

## Md. Azimullah Khan Vs State of Bihar and Others

**Court:** Patna High Court

**Date of Decision:** Aug. 18, 1998

**Acts Referred:** Penal Code, 1860 (IPC) â€” Section 120B, 406, 407, 420, 467

**Citation:** (1999) 1 BLJR 443

**Hon'ble Judges:** R.A. Sharma, J; A.K. Prasad, J

**Bench:** Division Bench

**Final Decision:** Dismissed

### Judgement

@JUDGMENTTAG-ORDER

1. Being aggrieved by an order of suspension dated 26.7.1996, the petitioner appellant, who claims to be a constable in the Excise Department of

the Govt. of Bihar, has filed C.W.J.C. No. 996 of 1997 (R). The writ petition having been dismissed by the learned Single Judge vide judgment

dated 31.11.1997, he has filed this appeal under Clause 10 of the Letters Patent challenging the said Judgments.

2.The learned Counsel for the appellant has made three submissions in support of this appeal, namely, (i) the order of impugned suspension has not

been passed by a competent authority, inasmuch as it was passed by the Additional Secretary, Excise, Govt. of Bihar, Patna, and not by the

appointing authority or the Governor, (ii) no subsistence allowance is being paid to the appellant in accordance with the relevant rules, and (iii) the

learned Single Judge while dismissing the writ petition has erred in directing for conclusion of the departmental proceeding against the appellant

expeditiously, inasmuch as no such proceeding is pending against him.

3. The appellant was initially suspended vide order dated 29.9.1995 on the ground that he has shown less recovery of wine seized during the raid.

Against the said order he filed C.W.J.C. No. 1842 of 1996 (R), which was disposed of on 11.10.1996 directing the respondents therein to

conclude the enquiry within four months, failing which the suspension order shall stand revoked after the expiry of the said period. As the enquiry

could not be concluded within the period specified by this Court. the order of suspension referred to above stood revoked. In the meantime

criminal case has been launched against the appellant and others for which the Govt. has also granted sanction. The appellant was suspended again

on 26.7.1996, pending the original case under Sections 406, 407, 420, 467, 468, 471 and 120B of the Indian Penal Code.

4. Perusal of the impugned order clearly indicates that it has been passed by the State Government and has been signed by the Additional

Secretary on behalf of the Govt. The learned Counsel submits that the Bihar Govt. has no power to suspend the appellant. In this connection he

has invited the attention of the Court to Rule 3-A of the Bihar and Orissa Subordinate Services Discipline and Appeal) Rules, 1933 (hereinafter

referred to as the Rules), which, in so far as it is relevant, is reproduced below-

3-A(1) The appointing authority or any authority which it is subordinate or the Governor, by general or special order, may place a Government

servant under suspension-

(a) where a disciplinary proceeding against him is contemplated or is pending; or

(b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial.

5. According to the said rule a Govt. Servant can be suspended by the appointing authority or by an authority to which the appointing authority is

subordinate or by the Governor. The learned Counsel for the appellant has stated that the Excise Commissioner is the appointing authority of the

appellant. If that is so the Bihar Government is the authority to which appointing authority is subordinate. Therefore, the Government is quite

competent to pass the suspension order. In this connection reference may be made to *Kamta Prasad Singh v. The State of Bihar and Ors.* 1987

PLJR 1042, wherein while construing the identical provision as contained in Rule 49-A of the Civil Services (Classification, Control and Appeal)

Rules, 1930, a Division Bench of this Court has held that the authority to which the appointing authority is subordinate is quite competent to pass

the order of suspension.

6. In the alternative, the learned Counsel submits that the impugned order has not been passed by the State Government, but has been passed by

the Additional Secretary to the Govt. of Bihar. This submission is devoid of merit. The Bihar Govt. is not a natural person. It has to act through its

officers. Rules of business have been framed by the Governor, according to which the orders of the Bihar Government have to be passed by the

officers/persons to whom the power has been delegated/conferred. In this case the Additional Secretary has passed the order acting for and on

behalf of the Bihar Govt. The said order has to be presumed to be valid unless proved otherwise. It has not been stated in the writ petition that

Rules of business do not empower and authorize the Additional Secretary to the Govt. to pass such order. This submission is, therefore, rejected.

7. As regard the second submission, the order, itself shows that the appellant will be paid the subsistence allowance. He is, therefore, entitled to

receive the subsistence allowance in accordance with law. If such amount is not paid to him, it will be open to the appellant to make representation

in this regard to the appropriate authority and if such a representation is made and on enquiry it is found that the subsistence allowance has either

not been paid to or what has been paid is less than the amount prescribed by the rules, the concerned authority shall make the payment of arrears

of the subsistence allowance to him within a period of two months from the date of production of the certified copy of this judgment.

8. With regard to the third submission, we may observe that the learned Single Judge was not justified to direct for conclusion of the departmental

proceeding initiated against the appellant expeditiously, because no such enquiry was initiated by order dated 26.7.1996 or by any other order.

The appellant has been suspended on account of pendency of the criminal case under Rule 3-A(1)(b) of the Rules. The appellant, therefore, has to

remain under suspension during the trial of the criminal case. If the appellant feels that the criminal trial is being unduly delayed without there being

any fault on his part, it is open to him to move the competent authority under Sub-rule (5) of Rule 3-A for revocation of the order of suspension. If

such a representation is made, the concerned authority shall decide the same expeditiously in accordance with law.

9. For the reasons as above, this appeal lacks merit and it is, accordingly, dismissed.