

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.21445 of 2013**

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Ram Babu Son of Sri Ram Nawmi Ram Resident of Village - Dighwalia, Post Office - Dighwalia, Police Station - Raghunathpur, District - Siwan, at present posted on the post of Senior Deputy Collector, Nalanda at Biharsharif, Police Station - Biharsharif, District - Nalanda

.... .... Petitioner

Versus

1. The State of Bihar
2. The Chief Secretary, Government of Bihar, Patna
3. The Principal Secretary, General Administration Department, Government of Bihar, Patna
4. The Principal Secretary, Apada Prabandhan (Disaster Management) Bibhag, Bihar, Patna
5. The Principal Secretary, Rural Development Department, Government of Bihar, Patna
6. The Under Secretary, General Administration Department, Government of Bihar, Patna
7. The Joint Secretary, General Administration Department, Government of Bihar, Patna
8. The Deputy Secretary, General Administration Department, Government of Bihar, Patna
9. The Divisional Commissioner, Darbhanga
10. The Departmental Enquiry Commissioner, General Administration Department, Bihar, Patna
11. The District Magistrate, Madhubani, District - Madhubani

.... .... Respondents

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**Appearance:**

For the Petitioner : Mr. Siya Ram Shahi.  
Mr. Indu Bhushan, Advocates  
For the Respondent : Mr. Kameshwar Kumar, GP 17  
Mr. S.K.Ranjan, AC to GP 17

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**CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN**

ORAL JUDGMENT

**Date: 09-10-2017**

The present writ petition has been filed for quashing the order of punishment vide Memo No. 16660 dated 06.12.2012 (Annexure-8) issued under the signature of the Joint Secretary, General Administration Department, Government of Bihar, Patna.



2. Learned counsel for the petitioner confines his submissions only with regard to punishment no. (iii) by which it has been directed that the petitioner would be entitled only to subsistence allowance during the period of suspension and on this basis, his prayer for out of turn hearing and disposal of this case has been accepted, in terms of the mentioning slip filed by him.

3. Learned counsel for the petitioner relies on a Division Bench decision of this Court in the case of Dinesh Prasad vs. State of Bihar and others, 2006(4) PLJR 541 in which it has been held as follows –

*“9. Apart from these questions, so far the main question for which this matter has been referred, is concerned, it appears that for imposing the punishment no. (iii) that the petitioner shall not get anything for the period of suspension save and except the subsistence allowance, the disciplinary authority was required to give separate show cause notice to the delinquent in terms of Rule 97(3) of the Code. This part of the order, therefore, is not permissible in absence of any such notice to the delinquent employee.*

*10. Admittedly, it appears from the materials on record and also from the record produced before us by the State Counsel that no such opportunity was given to the petitioner in terms of Rule 97(3) of the Code. A Bench of this court while considering this question in the case of Pramod Kumar vs. The Champaran Kshetriya Gramin Bank and Ors. reported in 2003(4) PLJR 68 relying upon a decision of this court rendered in the case of Mahabir Prasad vs. State of Bihar reported in 1988 PLJR 82, held that non-observance of the provisions of Rule 97(3) of the Code would amount to violation of the principles of natural justice. The orders impugned on these scores, appear to be violative of the principles of natural justice as referred to above.”*



4. Learned counsel for the respondent appears and has been heard.
5. Having heard learned counsels for the parties and on a consideration of the materials on record, this Court finds merit in the contention of the petitioner. This Court in Dinesh Prasad’s case (supra) has already expressed the view that if the petitioner has to be deprived of his salary during the period of suspension, an opportunity of hearing in this regard is required to be given to him. Learned counsel for the respondents has not been able to point out that such opportunity was granted to the petitioner.
6. In the above circumstances, the impugned order dated 06.12.2012 only to the extent of punishment no. (iii) by which it has been ordered that during the period of suspension, only subsistence allowance would be admissible, is hereby set aside and the matter is remanded to the disciplinary authority to decide the same afresh after grant of appropriate opportunity of hearing to the petitioner, in accordance with law.
7. The writ petition stands disposed of.

(Vikash Jain, J)

Chandran/BT

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