

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.21161 of 2011**

Prakash Parewa Son Of Shri Nanak Chand Parewa Resident Of B-292, 293  
Raghubir Nagar, P.S. Khayala, New Delhi.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, General Administrative Department, Government of Bihar, Patna
2. The Principal Secretary To The Governor Of Bihar, Governor's Secretariat, Raj Bhawan, Patna.
3. The Joint Secretary-Cum-Inquiry Officer, Governor's Secretariat, Raj Bhawan, Patna.
4. The Under Secretary-Cum-Presenting Officer, Governor's Secretariat, Raj Bhawan, Patna.
5. Shri Afjal Ammanullah Son Of Late Nehal Amanullah Resident Of 133, Patliputra Colony, Patna.
6. Shri Sudhir Shrivastava Fathers Name Not Known To The Petitioner Resident Of Himgiri Apartment, West Boring Canal Road, Patna.

... .. Respondent/s

**Appearance :**

|                      |   |                                                        |
|----------------------|---|--------------------------------------------------------|
| For the Petitioner/s | : | Mr. Mrigank Mauli, Sr. Advocate<br>Mr. Saket, Advocate |
| For the Respondent/s | : | Mr. Rana Vikram Singh, Advocate                        |

**CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA**  
**ORAL JUDGMENT**

**Date : 22-01-2024**

Heard Mr. Mrigank Mauli, learned senior counsel for the petitioner assisted by Mr. Sanket and Mr. Rana Vikram Singh, learned counsel appearing on behalf of respondent nos. 2 to 4 as well as learned counsel for the State.

2. The present writ petition has been filed for quashing the order contained in memo no. 1436 dated 10.05.2011 issued under signature of respondent no. 2 and quashing the enquiry report dated 19.04.2011 submitted by respondent no. 3.



3. Earlier, the petitioner has filed C.W.J.C No. 8289 of 2011 for quashing the show cause notice dated 20.04.2011, quashing the enquiry report dated 19.04.2011 and staying the operation of the letter dated 20.04.2011 and when the matter was pending, the petitioner was dismissed from services and the petitioner has filed I.A. No. 4261 of 2011 seeking amendment of the writ petition by addition of prayers in view of the subsequent development. The Hon'ble Court was pleased to hold that in view of the subsequent development the writ petition has become infructuous and was dismissed. But this order does not bar the petitioner from challenging the order in question in a fresh proceeding. Pursuant to the aforesaid direction the present writ petition has been filed.

4. The petitioner was initially appointed on daily wage basis as Personal Assistant to the Governor of Bihar on 04.03.1989. The petitioner was appointed on temporary basis vide order dated 20.04.1989 but due to increased work load in the Delhi Office the petitioner was not able to give his joining on the post of P.A. till 20.06.1989 and the services of the petitioner were considered to be on daily wages till 18.06.1989 on a pay of Rs. 84/-. After that on 23.06.1989 the respondents issued notification for appointment of the petitioner on a



consolidated salary of Rs. 785/- per month. The service of the petitioner was confirmed vide order dated 18.01.1990 passed by the then Governor of Bihar as communicated vide letter dated 01.02.1990 issued by the Deputy Secretary to the Governor, Bihar. The petitioner was promoted to the post of Senior Personal Assistant in the pay scale of Rs. 6,500- Rs. 10,500/- vide office order dated 15.12.2001. Subsequently, vide the office order dated 08.10.2005 the petitioner was promoted to the post of Private Secretary to the Governor in the scale of Rs. 10,000 – Rs. 15,200/-. The petitioner was communicated vide office order dated 29.07.2010 that the Governor has been pleased to release him of his services as the Private Secretary to the Governor and his services were returned to the Government of Bihar. The relieving of the petitioner was done without any notice or prior intimation. Thereafter, the petitioner has submitted his joining in the Cabinet Secretariat Department, Government of Bihar on 02.08.2010 in compliance to the office order dated 29.07.2010. But the joining of the petitioner was not accepted in the Cabinet Secretariat Department, Government of Bihar as he did not belong to the Private Assistant cadre and therefore his services were returned to the Governor's Secretariat vide letter dated 18.08.2010. While the petitioner was waiting for allocation of



work at Governor's Secretariat, all of a sudden he received office order dated 12.10.2010 by which the petitioner was communicated his suspension from service and one Sudhir Srivastava, Joint Secretary, Governor's Secretariat, Patna was appointed as the conducting officer for the departmental proceedings against the petitioner and vide memo no. 4022/G.S. (III) dated 02.11.2010 a Memorandum of Charges was served upon the petitioner containing all together six charges levelled against him. The petitioner immediately on receipt of the memo of charges vide his letter dated 16.11.2010 while pointing out to the conducting officer that all the charges made against him were frivolous, sought for the documents which were proposed to be relied upon by the Department in the proceedings against him. He further requested that in view of the fact that all the relevant documents were not supplied to him along with memo of charge is a clear cut violation of the mandatory provisions of Section 17(4) of the CCA Rules. The request of the petitioner was considered by the conducting officer on the next date of hearing i.e. on 30.11.2010 and in terms of the request made by the petitioner, the presenting officer was directed to supply all the documents relating to the charges to the petitioner and also supply all the additional documents sought for by the petitioner.



