IN THE HIGH Court OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 3397 of 2021

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Om Prakash Manjhi, Son of Late Lakshmi Manjhi resident of M.I.G. - 208, Hanuman Nagar, P.S. - Patrakar Nagar, District- Patna, dismissed from Superintending Engineer, Rural Works Department, Work Circle, Siwan.

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Rural Works Department, Government of Bihar, Patna.
3. The Deputy Secretary, Rural Works Department, Government of Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Y. V. Giri, Sr. Advocate Mr. Sumit Kumar Jha, Advocate Ms. Riya Giri, Advocate Mr. Binod Kumar, Advocate
For the Respondent/s	:	Mr. Kumar Alok, SC-7 Mr. Rakesh Kumar, AC to SC-7

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAV JUDGMENT

Date : 09-08-2024

1. The Petitioner has invoked for the Constitutional Writ Jurisdiction under Article 226 of the Constitution of India, praying for the following reliefs:

> *"(i) For setting aside and quashing the order contained in notification issued under memo No. 677 dated 28.02.2020 whereby and whereunder the Petitioner has been dismissed from the service, consequent upon quashing the dismissal order, the Petitioner be reinstated in service and payment of fully salary right from the date when the Petitioner was put under*

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suspension i.e., 13.01.2017 with all consequential benefit be granted.

(ii) Any other relief or reliefs for which the Petitioner be found entitled to."

2. By filing an Interlocutory Application, the Petitioner has prayed for inclusion of the following prayer by way of amendment of the writ petition:

"2(iii) To issue an appropriate writ/order/direction in the nature of certiorari for setting aside the order contained in memo no. 1121 dated 12.06.2020 issued under the signature of Additional Secretary, Rural Work Department, Government of Bihar, by which the review filed by the Petitioner against order of termination dated 28.02.2020 has been rejected without application of mind."

3. The Petitioner was appointed as Assistant Engineer in Rural Works Department, Government of Bihar, Patna. In course of his service, he was promoted to the post of Executive Engineer and finally Superintending Engineer of the said Department. In the year, 2016, he was posted as the Superintending Engineer, Siwan, when a complaint was lodged against him in the Vigilance Investigation Bureau (Vigilance Investigation Bureau), alleging accumulation of disproportionate assets to his known source of income. On the basis of such complaint, Vigilance P. S. Case No. 145 of 2016,

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dated 19th of December, 2016 under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, was registered. Subsequently, vide order dated 13th of January, 2017, issued by the Deputy Secretary, Rural Works Department, Government of Bihar, Patna, the Petitioner was placed under suspension due to institution of Vigilance Case and in contemplation of initiation of departmental proceeding against him.

4. The Petitioner challenged the said order of suspension by filing a writ petition, bearing C.W.J.C. No. 714 of 2017. The said writ petition was, however, subsequently, withdrawn vide order dated 5th of September, 2017. Again, the Petitioner filed another writ petition having registration no., C.W.J.C. No. 1002 of 2017, challenging part of the order dated 13th of January, 2017, whereby and whereunder, the departmental proceeding was initiated and Memorandum of Charge was submitted. The said writ petition was, however, dismissed. Against the order of dismissal of C.W.J.C. No. 1002 of 2017, the Petitioner preferred an Intra-Court Appeal, bearing L.P.A. No. 1668 of 2017. During pendency of the appeal, an enquiry report, dated 14th of September, 2017 was submitted under the signature of the Additional Departmental Enquiry Commissioner, Bihar, by

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which the charges were held to be proved against him. The Petitioner challenged the said order by filing I. A. No. 8717 of 2017 in L.P.A. No. 1668 of 2017. The said LPA was dismissed on 19th of January, 2018. Being aggrieved, the Petitioner preferred Special Leave Petition (Civil) bearing No. 16255 of 2018. The said Special Leave to Appeal was also summarily dismissed. In the meantime, the Petitioner filed reply to the second show-cause notice after charges framed against him were held to have been proved on 15th of October, 2019. Thereafter, by Notification No. 6771, dated 28th of February, 2020, he was dismissed from service.

5. It would not be out of place to mention that the case under Section 13(i)(e) read with Section 13(2) of the Prevention of Corruption Act was instituted against the Petitioner for acquiring disproportionate assets to the tune of Rs. 1,16,98,070/- including that of his wife. As the Petitioner was subjected to criminal proceeding on the ground of huge financial irregularities and acquiring of assets disproportionate to his income, the departmental proceeding was initiated, and finally concluded, holding him guilty for gross misconduct and finally dismissing him from service.

6. It is contended on behalf of the Petitioner that the

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Petitioner requested the Inquiry Officer to serve him with the necessary documents relied upon by the prosecution to prove the charge. The grievance of the Petitioner is that he was not supplied with the required documents necessary for the purpose of his defence in the departmental proceeding. According to the Petitioner, the order of punishment passed by the Disciplinary Authority was in violation of the Principles of Natural Justice, non-consideration of specific defence made by the Petitioner and in violation of Rules 17 and 19 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as “the Bihar CCA Rules, 2005” for short).

7. The order of the Disciplinary Authority was challenged in review under Rule 24 of the Bihar CCA Rules, 2005. The review petition was also rejected vide order dated 12th of January, 2020 by the competent authority.

