

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(S) No. 1833 of 2026

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Bharat Pathak @ Bharat Kumar Pathak, S/o Siddeshwar Pathak, aged about 42 years, R/o Asni, P.S. Udwant Nagar, P.O. Jatipur, District-Bhojpur, Bihar.

.... **Petitioner(s)**

-VERSUS-

1. The State of Jharkhand, through the Secretary, Department of Home, Jail and Disaster Management, situated at 2nd Floor, Project Bhawan, Dhurwa, P.O. & P.S. Dhurwa, District-Ranchi, Jharkhand.
2. Director General of Police, Jharkhand, Police Headquarters, DPRD building, H.E.C., Dhurwa, P.O. & P.S. Dhurwa, District-Ranchi, Jharkhand.
3. The Deputy Inspector General of Police, Jharkhand Armed Forest Officers' Colony, Doranda, P.O. & P.S. Doranda, District-Ranchi, Jharkhand.
4. Commandant, Jharkhand Armed Police-10, Ranchi, At-Hotwar, P.O.-Hotwar, P.S. Sadar, District-Ranchi.
5. Commandant, Jharkhand Armed Police-9, Sahibganj, At-Sahibganj, P.O.-Sahibganj, P.S. Sahibganj, District-Sahibganj.

.....**Respondent(s)**

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CORAM: **HON'BLE MR. JUSTICE DEEPAK ROSHAN**

For the Petitioner(s) : Mr. Shresth Gautam, Adv
Mr. Shailesh Poddar, Adv
Mr. Shashank Shekhar No.3, Adv
For the Respondent (s) : Ms. Sonal Tiwary, A.C. to A.G.
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4/09.06.2026

1. Heard learned counsel for the parties.
2. The present writ application has been filed with the following prayers:

A. Issue an appropriate writ, or order, direction to set aside/quash memo no. ज्ञापांक-257/ गो० दिनांक-31.12.2024 (**Annexure 9**), memo ज्ञापांक - 84/ र०का०दिनांक- 14.01.2025 (**Annexure 10**), and memo no. ज्ञापांक- 786 दिनांक- 04.12.2025 (**Annexure 11**), wherein the Petitioner was

dismissed from services and his appeal against the dismissal was also rejected; and

B. Issue an appropriate writ, or order, direction to the Respondents to reinstate the Petitioner with back wages to the position of Constable at Jharkhand Armed Police.

Factual Matrix & Submission of the Petitioner

3. Facts, as narrated in the writ application, are as follows:

The Petitioner was working as a constable at Jharkhand Armed Police, having joined the services in the year 2007. A complaint was made by *Mrs. Jyoti Kumari* against the present Petitioner to the Commandant, Jharkhand Armed Forces – 10, Ranchi, alleging that the Petitioner, while being in service, performed marriage with the Complainant and established a physical relationship with her between 04.10.2019 to 25.04.2023. She alleged that the Petitioner later refused to keep her due to which her life was ruined and hence she filed the complaint before the Commandant, JAP, Ranchi.

A preliminary enquiry was done in furtherance to which a report was submitted on 23.08.2023 wherein it was stated that both the Petitioner and the complainant were married and had children, but still they both were consensually living as husband and wife at various hotels and rental homes after having met online. It was further stated that due to societal embarrassment when the Petitioner denied the relationship with the Complainant, they started arguing, and

pursuant to the same, a case was lodged before the department as well as before the police bearing Chutia PS Case No. 203/2023 dated 16.09.2023 u/s 417/376(2)(n) IPC.

The Respondent authority (Respondent No. 4) vide letter dated 02.09.2023, called upon an explanation from the Petitioner in regard to the present matter, giving only two days to submit his reply, i.e. by 04.09.2023. The Petitioner was however, suspended from service from 08.09.2023 on general living cost allowance owing to the dissatisfactory reply from the Petitioner vide letter dated 08.09.2020.

Thereafter, a departmental proceeding was initiated against the petitioner upon issuance of a formal charge sheet against the Petitioner on 12.09.2023 on the selfsame charge. Thereafter, the enquiry was conducted in the departmental proceedings by the Inquiring officer who submitted his report dated 23.12.2023. In the said enquiry report, 4 witnesses were examined, namely *Jon Erica Kujur, Devanti Devi, Laxman Kumar Singh* and the Complainant, namely *Jyoti Kumari*.

4. The witnesses namely *Jon Erica Kujur* and *Devanti Devi* had conducted the preliminary enquiry. They were cross-examined by the Petitioner, wherein it has clearly surfaced that, save and except from the statement of the Complainant, there was nothing on record to prove the allegations against the Petitioner. It had further come in their cross-examination that

the complainant herself didn't provide any documentary evidence to prove any of the allegations. She in fact did not even let her husband be examined as a witness in the instant case.

The Petitioner couldn't cross-examine the complainant for the reason that he was mentally disturbed and that the criminal case was already pending before the competent court. The same is also reflected in the departmental proceedings.