In terms of the directions issued by the conducting officer on 30.11.2010 the petitioner vide his letter dated 10.12.2010 submitted a list of documents required by him before the presenting officer. Despite repeated request for supply of all the relevant documents were never supplied to the petitioner.

5. The conducting officer after hearing the parties directed the department to supply the copies of the document within a week and directed the petitioner to file his written statement in defense by 17.10.2011. The next date in the proceeding was fixed as 28.01.2011. The petitioner submitted his written statement of defense on 27.01.2011 along with the written statement a list of documents to be relied upon by the petitioner was annexed as was a list of witnesses proposed to be examined by the petitioner. The petitioner had not been supplied with the required documents. All of a sudden the petitioner has received the letter dated 20.04.2011 issued under the signature of respondent no. 2 whereby he was communicated that the departmental proceeding initiated against him had already concluded, that the Conducting Officer had submitted its report and in view of the report of the Conducting Officer it has been decided that there was no justification to keep the petitioner in service. Thereafter, the petitioner was asked to show cause by



05.05.2011 as to why he should not be dismissed from service. Along with the said letter the report of the Conducting Officer dated 19.04.2011 was also annexed.

6. Learned counsel for the petitioner submits that the provisions of Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 which govern the procedure and conduct of departmental proceedings against government servants and which are applicable to the employees of the Governor's Secretariat. Part VI of the rules provides for the procedure for imposing penalties and rule 17 thereof specifically provides for the procedure to be followed before an order imposing major penalties can be passed against any government servant.

7. Learned counsel for the petitioner further submits that in violation of aforesaid provisions, the impugned order has been passed and even in the proceeding no witnesses were examined and in view of the aforesaid, impugned orders are bad in law.

8. Learned counsel for the petitioner relied upon the paragraph no. 14 of the Hon'ble Apex Court's decision in the case of **Roop Singh Negi vs. Punjab National Bank & Ors** reported in **(2009) 2 SCC 570** which is quoted as herein below:-

*"14. Indisputably, a departmental*



*proceeding is a quasi- judicial proceeding. The enquiry officer performs a quasi judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a find finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence."*

9. Learned counsel for the petitioner further relied upon the several judgments of this Hon'ble Court which are reproduced herein below:-

(i) Paragraph nos. 6 and 7 of the judgment of this Hon'ble Court dated 29.09.2022 passed in **C.W.J.C No. 17133 of 2011** which is as follows:-

*"6. Perusal of the records, it is evident that alleged charges relate back to of the year 1995-1983 whereas the charge memo for the first time was issued on 14.01.2004 and thereafter once again charges were framed on 17.07.2007 by virtue of judicial pronouncement. Apex Court in the case of **State of Andhra Pradesh vs. N. Radhakishan** reported in **1998 (4) SCC 154** held that delay in initiation of inquiry vitiate the inquiry proceedings. The other contention is relating to violation sub-Rule*



*(3) of Rule 17 of Rules 2005. It is to be noted that along with the charge memo, disciplinary authority is required to comply sub Rule (3) of Rule 17 of Rules 2005. Sub Rule 3 reads as under:*

*“(3) Where it is proposed to hold an inquiry against a government servant under this Rule, the disciplinary authority shall draw up or cause to be drawn up-*

*(i) the substance of the imputations of misconduct or misbehaviour as a definite and distinct article of charge*

*(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain-*

*(a) a statement of all relevant facts including any admission or confession made by the Government Servant;*

*(b) a list of such document by which, and a list of such witnesses by whom, the articles of charge are proposed to be sustained.”*

*“7. In other words, disciplinary authority was required to adopt procedure for imposition of major penalties under Rule 17 in framing of article of charges, statement of imputation, list of documents and list of witnesses. Perusal of charge memo dated 17.07.2007, it is evident that it is not supported by list of witnesses. In the result, there is a violation of sub Rule (3) of Rule 17 of Rules 2005.*

(ii) Judgment of this Hon’ble Court dated 04.09.2017 passed in

**C.W.J.C No. 5042 of 2016** which is as follows:-



*“In somewhat similar situation where the Presenting Officer was appointed but he did not choose to lead any evidence this Court in the case of Shankar Dayal vs. State of Bihar arising from CWJC No. 7207 of 2016 has expressed its opinion which applies with all force to the case in hand:*

*"It is not in dispute that though a Presenting Officer was appointed for the enquiry but he did not choose to lead any evidence drawn against the Petitioner or examine the petitioner on the allegation. On the contrary it is the Enquiry Officer who took this duty upon himself. Rule 17 of 'the Rules' draws a complete scheme of the proceeding and details the manner in which a proceeding is to be conducted. Rule 17(14) very eloquently describes as to how a proceeding is to proceed on the date fixed. A mandatory duty has been cast on the Presenting Officer to examine the witnesses and lead evidence collected against a delinquent. This mandatory duty has not been discharged. Instead the Enquiry Officer took this duty upon himself even when such practice has been deprecated by the Courts on different occasions. For ready reference I would refer to a judgment of the Supreme Court reported in (2010) 2 SCC 772 (State of Uttar Pradesh vs. Saroj Kumar Sinha). At paragraph 28 of the judgment the Supreme Court has the following words of advise for the enquiry officer:*