8. Hence, the instant writ petition.

9. That on 25th of August, 2021, a counter affidavit has been filed on behalf of the Respondent Nos. 2 and 3. It is claimed by the contesting Respondents that the departmental enquiry was conducted, following relevant rules under the Bihar CCA Rules, 2005. The Petitioner submitted his written

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statement on 14th of July, 2017, which was placed before the Additional Departmental Enquiry Commissioner, Government of Bihar. On careful consideration of the Memorandum of Charge, supporting documents and statement of defence, the Additional Member, Board of Revenue-cum-Departmental Enquiry Commissioner held that Charge No. 5A, 5B and 5C were proved against the Petitioner and the enquiry report dated 14th of September, 2017 was placed before the Departmental Authority. During enquiry, it was held by the Inquiry Officer that the properties disproportionate to the source of income of the Petitioner were acquired by him in violation of Letter No. 1752, dated 21st of December, 2012 issued by the General Administration Department, Government of Bihar as well as the provisions contained in the Bihar Government Servants Conduct Rules, 2011. After enquiry report, having been submitted, the Petitioner was directed to submit his second show-cause. However, he did not file any second show-cause at that point of time. On the contrary, he reiterated that relevant documents and requisite papers were not supplied to him. Thus, the contesting Respondents contend that the orders of dismissal from service passed by the Disciplinary Authority and affirmed by the Appellate Authority as well as Reviewing Authority were

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validly passed and there is no reason of interference with the said orders by this Court.

10. The Petitioner has filed a supplementary affidavit, stating, *inter alia*, that the enquiry report, holding the Petitioner guilty, was passed on no evidence and, therefore, the enquiry report and consequent order of dismissal of the Petitioner are liable to be quashed and set aside.

11. Mr. Y. V. Giri, Ld. Senior Counsel appearing on behalf of the Petitioner has assailed the impugned order of termination passed against the Petitioner on the following grounds :-

12. First, no show-cause notice was issued by the appointing authority to the Petitioner before taking a decision of initiation of a departmental proceeding against him. Therefore, the very initiation of departmental proceeding is bad in law.

13. Secondly, the Memorandum of Charge (Prapatra-K) does not contain the name of any witness to prove the departmental charge against the Petitioner and only a letter issued by the Superintendent of Police, Vigilance Investigation Bureau, Bihar bearing no. SR 145/2006/ vigilance – 2943 criminal branch dated 27th December 2016 was proposed to be the documentary evidence against the Petitioner. However, no witness was cited even to prove the aforesaid letter during

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enquiry of the charges levelled against him. Thus, the mandatory Rule 17(3) of the Bihar C.C.A Rules, 2005 was not followed at the time of framing of Memorandum of Charge. Naturally, the Petitioner did not get any scope to cross-examine the witnesses on behalf of the prosecution to rebut charges levelled against him in support of his defence.

14. Thirdly, it is urged by the Learned Senior Counsel on behalf of the Petitioner that the Inquiry Officer only reiterated the case of the Vigilance Investigation Bureau without any objective satisfaction as to whether the allegation of disproportionate assets to the Petitioner's known source of income was established on the basis of preponderance of probability or not.

15. Fourthly, Mr. Giri has urged that Rule 17 of the Bihar C.C.A. Rules, 2005 was blatantly violated during enquiry against the Petitioner. Specifically Rules 17(3) and 17(4) read with Rule 17(11)(2) clearly provide that the statement of imputation of misconduct in support of each article of charge must contain list of documents and list of witnesses by whom the articles of charges are proposed to be established. In the present case neither list of documents/ witnesses were provided nor any witness has been examined by the department or the

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Presenting Officer. Moreover, the document which was proposed to be relied upon by the department in the list of evidences stated in the Memorandum of Charge has not been proved in accordance with law.

16. Fifthly, the enquiry report submitted by the Inquiry Officer is also violative of Rule 17(23) of the Bihar C.C.A. Rules, 2005 as it lacks assessment of evidence in respect of each article of charge and finding of each article of charge. In support of his contention, Mr. Giri first refers to an unreported decision of this Court in C.W.J.C. No. 470 of 2018 decided by a Coordinate Bench of this Court on 27th June, 2018 in the case of Dharmendra Kumar v. the State of Bihar through Principal Secretary, Home (Police) Department, Government of Bihar, Patna & Ors. In paragraph 12 of the aforesaid judgment it is held by a Coordinate Bench of this Court :-

> *"12. ...... The most vital witness in the present case i.e. victim of the present case has not been examined by the prosecution, as admitted in the counter affidavit, hence the present case can be said to be a case of no evidence, especially on account of the fact that the documentary evidence which has been sought to be relied upon by the prosecution, has not been proved individually during the course of the enquiry. Moreover, neither the Petitioner*

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has been granted opportunity to cross-examine the witnesses nor he has been granted an opportunity to lead the defence witnesses. On this ground as well the entire disciplinary proceeding is vitiated and fit to be set aside. Reference in this regard be a had to a judgement of the Hon'ble Supreme Court reported in 2009 2 SCC 570 (Roop Singh Negi vs. Punjab National Bank & Ors.)Reference in this regard be had to a judgment of the Hon'ble Apex Court, reported in (2009)2 SCC 570 (Roop Singh Negi vs. Punjab National Bank). From the facts and circumstances stated herein above, as also from the discussions made in the present judgment regarding the position in law, this Court finds that the disciplinary proceeding in question is classic example of statutory violations.

13. For the reasons and discussions aforementioned and in view of the legal position discussed, the entire disciplinary proceeding resulting in the order(s), impugned is held illegal and de hors the statutory procedure.

17. Mr. Giri, learned Sr. Advocate also refers the decision of Hon'ble Supreme Court in the case of ***State of U.P. & Ors. v. Saroj Kumar Sinha*** reported in ***(2010) 2 SCC 772.***

18. In the above-mentioned report, it was noticed by the

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Hon'ble Supreme Court that copies of the documents which formed the foundation of the charge-sheet against the respondent have been denied to him on the lame excuse, as projected in the pleadings of the appellant, at different stages before the High Court as well as this Court, that the respondent, at the relevant time, was posted in the same division and the documents could have been received by him and the reply could have been given. According to the appellant all the documents concerned were with the division in which the Petitioner was posted as Executive Engineer.

