

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

**W.P. (S) No. 857 of 2011**

Ratan Singh, son of Sri Hiranman Singh,  
Resident of village Manjhi Para, P.O &  
P.S. Kundla, District Chatra (Jharkhand) .....

.....Petitioner

**Versus**

1. State of Jharkhand through the Principal  
Secretary, Home Department, Government  
Jharkhand, Project Bhawan, Dhurwa, P.O  
& P.S. Dhurwa, Dist Ranchi
2. Director General of Police, Project Bhawan,  
Dhurwa, P.O & P.S. Dhurwa, Dist Ranchi
3. Superintendent of Police, Chatra.  
At, P.O & P.S. Chatra, District Chatra .....

..... Respondents

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**CORAM: HON'BLE MR. JUSTICE PRAMATH PATNAIK**

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For the Petitioner : M/s Rajiv Kumar & Lalit Kumar Singh, Adv.  
For the Respondents : J.C. to A.G.

**C.A.V. on 23.01.2015.**

**Pronounced on 6 /02 /2015**

**Per Pramath Patnaik,J:**

In the accompanied writ application, the petitioner has sought for issuance of a writ, in the nature of certiorari, for quashing order dated 29.09.2007 passed by respondent no.3-Superintendent of Police, Chatra, inter-alia, on the ground that copy of the enquiry report was not supplied to him before dismissing him from service as Constable on the ground of irregularity in the appointment notwithstanding the fact that he was selected on the ground of fighting against naxals and his case was recommended for Presidential medal for his acclaimed performance as a Constable.

2. The factual matrix, as has been delineated in the writ application, in a nutshell is that:

On the fateful day, i.e. on 07.02.1996, when the extremists attacked police picket at Kundla Police Station, Chatra, the petitioner

who had a licensed rifle bravely fought with the extremists, drove them away and helped in recovery of arms and ammunitions. This act of gallantry/bravery was applauded by the then Superintendent of Police, Chatra and he recommended for his appointment as a Constable, vide Memo No. 355/ Ra Ka dated 16.02.1996, consequent thereupon, the petitioner was appointed on the post of constable vide Memo No. 179 dated 02.03.1996, under Annexure 2 to the writ application, by Deputy Inspector General of Police, North Chhotanagpur Range, Hazaribagh. Office Order No. 289/1996, under Annexure 1 to the writ application, was issued to that effect wherein date of appointment of the petitioner is shown as 19.03.1996. Thereafter, for another naxal encounter dated 20.01.2002, in which, the petitioner along with other police personnel had shown their gallantry, the then Superintendent of Police, Chatra vide letter dated 15.03.2002, under Annexure 3 to the writ application, recommended for Presidential Police Medal. Learned counsel for the petitioner has also annexed a letter dated 19.08.2003, under Annexure 4 to the writ application, wherein an opinion has been given to boost up the morale of the brave villagers so that they may be inducted in government services according to their ability. Learned counsel for the petitioner has also annexed letter dated 05.02.2004, under Annexure 5 to the writ application, wherein list of persons have been given, who have been selected under special circumstances, to show that his case also stands on similar footing. It is further contended that after rendering about more than eight years of service without any rhyme and reason charge was framed on 27.07.2004, under Annexure 6 to the writ application and show cause notice was issued as to why the services of

the petitioner be not terminated because the appointment of the petitioner was made without advertisement and without following the general selection procedure. Pursuant thereto the petitioner submitted his reply dated 03.08.2004, which is at Annexure 9 to the supplementary affidavit. Thereafter, vide impugned order dated 29.09.2007, under Annexue-10 to the supplementary affidavit, the petitioner has been dismissed from services by the then Superintendent of Police, Chatra (respondent no.3).

3. Heard learned counsel for the petitioner as well as learned counsel for the respondents.

4. Learned counsel for the respondents has filed counter affidavit on behalf of respondent no.3, repelling the contentions raised in the writ application. It has been stated in the counter affidavit that the petitioner was removed from service after proper departmental proceeding no. 31/04 dated 29.09.2007, which is annexure-A to the counter affidavit. It has been submitted in the counter affidavit that the persons whose appointment was not found in accordance with law and if the said illegality is detected can be terminated and dismissed by the district head official. In the instant case, appointment of the petitioner has not been done by following all the formalities and hence, the said appointment is not a valid appointment. It is further contended that since the said illegality was detected by Superintendent of Police, Chatra (respondent no.3), he has rightly dismissed the petitioner from his services after proper departmental proceeding. It has been further stated in the counter affidavit that the appointment of the petitioner is against the provisions of Police Manual. The departmental proceeding

No. 31/04 was initiated and Sri Arvind Kumar Chaudhary was appointed as conducting (Enquiry) officer, who in his report found that the recruitment of the petitioner was not in accordance with Rule 663 of the Police Manual and the provisions of the recruitment was not followed in the case of the petitioner. It is further stated that after submission of the report of the conducting officer the petitioner was asked to submit his last explanation, therefore, the plea of the petitioner that perfunctory departmental proceeding was done is not sustainable. It is submitted in the counter affidavit that the instant writ application is fit to be dismissed being devoid of merit.