5. The enquiry report so submitted itself revealed that the same was based solely on the findings of the preliminary enquiry; whereas the two witnesses who had proved the preliminary enquiry in course of cross-examination had deposed as under :

“3. प्रश्न जाँच के क्रम में आवेदिका ज्योति कुमारी का कोई पहचान पत्र आवासीय प्रमाण पत्र आवेदन के साथ संलग्न किया गया है।

उत्तर- नहीं था।

4. प्रश्न-ज्योति कुमारी के साथ राँची में किराये के मकान में 03 तीन माह तक रिलेशनशिप में रहने का आरोप लगाया गया है, जिसका कोई प्रमाण मकान मालिक का बयान या मेरा पहचान मकान में रहने का क्या प्रमाण है।

उत्तर- प्रमाण नहीं है ज्योति कुमारी के बयान पर अंकित किया गया है।

5. प्रश्न- ज्योति कुमारी के साथ मेरा रिलेशनशिप में रहने तथा शादी की बात हावड़ा के नया मंदिर में होने की बात लिखी गई है, क्या इसका कोई प्रमाण-फोटो या गवाह है।

उत्तर- प्रमाण नहीं है ज्योति कुमारी अपने बयान में ये बात कही है, इसका कोई प्रमाण नहीं है।

7. प्रश्न- क्या राँची स्थित होटल का सी०सी०टी०वी० फुटेज का जाँच किया गया था।

उत्तर- आरोप से संबंधित नहीं है।”

In the enquiry report, the stand of the petitioner was merely reproduced and not even discussed and as such, the enquiry report itself was a non-speaking report which had

relied solely on the two witnesses of the preliminary enquiry who had themselves disclosed that their report was solely based on the statement of the complainant and no other verification thereof was done by them.

Thereafter, the Petitioner was issued a second show cause notice dated 30.12.2023, providing a copy of the enquiry report. Pursuant to which the Petitioner filed his reply before the Respondent Authority on 29.01.2024.

The Petitioner thereafter was transferred to Sahibganj, where he rendered his duty with the Jharkhand Armed Police – 9, Sahibganj Battalion.

6. Thereupon, an order of removal of services of the Petitioner was passed under Police Manual Rule 824(b) vide order dated 31.12.2024 on a ground which was never a part of the enquiry/charge as framed against the petitioner i.e. an FIR lodged against the Petitioner u/s 376(2)(n) which is a serious offence. It was further directed that the Petitioner will not receive any other payment except for 52 days payment made during his suspension i.e. from 08.09.23 to 26.09.23 and from 03.11.23 to 05.12.2023. It was also directed that the 37-day period between 27.09.23 to 02.11.23 will be adjusted as extraordinary leave.

The petitioner has alleged that said order has been passed without considering the evidences on record and completely disproportionate.

Thereafter, on the above-mentioned order dated 31.12.24, the sequential order dated 14.01.2025 bearing Anukramik Baladesh Sankhya No. 42/2025 was passed against the Petitioner by Commandant, Jharkhand Armed Police-9, Sahibganj. Despite the removal of the Petitioner, he was called for duty, which the Petitioner did from 1st January 2025 till 7th January 2025. He was not even paid for the said duty that he performed for those days.

Thereafter, the petitioner has filed an appeal against the memos ordering his removal from service before the Deputy Inspector General of Police, but the same was not allowed, vide memo no. झापांक- 786 दिनांक-04.12.2025 issued by the office of Deputy Inspector General of Police, Jharkhand Armed Police, Ranchi. Petitioner's appeal was rejected on the ground that since the Petitioner indulged in the alleged act despite being married, he is guilty of the offence.

The Petitioner thereafter made a representation against the said order before the Director General of Police -cum- Inspector General of Police, Jharkhand Police, vide an

application dated 27.01.2025. However, Petitioner has not received any response. Hence, this writ application.

7. The State Government has filed an affidavit in the present matter and has merely reiterated its stand taken in the enquiry report and has argued that they have complied with the principles of natural justice.

8. Ld. Counsel for the Petitioner submits that the impugned order is being challenged on three separate grounds:

A.The penalty is based on a charge which was never a part of the charge sheet issued to the petitioner/ delinquent.

B.The enquiry is perverse as well as non-speaking as well as the orders of penalties are also non-speaking, not addressing any of the grounds so taken by the petitioner/ delinquent.

C.Adultery, in light of the judgment of the Hon'ble Supreme Court in the case of *Joseph Shine*, is no longer a criminal act.

9. Having heard the learned counsel for the parties and upon perusal of the materials available on record, it transpires that the Petitioner working in the Jharkhand Armed Police has been awarded punishment of dismissal from services for a charge for having a relationship with a married woman despite being himself married and hence the same amounting to indiscipline and damaging the reputation of the police department.

10. However, the Petitioner was awarded Punishment for altogether a different reason, which is evident from Annexure 9 at page 71 of the main writ petition. The final order states that since there is an FIR lodged u/s 376(2)(n) of IPC before the Chutia PS, the same amounts to a serious offence and hence he was dismissed from the services. Thereafter, a consequential order was passed, which is at Annexure-10 and the it also records the same finding. Hence, it is evident that both the impugned orders are passed on a charge that was never framed against the Petitioner, thereby causing severe prejudice, violating principles of natural justice and is illegal in the eyes of law.