19. Relying on the decision of ***Saroj Kumar Sinha*** (supra), it is submitted by Mr. Giri, that 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 was not observed by the Inquiry Officer. Since no oral evidence has been examined, the document which was proposed to be the evidence against the Petitioner has not been proved and could not have

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been taken into consideration to conclude that the charges have been proved against the Petitioner.

20. It is also submitted by Mr. Giri that by virtue of Article 311(2) of the Constitution of India the departmental enquiry has to be conducted in accordance with the rules of natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee.

21. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice was not followed in course of inquiry against the Petitioner as it was not conducted fairly, impartially giving opportunity to the Petitioner to prove his defence.

22. The learned Senior Counsel further submits that the allegation against the Petitioner is that he acquired disproportionate assets to his known source of income in his name as well as in the name of his wife. After receiving a source

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information, a team of Vigilance Investigation Bureau conducted an inquiry and found that the Petitioner allegedly acquired disproportionate assets to his known source of income. An FIR was instituted against him. The said FIR is the basis of the departmental inquiry. On the basis of the said FIR, a criminal case under Section 13 (2) read Section 13 (i) (e) of the Prevention of the Corruption Act, 1988 was registered. Therefore, the departmental proceeding and the criminal proceeding were initiated against the Petitioner on same set of allegations and same set of evidences. Though, the criminal proceeding and the departmental proceeding are two different proceedings and anyone of the two is not dependent on the outcome of the other, in the departmental inquiry, the witnesses on behalf of the prosecution ought to have been examined to prove the allegation of misconduct against delinquent. Moreover, the departmental proceeding ought not to have been proceeded further till the disposal of the criminal case instituted against the Petitioner.

23. Mr. Kumar Alok, learned Standing Counsel 7, on the other hand, submits that a document need not be proved formally if the said document is prepared and transmitted by one Government official under his authority to another in official

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course of business. Vigilance Investigation Bureau is statutorily empowered to inquire into the cases of corruption committed by a Government employee. Being armed with such power and authority, a team of officials of Vigilance Investigation Bureau conducted inquiry in support of the assets of the Petitioner. After inquiry, the Vigilance Investigation Bureau found that the Petitioner had acquired assets disproportionate to his known source of income. Therefore, an FIR was lodged by the Inspector of Police, Vigilance Investigation Bureau, Patna before the Superintendent-cum-SHO, Vigilance Police Station. The copy of the said FIR was sent with a forwarding report by the Superintendent of Police, Vigilance Investigation Bureau to the Secretary, Rural Works Department, Government of Bihar, Patna. It is not disputed that the Petitioner was served with a copy of the FIR and forwarding letter along with the Memorandum of Charge.

24. The FIR discloses the allegation of disproportionate asset as hereunder:-

"अनुमानित आयः—

1) श्री ओम प्रकाश मांझी के वेतनादि (अनुमानित)	90,00,000/—रू0
2) बैंक से ऋण	45,01,653/—रू0
3) अन्य ऋण	15,00,000/—रू0
कुलः	1,50,01,653/—रू0

अनुमानित व्ययः—

1) किचेन व्यय (श्री ओम प्रकाश मांझी के वेतन का 1/3 भाग)	30,00,000/—रू0(लगभग)

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2) बच्चों की शिक्षा पर व्यय– 5,00,000 / –रू0 (अनुमानित)

कुल–35,00,000 / –रू0

संभावित बचत

आय (–) व्यय = बचत

रू0 1,50,01,653 (–) रू0 35,00,000 = रू0 1,15,01,653 / –

आरोपित द्वारा अपने एवं अपने परिवार के अन्य सदस्यों के नाम से उपरोक्त चेक अवधि में अर्जित गयी अचल संपत्तिः–

क0सं0	विवरणी	मूल्य (रूपया में)
1	स्वयं के नाम से Flat No. 80C, Sec 105, Noida, U.P. में 1640 sq.ft.	42,00,000 / –
2	पत्नी के नाम से MIG H No.2, Hanuman Nagar, Patna	83,51,301 / –
3	पत्नी के नाम से डीड सं0– 15482 / 09 बेतौड़ा, फुलवारीशरीफ, था0–बेउर 3 कट्ठा 2 धुर 8 धुरकी जमीन	66,594 / –
4	पत्नी के नाम से डीड सं0– 10595 / 09 बेतौड़ा, फुलवारीशरीफ, था0–बेउर 6 कट्ठा 2 धुर 16 धुरकी जमीन	1,08,324 / –
5	पत्नी के नाम से डीड सं0– 9043 / 09 चिलबिल्ली, था0–बेउर 6 कट्ठा 4 धुर 16 धुरकी जमीन	1,11,704 / –
6	पत्नी के नाम से डीड सं0– 436 / 09 बेतौड़ा, फुलवारीशरीफ, बेउर 10 कट्ठा 3 धुर 16 धुरकी जमीन	2,56,509 / –
7	पत्नी के नाम से डीड सं0–13775 / 06 पुर्णन्दु नगर, वार्ड नं0–06 2585 वर्गफीट जमीन	5,04,714 / –
8	पत्नी के नाम से डीड सं0–26710 / 10 रसूलपुर सैदपुर वाजिद, मुशहरी मुजफ्फरपुर 580 डि0 जमीन	2,32,000 / –
9	पत्नी के नाम से डीड सं0–22344 / 10 रसूलपुर सैदपुर वाजिद, मुशहरी मुजफ्फरपुर 680 डि0 जमीन	2,72,000 / –
10	स्वयं के नाम से डीड सं0 – 3982 / 09 एकमा में 8.17 डि0 जमीन–	2,90,000 / –
11	स्वयं के नाम से डीड सं0 – 3132 / 09 एकमा में 6.04 डि0 जमीन–	28,000 / –
12	स्वयं के नाम से डीड सं0– 1472 / 15 फ्लैट नं0 (अस्पष्ट), लोटस अपार्टमेंट, पाटलीपुत्र, पटना	54,20,255 / –
	कुल	1,98,41,401 / –