5.(a) Learned counsel for the petitioner has strenuously urged before this Court that in the departmental proceeding a serious prejudice has been caused to him for non-supply of the enquiry report as he could not take defence and entire departmental proceeding has been vitiated due to non-supply of enquiry report rendering the impugned order of discharge from services legally unsustainable.

(b) The second limb of argument of the learned counsel for the petitioner is that similar appointment in similar situations have been made by the order of the Inspector General of Police in Memo No.83/Prasikshan pra-19-38-2003 dated 05.02.2004, whereby 35 villagers, who helped and assisted the police force in ambush in the operation against the extremists; they are continuing in service and the petitioner has been subjected to hostile discrimination.

(c) The third ground of the learned counsel for the petitioner is that the impugned order is violative of Article 311 (1) of the Constitution of India which mandates that no person shall be dismissed by a person

holding the post inferior to the post by which such person has been appointed. Though the Superintendent of Police is the appointing authority in terms of Police Manual but the law has made distinction of appointing authority and the persons who had actually appointed. The appointing authority, if inferior to the rank of a person who has actually appointed then the disciplinary authority shall be the person who has actually appointed and not the appointing authority by virtue of the Rule. In the instant case, the appointment of the petitioner has been made by the Deputy Inspector General of Police and the impugned order of termination/dismissal has been passed by the Superintendent of Police.

6. To substantiate his argument, the learned counsel for the petitioner relied upon the decisions rendered in the case of *Gurmukh Singh Vs. Union of India* as reported in *AIR 1963 Punjab 370* ; *Dharam Dev Mehta Vs. Union of India and Others* as reported in *AIR 1980 SC 557*, and *Krishna Kumar Vs. The Divisional Assistant Electrical Engineer, Central Railway and Others* as reported in *AIR 1979 SC 1912*, wherein it has been held that dismissal of a civil servant by an authority inferior to the rank of appointing authority in exercising the power violates Article 311(1) of the Constitution of India.

7. After having gone through the writ application, supplementary affidavits and counter affidavit filed by the respondents and the decisions cited by the learned counsel for the petitioner, the impugned order of dismissal dated 29.09.2007 (Annexue-10 to the supplementary affidavit) is not sustainable, due to following facts, reasons and judicial pronouncements:

(I) Admittedly, the petitioner was appointed by the Deputy Inspector General of Police, Jharkhand (Annexure-2) and the impugned order of discharge/dismissal from service has been passed by Superintendent of Police, Chatra - respondent no. 3. Article 311(1) of the Constitution of India, mandates that no person shall be dismissed by an authority subordinate to that by which he was appointed. Since the order of dismissal has been passed by the Superintendent of Police, who is admittedly subordinate to the appointing authority i.e. Deputy Inspector General of Police, therefore, the impugned order violates the mandates of Article 311(1) of the Constitution of India, as has been decided by the decisions referred hereinabove.

(II) The contentions of the petitioner that in similar situations 35 persons have been appointed and are continuing in service whereas the petitioner has been singled out by the impugned order of termination thereby the petitioner has been subjected to hostile discrimination, which is violative of Article 14 and 16 of the Constitution of India.

(III) Annexure 3 to the writ application reveals that after rendering about six years of service, the then Superintendent of Police, Chatra vide letter 15.03.2002 has recommended the case of the petitioner to the Director General of Police for awarding him Presidential Medal for the gallantry and valour shown in naxal encounter. Even though, very initial appointment of the petitioner was not in accordance with Police Manual Rules but by dint of his gallantry and valour the petitioner was appointed way back in the

year 1996. No omissions or commissions or misconduct has been committed by the petitioner after rendering about more than eleven years of unblemished service career and was under legitimate expectations to be regularized in service. But to the utter dismay and consternation, a perfunctory departmental proceeding was initiated. Even otherwise, there has been procedural irregularity in the departmental proceeding due to non-supply of the enquiry report before infliction of major punishment, hence, the entire proceeding has also been vitiated due to non-supply of enquiry report, which caused gross prejudice to the petitioner. If the impugned order of discharge from service (Annexure-10) is allowed to sustain, it would accentuate the sufferings of petitioner.

8. For the reasons aforesaid, the impugned order of dismissal/discharge, as contained in order dated 29.09.2007 passed by respondent no. 3-Superintendent of Police, Chatra, under Annexure 10 of the writ application, cannot be upheld and the same is, accordingly, set aside and the respondents are directed to reinstate the petitioner in services forthwith and on his reinstatement petitioner shall be entitled to all consequential benefits.

9. The writ petition, is thus, allowed with the aforesaid observations and directions, but without any order as to costs.

**(Pramath Patnaik, J.)**

Saket/-

N.A.F.R.