, the applicant was served with a charge sheet dated 10.5.2018 with statement of imputation of misbehaviour and misconduct [Annexure-A/1], which is impugned in the present OA.

The counsel for the applicant submitted that the applicant had submitted her defence statement explaining that she had not committed any misconduct. The report dated 9.9.2016 submitted by Vikash Vaibhav, the then Assistant to IG has not been taken into account by the disciplinary authority. Not only that, the vigilance department had also categorically observed in their report that all the commodities purchased during the applicant's tenure were already handed over to the MPTC, Dumaraon. It is also observed in the said vigilance report that due to circumstances beyond her control, the procedural lapses were found. It is also true that there is no missing of any commodities which were purchased during her tenure at MPTC, Dumaraon. There is no allegation of embezzlement nor any mis-appropriation of fund. On the contrary, all the expenditures occurred for purchase of commodities for setting up new office of MPTC at Dumraon was approved long back, not only that on appointment/posting of Dy. S.P. and Accountant at MPTC, Dumraon, the applicant had immediately issued the order to them to maintain stock register/issue register and proper register for account of MPTC Office at Dumraon as the said officers are responsible to discharge the said duty. Without considering the defence statement and additional explanation submitted time and again by the applicant, the respondents had issued the impugned order.

Vide impugned order dated 28.08.2018 [Annexure-A/2] the Joint Secretary to the Government of Bihar, Patna had informed the applicant that her defence statement dated 18.06.2018 and further explanation vide letter dated 04.07.2018 has not been found satisfactory. Therefore, it was decided to initiate disciplinary proceeding against her and as per the Rule,

Presenting Officer has been appointed. Further, she was ordered to be present before the Disciplinary Authority within ten days.

45. The submissions of the respondents that initiation of disciplinary proceeding will not cause any prejudice to the applicant delinquent and during the disciplinary proceeding, if the applicant is found innocent, in that case her honour shall be vindicated at the earliest possible time and if he/she is guilty should be dealt with promptly according to law.

At this juncture, it is apt to note that, vide order dated 28.08.2018 the respondents at the one hand have rejected the defence statement/explanation submitted by the applicant and on the other hand the Departmental Enquiry Commissioner, GAD, Bihar Patna, vide memo no.683 dated 28.08.2018 sought opinion from the Home Department, Bihar Patna on defence statement submitted by the applicant. It reveals that on 28.08.2018 in fact the Disciplinary Authority had already taken a decision that the explanation submitted by the applicant is not satisfactory and decided to proceed against the applicant, which is contradictory to each other. It also appears that before issuance of impugned order dated 28.08.2018,

The respondents have placed on record the copy of opinion of the Secretary, Home Department dated 06.09.2018 [Annexure-R/5]. The said procedure adopted by the Disciplinary Authority is in violation of principle of natural justice, arbitrary and the impugned order [Annexure-A/2] issued without thorough examination and without any cogent reason.

46. Having noted the aforesaid factual matrix and from careful perusal of the records, it is noticed that the applicant who has been charged for procedural lapses for purchase of commodities for running new Unit of MPTC, Dumaraon appears came to surface in the wake of an audit inspection of Accountant General. The audit report is based on entries being made in stock register at MPTC, Dumaraon pertaining to purchases. The Three Member Committee, who had submitted the report about non existence of items in MPTC, Dumaraon which were purchased during the tenure of the applicant, was admittedly prepared and submitted without consultation of the applicant, in other words behind the back of the applicant. The respondents have taken stand that the said Three Member Committee's report dated 09.10.2015 was not against any individual or applicant rather it was an inspection with regard to stock of MPTC, Dumaraon whereas it is noticed that the respondents had initiated the preliminary inquiry, inquiry and initiation of disciplinary proceeding is based on the very said Three Members Committee's report. This approach of the respondents clearly indicates that the process of conducting inquiry and initiation of departmental proceedings without giving opportunity to the charged officer is arbitrary and suffers from non-application of mind. It is not in dispute that there was virtually no subordinate staff posted at MPTC, Dumaraon for more than 11 months to maintain the relevant register. On their posting immediately the applicant had issued order to the said responsible staff to maintain the register in accordance with rules. The

said letter/order issued by the applicant has been totally ignored by the said Three Member Committee as well as the respondents.

47. Further, the respondents nowhere made out a case that the applicant acted with an intention to misuse her position for her personal benefits.

On one hand, the applicant was ordered by her superior authority to start a new Unit of MPTC, Dumaraon without providing any facility of infrastructure which she successfully completed despite all the difficulties and on the other the applicant is departmentally proceeding against the so called procedural lapses.

The vigilance department had enquired all aspect of the matters closely and suggested that procedural lapses in respect to purchase of commodities for new office set up were bound to happen in the facts and circumstances the applicant has undertaken the task entrusted to her. Although the applicant was not provided any assistance to start MPTC Unit at Dumaraon, she obeyed the order of the department without any protest and established the Unit.