5) आरोपी द्वारा अर्जित की गयी चल संपत्ति (वर्ष 2014 के संपति उद्घोषण के अनुसार) –

1. नकद राशि – 90,000 / –
2. बैंक में स्वयं एवं पत्नी के नाम से जमा राशि – 13,71,723 / –
3. स्वयं के नाम से पी0पी0एफ0 खाता नं0– 11049384614 – 4,84,069 / –
4. एल0आई0सी0 / अन्य बीमा कंपनियों में निवेश – 7,68,530 / –

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5. आभूषण	– 5,94,000 / –
6. शेयर में निवेश	– 50,000 / –
कुल	– 33,58,322 / –

उपरोक्त आय व्यय गणना से श्री ओम प्रकाश मांझी, तत्का0 अधीक्षण अभियंता, ग्रामीण कार्य विभाग, कार्य अंचल, मुजफ्फरपुर, सम्प्रति सिवान जिला का उपरोक्त चेक अवधि में कुल संपत्ति = (अचल संपत्ति रू0 1,98,41,401 / – + चल संपत्ति रू0 33,58,322) = 2,31,99,723 / – रू0 होता है।

इस प्रकार श्री ओम प्रकाश मांझी, तत्का0 अधीक्षण अभियंता, ग्रामीण कार्य विभाग, कार्य अंचल, मुजफ्फरपुर, सम्प्रति अधीक्षण अभियंता, ग्रामीण कार्य विभाग, सिवान के द्वारा उपरोक्त चेक अवधि के दौरान अर्जित किया गया ज्ञात वैध आय से अधिक संपत्ति (2,31,99,723 / – रू0 (–) 1,15,01,653 / – रू0 अनुमानित बचत) 1,16,98,070 / – (एक करोड़ सोलह लाख अनठानवें हजार सत्तर रू0) रूपया (लगभग) होता है।"

25. It is submitted by the learned Standing Counsel on behalf of the State that principle of law enunciated by the Hon'ble Supreme Court depends upon the facts of each individual case. The requirement of marking an FIR in departmental proceeding is to make/aware the delinquent officer to know the allegation made against him by the complainant/informant so that the charged officer is able to place his defence in the departmental inquiry. When the charged officer knew the contents of the FIR and submits his specific defence refuting the allegation made against him in the FIR, it is not always necessary as a general rule to examine any witness in the departmental proceeding to prove the said FIR. The purpose of examination of the witnesses to place the allegation of misconduct during inquiry in presence of the delinquent officer. If, however, the delinquent officer in his written statement of

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defence refutes or rebuts the allegation of content in the FIR, it is not necessary to prove the document by adducing evidence which has been specifically rebutted by the Petitioner during departmental inquiry. In order to substantiate his argument, learned Standing Counsel refers to the Petitioner's reply to the second show cause notice dated 15th of October, 2019. The relevant portion referred to by the learned Standing Counsel is quoted below:-

"FACTS RELATING TO MY INCOME AND INCOME OF MY WIFE

4. That it would be relevant to state here that apart from the salary which I draw from the government there are other sources of income of mine also i.e., agricultural income, income earned by way of rent, HUF etc. During the check period (i.e. between 31.08.1989 to March/2015) I also received amount through loan, gifts etc. For the convenience of your good-self I am herein giving the entire details of my income earned during the check period hereinbelow:

Sl. No.	Source of Income	Amount	Page No. and Volume
1.	Salary Income	95,42,572/-	3-134 of vol 2
2.	Rental income as per affidavits from tenant	11,88,000/-	135 of vol 2

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3.	HUF Taxable income as per ITR	27,47,988/-	1-26 of Vol 4
4.	Bank interest as per bank statement.	7,18,469/-	136-137 of vol 2
5.	Agricultural income	18,58,800/-	138-140 of vol 2
6.	Profit on sale of mutual funds	76,571/-	141 of vol 2
7.	Capital receipt on account of sale of jewellery which were received as inheritance and as marriage gift.	6,69,323/-	142-153 of vol 2
8.	Loan from relatives through cheques and drafts.	5,00,000/-	154-156 of vol 2
9.	Housing loan from bank	43,09,079/-	157-158 of vol 2
10.	Marriage gift in cash from relatives and friends.	2,51,000/-	159-175 of vol 2
11.	Irrevocable gift from blood relatives through cheque/draft as per their affidavits	45,000/-	176 of vol 2

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12.	Past accumulated savings out of earning before service.	2,90,000/-	147 of vol 2
	TOTAL	**2,21,96,802/-**	

From the above chart it is apparent that during the check period I totally earned Rs. 2,21,96,802/-. Out of the said total income the total expenditure which I met is as follows:

Chart No. 2

S.No.	Expenditure	Amount	Pg no and volume
1.	Income tax, GPF, LIC and other deductions	19,13,615/- +24,929 (HUF) =19,38,544/-	4 of Vol 2 and Pg 1 of Vol 4 (HUF)
3	Kitchen expenses	14,38,500/-	Xxx
4	Housing Loan Repayment	5,63,914/-	177 – 183 of vol 2
6	Agriculture land deed no. 3982/09 Rajapur, Ekma district- Saran, State-Bihar	3,13,461/-	184 – 191 of vol 2
7.	Agricultural land deed no. 3132/09 Rajapur, Ekma, district-Saran,	31,871/-	192 - 198 of vol 2