*“28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department / disciplinary authority / Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid*



*procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents."*

(iii) Paragraph nos. 11 and 12 of the judgment of this Hon'ble Court dated 01.09.2023 passed in **C.W.J.C No. 13903 of 2015** which is as follows:-

*"11. Learned counsel for the petitioner submitted that impugned penalty order has not been passed by the disciplinary authority. O.S.D. is not the competent authority and two cited witnesses have not been examined in support of the charge. Further, it is submitted that prime witness-complainant Ripusudan has not been cited as a witness. For non-examination of witnesses, he has cited the decision of **Roop Singh Negi**. On the other hand, learned counsel for the respondent submitted that petitioner has not availed the remedy and the Officer - on - Special Duty has communicated the decision of the General Manager. Such contention is not acceptable for the reasons that competent authority has not passed the order of penalty so as to resort the petitioner to avail the remedy. That apart, there is a dispute as to who is the disciplinary authority. According to the petitioner, disciplinary authority is Board. On the other hand, respondents are of the view that disciplinary authority to the petitioner is General Manager."*

*"12. Be that as it may, the impugned order has been passed by the Officer-on-Special Duty, He is not the competent authority as the extent that he is not the disciplinary authority to the petitioner who is holder of the post of Assistant Electrical*



*Engineer and retired from service. The other contention of the respondent is that General Manager who is the disciplinary authority passed the penalty order and it has been communicated by the O.S.D. The same cannot be accepted in view of the impugned order of penalty to the effect that O.S.D. has proceeded to impose penalty and it is not the communication of any General Manager's order insofar as imposition of penalty. Accordingly, it is rejected. The petitioner has made out a case insofar as non-examination of two witnesses, in not citing the prime witness Ripusudan- complainant. The matter is covered by **Roop Singh Negi** case insofar as non-examination of the witnesses. On all these counts, petitioner has made out a case so as to interfere with the impugned order of penalty dated 31.01.2015 (Annexure-14). Hence, the impugned order dated 31.01.2015 (Annexure-14) stands set aside. The concerned authority is hereby directed to examine pendency of criminal proceedings and settle the petitioner's retiral benefits including arrears of pension and other service benefits which are due to the petitioner during the intervening period from 02.08.2012 to 31.01.2013 and further difference of pay and arrears of pension shall be calculated and disbursed within a period of three months from the date of receipt of this order, if otherwise petitioner is eligible."*

(iv) Judgment of this Hon'ble Court dated 07.12.2022 passed in

**C.W.J.C No. 20047 of 2010.**

10. Learned counsel for the respondent nos. 2 to 6 have referred to the counter affidavit and submits that the petitioner was engaged on daily wages basis in the Governor's Secretariat on 04.03.1989 without production of any kind of



proof of identity or residential certificate or educational qualification in the name of “Prakash Parewa” subsequently got confirmation and promotion in the same name of “Prakash Parewa”. When the respondent authority has directed to produce the educational qualification certificate then the petitioner has produced the educational certificate in the name of “Prakash Chand” and he has also filed an affidavit sworn on 02.09.1993 that he is changing his name from “Prakash Chand” to “Prakash Parewa” and he also took out an advertisement in the news paper on 17.04.1994 that henceforth “Prakash Chand” should be known as “Prakash Parewa”.

11. Learned counsel for the respondents further submits that in the year 1989 the petitioner got employment in the name of Prakash Parewa by playing fraud and misrepresentation as on the day of appointment, no one by the name of Prakash Parewa existed. And accordingly, in contemplation of departmental proceeding which was initiated against the petitioner, the petitioner was suspended vide order dated 12.10.2010 and memo of charges were served upon him vide letter dated 02.11.2010 and he was called upon to submit his show-cause before the enquiry officer within 15 days. The petitioner in response to the memo of charges has demanded certain papers



from the enquiry officer and the same was supplied to the petitioner and the petitioner was asked to file his defence by 28.01.2011. In the departmental proceeding the charges are proved on the basis of admitted written documents/ records and the enquiry officer after considering the show-cause filed on behalf of the petitioner has passed order in the proceeding and accordingly, the second show-cause notice dated 20.04.2011 along with a copy of enquiry report was issued to the petitioner calling upon him to submit show-cause by 05.05.2011 as to why he should not be dismissed from the service for the charges proved against him.

12. Learned counsel for the respondents fairly submits that after gone through the records of the case, it appears that the provisions of Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 have not been followed in the present case. He also submits that after perusal of the original records, it appears that no witnesses were examined.

13. In view of the aforesaid, it is admitted fact that the provisions of Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 have not been followed and even in the proceeding no witnesses were examined.

14. For the reasons discussed above, the entire



proceedings initiated vide memo no. 1436 dated 10.05.2011 and enquiry report dated 19.04.2011 cannot be upheld and are accordingly quashed and set aside.

15. The writ petition stands allowed.

**(Rajesh Kumar Verma, J)**

Vanisha/-

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