The Disciplinary Authority, without taking into account the report submitted by Shri Vikash Vaibhav, IPS assistant to I.G. Training [Annexure-A/15] and the observation of the vigilance report.

It is further noticed that admittedly, there is neither allegation against the applicant for embezzlement of public money nor any

misappropriation of fund. In fact, she is being blamed for her having spent her own money for Government purchases and getting it reimbursed later.

48. There is no loss of government money as the majority of commodities which were purchased are very much in existence and the same have been handed over to the staff of MPTC, Dumaraon as it is stated in the vigilance report. Even if it is to be accepted that there were some irregularity in the procurement of commodities, it is very clear from the aforesaid discussions made hereinabove, these irregularities do not prima facie appear to be attracting major penalty procedure against any person at that responsible level.

49. This Tribunal is conscious of the limitation of interference in administrative decision including the decision of initiation of disciplinary proceeding as per various pronouncements of Hon'ble Apex Court. At the same time, it is also held by the Hon'ble Apex Court that the Writ Court/Tribunal would be justified if not duty bound to examine the matter and grant relief in appropriate case. The writ court will certainly interfere with disciplinary enquiry or the resultant order which itself vitiated on account of violation of principles of natural justice, as noticed in the present case.

Considering the factual matrix it reveals that the applicant has taken started office of MPTC, Dumraon after obtaining permission in a rented premise where she was residing, and the request of the applicant for providing subordinate staff was only accepted by the higher authorities after more than 10-11 months. During this period, she had purchased

minimum required commodities through the government approved agencies and the expenditures occurred thereon was in fact approved long back in absence of non availability of staff, it was practically not possible to constitute the purchase committee. Even the items purchased by the applicant has been handed over to the MPTC, Dumraon.

In absence of any Dy. S.P. or Accountant it was not possible for her to maintain the stock register and other related formalities for the purpose of maintaining account as per the provision of Rule 1045 of Police Manual. The said responsibility was of the Accountant and Dy. S.P., but admittedly not the IPS officer in the present case, the Commandant-cum-Principal, MPTC, Dumraon. The entire enquiry based on the Three Member Committee report which was prepared without considering the fact that items purchased were in fact in custody of the applicant which was not handed over to any successor at the time of applicant's transfer since there was no one to take the delivery of the said commodities.

There is no allegation embezzlement or misappropriation of fund and the procedural lapses occurred during the tenure of applicant as Principal, MPTC was due to circumstances, which was in fact due to failure on the part of the State Authorities for not supplying the infrastructure facilities nor any subordinate staff at the relevant time. The impugned orders at Annexure-A/1 and A/2 are found to be in violation of principle of natural justice as also against the existing rules for maintenance of account. Under the Rules, the applicant was not under any statutory obligation to maintain the stock register or to write any books of accounts. The entire process of

issuance of impugned orders are found to be contrary to the vigilance report, hence the same is vitiated.

50. In the light of overall discussions, and the material available on record we are of the opinion that entire process of enquiry and initiation of departmental proceedings against the applicant is without any proper verification of the record and application of mind, The allegations levelled against the applicant are contrary to the facts and charges are obviously very vague. Initiating a major penalty procedure in such a case of obvious minor irregularities raises suspicion about prejudice on the part of the concerned authority. In the case of State of Punjab vs. Ram Singh, AIR 1992 SCW 2595 in which it is held that – *“The word misconduct do not capable of precise definition, its reflection received its connotation from the context, the delinquency in its performance and its effect on discipline and the nature of duty. It may involve moral turpitude, it must be improper or wrong behaviour, unlawful behaviour, wilful character, forbidden act, or transgression of established and definite rule of action or code of conduct, but not mere error of judgment, carelessness or negligence in performance of duty, the act complained of bears forbidden quality of character. Its ambit has to be construed with reference to the subject-matter and the context wherein the terms occurs, regard being had to the scope of the statute and the public purpose it seeks to serve.”* Further in the case of Ministry of Defence vs. Prabhash Chandra Mirdha [supra] it is held that the Court/Tribunal may quash the charge-sheet after considering the gravity of the charge and all relevant factors involved in the case weighing all the facts both for and against the delinquent employee and must reach the

conclusion which is just and proper in the circumstances. In the present case as discussed hereinabove, and considering the gravity of alleged misconduct and all relevant facts and circumstances of the case, the charges levelled does not sustain in the eye of law. Thus, the proceedings initiated against the applicant are thereby vitiated on the ground of violation of principle of natural justice as also arbitrary and contrary to the material on record.

51. Under the circumstances, we have no other option but to interfere with the decision of the respondents in issuance of the charge-sheet and in rejecting the defence statement of the applicant. Accordingly, Annexure-A/1 dated 10.05.2018 and Annexure - A/2 dated 28.08.2018 are hereby quashed and set aside.

52. The OA is accordingly disposed of. MAs are also disposed of.
No costs.

[Dinesh Sharma]
Administrative Member

[Jayesh V. Bhairavia]
Judicial Member

Pkl/mps.