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	State-Bihar		
8	Flat no. 80 c, Block B Sector – 105 Noida, District GB Nagar, State-UP	42,00,000/-	199 – 231 of vol 2
9	Flat no. 602 Lotus Apartment, Patliputra, Patna, Bihar	54,20,225/-	232 – 251 of vol 2
10	Cash and bank balance	12,04,250/- +74,395 (HUF) =12,78,645/-	252 – 302 of vol 2
11	Advance to Kumari Kalpana (wife)	3,00,000/- (HUF)	49 of vol 2
12	LIC Policy and investments	672720+ 663789 (HUF) =13,36,509/-	303 - 306 of vol 2
13	Jewelries (value at the time of purchase/gift) however FIR value based on the declaration is on market price at the time of declaration.	25,050/-	307 of vol 2
14	PPF	6,24,332/-	308 of vol 2
15	Investment in share	50,000/-	309 of vol 2

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16	Personal assets	2,15,000/-	Xxxx
	TOTAL	**1,77,36,051/-**	

Sir, from the abovesaid charts following data will come out :

Total income	**2,21,96,802/-**
Total expenditure	**1,77,36,051/-**
Balance	**44,60,751/-**

5. That my wife is an independent, qualified and well educated lady and she has done M.A in Sociology from Patna University. She has also done professional courses of beautician. She also runs a tuition and from these sources she earns and the details of her earning was also submitted in course of enquiry but the same was not properly appreciated or considered by the enquiry officer. Sir, I would further like to say that my wife is a self-earner from the beginning and hence she cannot be considered as a "dependant member on a public servant" within the explanation of section 5(1)(e) of the Prevention of Corruption Act and accordingly property acquired by the spouse from her own source of earning and out of her past accumulated savings forming part of the stridhan cannot be clubbed with the property of public servant while calculating the value of disproportionate assets. In this regard judgements of Hon'ble Apex Court passed in the case of Smt. Dimple Yadav may be

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referred to (Civil Review Petition No. 272 of 2007)

True/photo copy of judgement passed in the case of Dimple Yadav is being annexed herewith and marked as annexure-2 to this reply.

For your kind appreciation I am giving the income and expenditure of my wife herein below:

Chart No. - 3

Sl. no.	Source of income	Amount	Pg no and vol
1	Rental income as per affidavit from tenants	3,60,000/-	21-22 of vol 3
2	Taxable income as per income tax return	27,22,603/-	1-16 of vol 3
3	Agricultural income	4,94,700/-	17-20 of vol 3
4	Advance against sale of land as per sale agreement	6,00,000/-	23-25 of vol 3
5	Capital received on account of sale of jewellery which were received as inheritance and as a marriage gifts	8,50,453/-	26-44 of vol 3

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6	Loan from relatives through cheque/drafts	51,95,276/-	45-48 of vol 3
7	Advance from OP Manjhi (HUF) through a/c payee check as per confirmation statement	3,00,000/-	49 of vol 3
8	Marriage gifts in cash from relatives and friends	1,96,000/-	Page 35-48 of vol 3
9	Gift on brother marriage occasioned as per two declaration on affidavits from brothers	1,02,000/-	50-53 of vol 3
10	Irrevocable gift from blood relatives through cheque/drafts as per their affidavit	3,30,000/-	54-59 of vol 3
11	Gift on first and second children chatti ceremony	87,100/-	60-64 of vol 3
12	Past accumulated savings out of earnings before 2001	1,75,000/-	74 of vol 3
	TOTAL	**1,14,13,132/-**	

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Sir, chart no. 3 clearly shows that the income of my wife during the check period is Rs. 1,14,13,132/-. From the said income following expenditure was meted out by my wife:

CHART No. 4

S. no.	Expenditure/Investments	Amount	Pg no. and vol
1	Income tax payments and other deductions	36,958/-	01-16 of vol 3
2	Children's education expenses	2,45,400/-	65-73 of vol 3
3	Household expenses	86,500/-	xxxx
4	Deed No. 13775/06 Phulwarishariff	5,04,714/-	75-85 of vol 3
5	Deed No. 1029/09 Saran	27,286/-	86-91 of vol 3
6	Deed No. 7361/09 Patna	2,56,509/-	92-100 of vol 3
7	Deed No. 9043/09 Patna	1,11,704/-	101-113 of vol 3
8	Deed No. 10595/09 Patna	1,08,324/-	114-122 of vol 3
9	Deed No. 15482/09 Patna	66,594/-	123-131 of vol 3
10	Deed No. 26710/10 Muzaffarpur	1,35,306/-	132-138 of vol 3
11	Deed No. 22344/10	1,58,686/-	139-145 of vol 3

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12	MIF H. No. 2 Hanuman Nagar	49,77,501/-	146-167 of vol 3
13	Cash and bank balance	9,33,718/-	168-189 of vol 3
14	LIC Policy and investments	2,72,584/-	190-192 of vol 3
15	Jewelries (value at the time of purchase or gift)however the FIR value based on market price at the time of declaration.	2,16,388/-	33 of vol 3
16	Personal assets	80,000/-	xxxx
	Total	**82,18,172/-**	

From the aforesaid income and expenditure chart of my wife the following data comes out:

Income **1,14,13,132/-**

Expenditure/Investment **82,18,172/-**

Balance **31,94,960/-**

6. That from the above data it is apparent that the total income of mine and my wife is Rs. 3,36,09,934/- (i.e., **2,21,96,802/-+1,14,13,132/-) whereas total expenditure is Rs. 2,59,54,223/-** (i.e. 1,77,36,051/-+82,18,172/-). From the said

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data the balance amount comes to Rs. 76,55,711/-)

26. The learned Standing Counsel also refers to Page 2 of the inquiry report submitted by the Additional Departmental Inquiries Commissioner on 14th of September, 2017, wherein it is recorded in paragraph no. 7 (b) under the heading “Defense” that the Petitioner filed his second defense on 30th of August, 2017 before the Additional Departmental Inquiries Commissioner submitting his reply on merits as well as in response to departmental comments. The inquiry officer also considered the reply submitted by the charged officer on 20th of June, 2017, before the Deputy Superintendent of Police-cum-Investigating Officer, Vigilance Investigation Bureau, Patna. In his defence, the charged officer specifically mentioned that other than items 1, 10 and 11 of the inventory mentioned in the FIR, all other properties are in the name of his wife Smt. Kalpana and therefore it is not correct to add her properties in the name of charged officer. He further pleaded that he got married in the year 2001, i.e., 12 years after he joined the service. His wife is trained in sewing, knitting and has also done the beautician course. As per him, his wife has been filing income tax returns since 2004 and 2005 and has accumulated immovable assets at Serial No. 2 and Serial No. 9 from her own

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sources. If those assets are removed from the list, then the remaining assets shown in his name are well within known source of income and therefore, case lies against him.