11. It is a settled proposition under the service jurisprudence that an order of penalty can be passed only on the basis of specific charges which are framed against a delinquent. Reference may be made to the judgment of the Hon'ble Supreme Court in the case of **Punjab National Bank Ltd. v. All India Punjab National Bank Employees' Federation, AIR 1960 SC 160**, wherein it has been held as under:

“27. There is another principle which has to be borne in mind when the tribunal deals with an industrial dispute arising from the dismissal of an employee. We have already pointed out that before an employer can dismiss his employee he has to hold a proper enquiry into the alleged misconduct of the employee and that such an enquiry must always begin with the supply of a specific charge-sheet to the employee. In Lakshmi

*Devi Sugar Mills, Ltd. [(1934) ILR XIII Pat 268] it **has been held by this Court that in dealing with the merits of the dismissal of an employee the employer would be confined to the charge-sheet given by him to his employee** when an enquiry was held into his conduct. It would not be open to the employer to add any further charges against the employee and the case would have to be considered on the original charge-sheet as it was framed. It is significant that in the case of *Lakshmi Devi Sugar Mills, Ltd. [(1934) ILR XIII Pat 268]*, this Court was apparently inclined to take the view that the additional acts of insubordination on which the appellant-mills wanted to rely would have justified the employee's dismissal; but even so it was not allowed to raise that plea because the said plea had not been included in the original charge-sheet. It, therefore, follows that where a proper enquiry has been held by the employer and findings are recorded against the employee that the principles laid down by this court in the case of *Indian Iron & Steel Co. Ltd. [(1958) SCR 667]* would be applicable; and in applying the said principles the employer **would be confined to the grounds set out by him in his charge-sheet against the employee.**”*

(emphasis supplied)

12. Similar view was also taken in the case of ***Remington Rand of India Ltd. v. Tahir Ali Saifi (1976) 3 SCC 69.***

13. Furthermore, it appears that both the impugned orders as well as the Appellate Authority order are also bad in law for the reason that they are non-speaking orders as they fail to disclose proper reasons and are passed in a mechanical manner without even considering the reply of the Petitioner. The Hon'ble Apex Court in ***ORYX Fisheries Private Limited Vs. Union of India (UOI) and Ors. reported in (2010) 13 SCC 427*** has held that:

“36. The appellant gave a reply to the show cause notice but in the order of the third respondent by which registration certificate of the appellant was cancelled, no reference was made to the reply of the appellant, except saying that it is not

satisfactory. The cancellation order is totally a non-speaking one.”

14. Nowhere does the impugned order mention any proper consideration of the reply of the Petitioner, and are passed on the sole ground that there is an FIR against the Petitioner. Whereas a mere perusal of the charge sheet clarifies that the same was never a charge as against the petitioner.

15. This Court further finds that the enquiry report attached as Annexure 6 at page 37, itself discloses that, except for the statement of the complainant, there was no documentary or independent evidence establishing the allegations. The investigating witnesses admitted during cross-examination that the complainant had not produced any material to prove the alleged marriage. Further, no CCTV camera of the alleged hotel was examined and there was no proof of the Petitioner staying at the rented house as alleged by the private complainant. Despite such evidentiary deficiencies, in view of this Court, the disciplinary authority proceeded to impose the extreme and disproportionate penalty of removal from service, inasmuch as, the impugned orders suffer from non-application of mind. Neither the disciplinary authority; nor the appellate authority, has recorded cogent reasons demonstrating how the charges were proved on the basis of reliable evidence. The authorities appear to have been

influenced merely by the nature of the allegations; rather than by legally admissible evidence.

16. Further, it is pertinent to note that the offence of adultery has already been struck down by the Hon'ble Supreme Court in ***Joseph Shine vs Union of India***, reported in **(2019) 3 SCC 39**, wherein it has been held that the offence of adultery is no more a crime. Such a provision cannot be considered to be a beneficial legislation covered by Article 15(3) of the Constitution.

17. In considered view of the Court, the Respondent authorities have failed to consider that the present case has been lodged by the disgruntled complainant, who is only trying to harass the Petitioner by filing a false case and blackmailing him. The present case does not fall within the definition of 'moral turpitude', which is a very subjective term and cannot be left to the whims and fancies of the Respondent authorities who can use it without any judicial application of mind.

18. The impugned action is, therefore, arbitrary, disproportionate and violative of Articles 14 and 21 of the Constitution of India, and cannot be sustained in the eyes of law. Consequently, the impugned orders dated 31.12.2024, 14.01.2025 and 04.12.2025, wherein the Petitioner was dismissed from services and his appeal against the dismissal was also rejected, are hereby, quashed and set aside.

19. The respondents are directed to reinstate the petitioner with back wages to the post of Constable at Jharkhand Armed Police and extend all consequential service benefits.

20. Accordingly, the instant writ application stands allowed. Pending I.A., if any, also stands disposed of.

(Deepak Roshan, J)

09.06.2026

Amardeep/
AFR

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