27. It is also specifically pleaded by the charged officer that his wife is not dependent on him. She has independent income and separate income tax assessee. He further mentioned that his father was a Government Teacher and he acquired some property which he inherited. He also owns agricultural land from which he has some income.

28. The inquiry officer examined the documents filed by the Petitioner in objective manner, fairly and impartially. It was found by the inquiry officer that the wife of the Petitioner filed income tax returns for the financial year 2005-06 and 2015-16. In 2005-06 she filed zero tax return. In 2015-16 she filed total income tax of Rs. 50,000/- only and she claimed refund of Rs. 35680/- from the Income Tax Department.

29. Learned Standing Counsel also submits that as per Rule 19(2) of the Bihar Government Servants Conduct Rules, 1976, no Government servant shall, except with the previous knowledge of the prescribed authority acquire or dispose of any immovable property by lease, mortgage, purchase-sale, gift or otherwise, either in his own name or in the name of any member

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of his family except with the previous sanction of the Government.

30. In the instant case, the Petitioner did not mention in his statement of defence that he took permission to purchase the immovable properties in the name of his wife from his department. The inquiry officer also examined the income tax returns of the wife of the Petitioner and found that majority of her income came from tuitions. The Petitioner failed to produce any satisfactory evidence as to how as many as 8 immovable properties were purchased in the name of his wife in a span of two years, viz., 2009 and 2010.

31. The learned Standing Counsel next submits that Rule 19(6) of the Bihar Government Servants Conduct Rules, 1976 clearly states that if a Government servant found to be in possession of pecuniary resources or property disproportionate to his known sources of income for which he cannot satisfactorily account, shall unless the contrary is proved, be presumed to have been guilty of grave misconduct in the discharge of his official duty for which he will be liable for criminal action besides departmental proceeding.

32. It is contended by the learned Standing Counsel that the provision contained in Rule 19(6) clearly places the burden

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of proof to the contrary upon charged officers in case of a departmental inquiry in respect of the disproportionate asset.

33. The Petitioner failed to discharge the burden and therefore he was held guilty. Since the departmental inquiry was conducted with all sincerity, fairly and objectively, the Petitioner was rightly punished with the major penalty of termination.

34. Referring to a decision of this Court in the case of ***Akshay Bat Choudhary (Dr.) v. State of Bihar & Ors.***, reported in ***2005 3 PLJR 113,*** it is submitted by the learned Standing Counsel that the Petitioner was given full opportunity to submit his defence during inquiry. He submitted his case elaborately before the inquiry officer and the principle of *audi alteram partem* was scrupulously followed in the departmental inquiry. Therefore, there is no scope of judicial review of the decision of the termination passed against the employee.

35. Having heard the Learned Counsels for the Petitioner and Respondents and on appreciation of entire materials on record, the following points are framed for the purpose of adjudication of the instant writ petition:-

(i) Was the departmental proceeding, a case of no evidence?

(ii) Was it necessary in the departmental proceeding

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to examine the informant and to prove the F.I.R. and other documents as evidence in course of enquiry by the Inquiry Officer?;

(iii) Was the Petitioner prejudiced in any way during departmental enquiry?;

(iv) Was the Principle of Natural Justice violated during enquiry?; and

(v) Is the order of dismissal from service passed against the Petitioner liable to be quashed and set aside.

36. With regard to Point No. (i), pertaining to the allegation that the Inquiry Officer did not examine any witness to prove the departmental charge against the Petitioner, this Court is inclined to record that the nitty-gritty of the Evidence Act is not applicable in the departmental proceeding. However, during departmental enquiry, it is incumbent upon the prosecution that the charges ought to have been proved by some means of evidence. The amount of evidence required to probe a departmental charge depends upon the facts and circumstances of each and individual case. In the instant case, the Petitioner was charged of acquiring assets disproportionate to his known source of income. The Vigilance Investigation Bureau conducted search and found immovable and movable assets

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acquired by the Petitioner and his wife during the check period between the year 1989 and 2015. During preliminary investigation, the charge of acquiring disproportionate assets was *prima facie* found to be true against the Petitioner and, accordingly, an F.I.R. was lodged by the S.H.O., Vigilance Police Station. The said fact was informed by the Superintendent of Police, Vigilance Investigation Bureau to the Secretary, Rural Works Department. The said letter was the basis of the departmental proceeding. In the F.I.R., the informant elaborately stated various descriptions of properties, their value, income of the Petitioner from his salary and the discrepancies found between the income and the assets. The said document was supplied to the Petitioner. The Petitioner made elaborate reply, rebutting the allegation, stating, *inter alia*, that his wife has independent income, and he inherited certain properties from his father, who was a government high school teacher and he had some agricultural income. Those assets and income were not considered by the Vigilance Department and he was wrongly charged in acquiring disproportionate assets.

37. The purpose of adducing evidence in departmental proceeding is to prove a charge of misconduct against the Charged Officer. If the Charged Officer admits institution of

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F.I.R., rebuts the contents of the same by detailed submission in his written statement of defence, the requirement of proving the complaint IF.I.R.) formally does not arise. In the instant case, it was admitted by the Writ Petitioner in his written statement of defence as well as in second show-cause that the Vigilance Investigation Bureau conducted preliminary investigation in respect of his and his wife's assets and had lodged an F.I.R. against the Petitioner. However, he rebutted the contents of the F.I.R. and submitted his own assessment with regard to his assets. In such circumstance, in my considered opinion, failure on the part of the Inquiry Officer to prove the letter of the Superintendent of Police, Vigilance Investigation Bureau which was cited as the only documentary evidence in the Memorandum of Charge cannot be held to be fatal for the department.

38. In other words, Disciplinary Authority is the sole judge of facts and once finding of fact based on appreciation of evidence are recorded, the High Court in its writ jurisdiction should not normally interfere with this factual finding unless it finds that the reasons were based on no evidence or that the findings were wholly perverse and/or legally untenable. Thus, Disciplinary Authority enjoins the duty of appreciation of

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evidence in course of its fact finding enquiry. It is needless to say that a document may be admitted by the defence though the contents thereof are disputed. When by submitting the statement of defence and the second show-cause, the Petitioner has made out the specific case that his accumulated assets in the form of immovable and movable properties is not disproportionate to his known sources of income and the Vigilance team failed to consider the independent income of his wife, property acquired by her by way of inheritance and from agricultural produce, formal proof of the allegation of acquiring disproportionate assets was not necessary. This Court has already recorded that under rule 19(6), it is the duty of a government servant found to be in possession of pecuniary resources or property disproportionate to his known source of income to prove the contrary. Thus, the Inquiry Officer is not under obligation to establish that the Charged Officer had disproportionate property to his known source of income. On the contrary, upon an allegation that the Charged Officer was found to be in possession of pecuniary resources or property disproportionate to his known source of income, the onus shifts upon the Charged Officer to prove that he acquired the property from income which he earned fairly and legally from different

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sources.

39. Here lies difference between the disciplinary enquiry against the government servant on any ground other than the disproportionate assets and the departmental enquiry initiated when the government servant is found to be in possession of property disproportionate to his known sources of income.

40. The Petitioner did not deny the description of the properties stated in the FIR. He only stated that except the properties mentioned in Srl. Nos. 1, 10,11 and 12, all other properties were purchased by his wife from her independent income. The Inquiry Officer took great pain, taking into consideration each and every description of property and came to the finding that the Petitioner failed to discharge his onus and, accordingly, he was held guilty. Therefore, non-examination of any person as a witness during departmental inquiry did not vitiate the finding of the Inquiry Officer.

41. The Point No. (i) is accordingly recited against the Writ Petitioner and in favour of the Respondents.

42. As regard Point No (ii) - As a result of the discussions made in foregoing paragraphs, while adjudicating Point No. (i), this Court finds that it was not necessary for the Inquiry Officer to examine the complainant of Vigilance P. S. Case No. 145 of

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2016, dated 19.12.2016, and to formally prove the FIR when lodging of FIR was admitted by the Petitioner himself.

43. This point is also decided against the Petitioner.

44. As regard Point No.- (iii) - For adjudication of this point, it is necessary for this Court to consider the scope of judicial review by the Constitutional Court to ascertain as to whether the departmental inquiry caused prejudice to the Petitioner or not.

45. In ***R. Mahalingam v. Chairman,Tamil Nadu Public Service Commission & Anr.***, reported in ***(2013) 14 SCC 379***, this Court laid down the scope of judicial review as regards the findings of disciplinary proceedings in following words.:-

> *"The scope of judicial review in matters involving challenge to the disciplinary action taken by the employer is very limited. The Courts are primarily concerned with the question whether the inquiry has been held by the competent authority in accordance with the prescribed procedure and whether the rules of natural justice have been followed. The Court can also consider whether there was some tangible evidence for proving the charge against the delinquent and such evidence reasonably supports the conclusions recorded by the competent authority. If the Court comes to the conclusion that the inquiry was held in*

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consonance with the prescribed procedure and the rules of natural justice, and the conclusion recorded by the Disciplinary Authority is supported by some tangible evidence, then there is no scope for interference with the discretion exercised by the Disciplinary Authority to impose the particular punishment, except when the same is found to be wholly disproportionate to the misconduct found proved or shocks the conscience of the Court."

46. In ***West Bokaro Colliery (TISCO Ltd.) v. Ram Pravesh Singh***, reported in ***(2008) 3 SCC 729***, it was held that in a departmental inquiry, the standard of proof is based on preponderance of probability and not beyond reasonable doubt. The relevant observation made in the above-mentioned decision is reproduced below: -

"20. The Tribunal has set aside the report of the enquiry officer and the order of dismissal passed by the punishing authority by observing that the charges against the respondent were not proved beyond reasonable doubt. It has repeatedly been held by this Court that the acquittal in a criminal case would not operate as a bar for drawing up of a disciplinary proceeding against a delinquent. It is well-settled principle of law that yardstick and standard of proof in a criminal case is different from the one in disciplinary

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proceedings. While the standard of proof in a criminal case is proof beyond all reasonable doubt, the standard of proof in a departmental proceeding is preponderance of probabilities."

47. In ***Karnataka Power Transmission Corpn. Ltd. v. C. Nagaraju,*** reported in ***(2019) 10 SCC 367**,* the Hon'ble Supreme Court has held as under:-

"9. Acquittal by a criminal court would not debar an employer from exercising the power to conduct departmental proceedings in accordance with the rules and regulations. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. [Ajit Kumar Nag v. Indian Oil Corpn. Ltd., (2005) 7 SCC 764 : 2005 SCC (L&S) 1020] In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings, the question is whether the offences registered against him under the PC Act are established, and if established, what sentence should be imposed upon him. The standard of proof, the mode of inquiry and the rules governing inquiry and trial in both the cases are significantly distinct and different. [State of Rajasthan v. B.K. Meena, (1996) 6 SCC 417 : 1996 SCC

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(L&S) 1455]

13. Having considered the submissions made on behalf of the appellant and Respondent 1, we are of the view that interference with the order of dismissal by the High Court was unwarranted. It is settled law that the acquittal by a criminal court does not preclude a departmental inquiry against the delinquent officer. The disciplinary authority is not bound by the judgment of the criminal court if the evidence that is produced in the departmental inquiry is different from that produced during the criminal trial. The object of a departmental inquiry is to find out whether the delinquent is guilty of misconduct under the conduct rules for the purpose of determining whether he should be continued in service. The standard of proof in a departmental inquiry is not strictly based on the rules of evidence. The order of dismissal which is based on the evidence before the inquiry officer in the disciplinary proceedings, which is different from the evidence available to the criminal court, is justified and needed no interference by the High Court."

48. In ***State of Karnataka v. Umesh,*** reported in ***(2022) 6 SCC 563,*** the Hon'ble Supreme Court observed as follows:-

"16. The principles which govern a

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disciplinary enquiry are distinct from those which apply to a criminal trial. In a prosecution for an offence punishable under the criminal law, the burden lies on the prosecution to establish the ingredients of the offence beyond reasonable doubt. The accused is entitled to a presumption of innocence. The purpose of a disciplinary proceeding by an employer is to enquire into an allegation of misconduct by an employee which results in a violation of the service rules governing the relationship of employment. Unlike a criminal prosecution where the charge has to be established beyond reasonable doubt, in a disciplinary proceeding, a charge of misconduct has to be established on a preponderance of probabilities. The rules of evidence which apply to a criminal trial are distinct from those which govern a disciplinary enquiry. The acquittal of the accused in a criminal case does not debar the employer from proceeding in the exercise of disciplinary jurisdiction."

49. In the instant case, it was vehemently urged by the learned Sr. Counsel appearing on behalf of the Petitioner that Rules 17(3), 17(4) read with Rule 17(11)(ii) clearly provide that the statement of imputation of misconduct in support of each article of charges must contain list of documents and list of witnesses to whom the articles of charge are proposed to be

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sustained. In the present case, no list of documents or witnesses were provided. Neither any witnesses has been examined by the department or Presenting Officer nor any document has been proved in accordance with law.

50. Rule 17 (3) of the Bihar CCA Rules, 2005 states as follows: -

> *"17. (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."*

51. Rule 17 (4) runs thus:-

> *"17. (4) The disciplinary authority shall deliver or cause to be delivered to the*

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Government Servant a copy of the articles of charge, such statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the Government Servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person."

52. Rule 17 (11) runs as hereunder: -

"17. (11) The inquiring authority shall, if the Government Servant fails to appear within the specified time or refuses or omits to plead, require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the Government Servant may, for the purpose of preparing his defence,-

(i) inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow, the documents specified in the list in sub-rule (3);

(ii) submit a list of witnesses to be examined on his behalf;

Note:-If the Government Servant applies in writing for the supply of copies of the statements of witnesses mentioned in the list

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referred to in sub-rule (3), the inquiring authority shall furnish him with such copies as early as possible.

(iii) give a notice within ten days of the order or within such further time as the inquiring authority may allow for the discovery or production of any documents which are in the possession of Government but not mentioned in the list specified in sub-rule (3) of this Rule:

Provided that the Government Servant shall indicate the relevance of the documents required by him to be discovered or produced by the Government."

53. This Court does not find any illegality in the Memorandum of Charge. The second column of Memorandum of Charge states that during enquiry, the Disciplinary Authority proposed to rely upon the letter of Superintendent of Police, Vigilance Investigation Bureau through which the incident was reported to the Departmental Secretary along with a copy of the F.I.R. It is already held that when lodging of F.I.R., an institution of Vigilance P. S. Case No. 145 of 2016, dated 19th of December, 2016, was admitted by the Charged Officer and the contents of the F.I.R. was specifically rebutted by him in his written statement of defence as well as second show-cause, non-

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examination of any witnesses did not cause any prejudice to the Petitioner. The Inquiry Officer does not seem to be perverse. Therefore, the Petitioner was not prejudiced by the manner in which the departmental enquiry was conducted. This point is also decided against the Petitioner.

54. With regard to Point Nos. (iv) and (v), it is a Trite Law that the departmental proceeding is to be conducted in accordance with the Principle of Natural Justice. The Principle of Natural Justice harmoniously protects individual's natural right of being heard and fair procedure as well as the public interest. Larger public interest is to be allowed to override the individual's interests where the justice demands protection of public interest. A Government Servant works in public interest for his work, he is paid from the public exchequer. Therefore, an employee does not have any right to acquire assets disproportionate to his known source of income. Accumulation of disproportionate assets points at the lack of honesty and integrity of a Government Employee. Therefore, Rule 19(6) of Bihar Government Servants Conduct Rules states that possession of property disproportionate to known source of income by a government employee is a grave misconduct. The Petitioner was held guilty for such grave misconduct by the

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Inquiry Officer, Appellate Authority as well as the Reviewing Authority. In all stages, he was given adequate opportunity of being heard. He placed defence and it was discussed by the concerned authorities at length and held to be not acceptable.

55. Therefore, this Court does not find even iota of evidence that the Principle of Natural Justice has not been followed and accordingly this point also goes against the Petitioner.

56. In view of my findings while deciding the above-mentioned points, I have come to an irresistible conclusion that the Petitioner was rightly held guilty and departmentally punished.

57. There is no ground for any interference with the order of dismissal of service passed against the Petitioner.

58. The instant writ petition is, accordingly, dismissed on contest.

59. However, there shall be no order as to costs.

(Bibek Chaudhuri, J)

skm/-

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