

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 1956 of 2023

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Anoj Kumar Son of Vale Prasad, resident of Village - Baradih, P.O. - Bara Gandhar, Police Station - Muffasil in the district of Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Home, Government of Bihar, Patna.
2. The Additional Chief Secretary, Department of Home, Government of Bihar, Patna.
3. The Deputy Secretary-cum-Deputy Director, Department of Prison and Correctional Services, Bihar, Patna.
4. The Superintendent, Central Jail, Buxar.
5. The Deputy Superintendent, Central Jail, Buxar.
6. The Superintendent, Saheed Khudi Ram Bose, Central Jail, Muzaffarpur.
7. The then Rakshit Hawaldar, Central Jail, Buxar namely Sri Vishwajeet Paswan, son of not known to the petitioner.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr Sunil Kumar, Advocate
For the Respondent/s : Mr Pawan Kumar, AC to AG

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CORAM: HONOURABLE MR JUSTICE ARVIND SINGH CHANDEL

ORAL JUDGMENT

Date : 22-04-2025

This petition has been preferred by the petitioner for quashing the order dated 23.06.2022 (Annexure 1) whereby and where under the petitioner has been dismissed from service and also to quash the order dated 09.11.2022 passed by Respondent No 2 whereby the appeal filed by the petitioner against the order of dismissal has been rejected (Annexure 2).



2 Brief facts of the case are that the petitioner was working as Warder in Central Jail, Buxar. There, he joined his duty on 05.12.2017. He was served a copy of Memo No 803 dated 05.03.2021 wherein it is alleged that the petitioner has supplied a bundle of **Ganja** to one convicted prisoner, namely, Ansu Sharma. Subsequently, a corrigendum was issued vide Memo No 833 dated 07.03.2021 wherein it was clarified that the petitioner illegally supplied a mobile phone to the said convicted prisoner Ansu Sharma. The petitioner submitted his explanation. However, he was put under suspension vide order dated 07.03.2021. Charge memo was also served on the petitioner and on the basis of enquiry report, the Disciplinary Authority passed the impugned order (Annexure 1) whereby and where under the major penalty, i e, dismissal from service has been imposed against the petitioner. The said order has been assailed by way of appeal by the petitioner which has also been rejected by the Appellate Authority vide its order dated 09.11.2022 (Annexure 2). Hence, this petition.

3 It is submitted by the learned counsel for the petitioner that without any material evidence available on record, only on the basis of presumption, the Enquiry Officer found the charges proved against the petitioner. He further submits that before imposing the penalty of dismissal, a copy of enquiry report has not



been supplied to the petitioner. Therefore, there was violation of provisions of Rule 17 of the Bihar CCA Rules, 2005. He further submits that the material witness Ansu Sharma has not been examined during the course of enquiry nor the footage of CCTV has been tendered by any of the witness before the Enquiry Officer. Therefore, only on the basis of oral statement of departmental witnesses, it cannot be said that the petitioner illegally supplied the mobile phone to the prisoner Ansu Sharma. According to the counsel, it is a case of no evidence but the Disciplinary Authority and further the Appellate Authority did not consider this aspect and passed the impugned orders (Annexures 1 and 2).

4 Learned counsel for the respondent-State opposes the argument raised by the learned counsel for the petitioner and submits that on the basis of material available on record, the Enquiry Officer rightly arrived at the conclusion that the charges levelled against the petitioner have been duly proved. Since, it was a serious charge and, therefore, the Disciplinary Authority rightly passed the order of dismissal of the petitioner which has also been duly affirmed by the Appellate Authority.

5 I have heard learned counsel for the petitioner and perused the materials available on record.



6 The charge memo, which has been issued to the petitioner, has been annexed by the petitioner along with this petition (Annexure 12). Along with the charge memo, no list of witnesses and list of documents have been annexed. In its counter affidavit also, the respondent-State did not make any pleading that any list of witnesses and list of documents were prepared and provided to the petitioner.

7 In this petition, a clear cut stand has been taken by the petitioner that before imposing penalty of dismissal, no enquiry report was supplied to the petitioner. In the counter affidavit of the respondent-State, this fact has not been denied. Rather, the enquiry report has been submitted by the respondent-State in its supplementary counter affidavit (Annexure K).

8 Perusal of the said enquiry report further shows that in this report, it has been recorded by the Enquiry Officer that the departmental proceeding has been closed. However, in the impugned order (Annexure 1), in paragraph 3, it has been mentioned that the Enquiry Officer, in his enquiry report dated 07.02.2022, arrived on the conclusion that the charges levelled against the petitioner were found proved. However, perusal of the enquiry report (Annexure K to the supplementary counter affidavit) shows that the Enquiry Officer recorded the statements



of three witnesses, namely, Mukesh Kumar Yadav, Baban Ram and Rewati Kant Mandal. In their statements, they only stated that on being searched, the mobile phone was recovered from the possession of prisoner Ansu Sharma. They also stated that before them, Ansu Sharma made his statement wherein he admitted the fact that the mobile phone was provided to him by the present petitioner. However, for the reasons best known to the Presenting Officer as well as the Enquiry Officer, the said Ansu Sharma, who is material witness, has not been cited as witness nor examined as witness. Perusal of the statement of the witnesses further shows that the CCTV footage was also available wherein it was found that at the relevant time, the petitioner was carrying a **Gamcha** in the room of that prisoner Ansu Sharma. However, this CCTV footage has also not been tendered by any of the witness during the course of enquiry. Thus, it is well established that the best evidence, i.e., CCTV footage as well as the statement of the prisoner Ansu Sharma has not been recorded by the Enquiry Officer. Only on the basis of statement of three witnesses, as mentioned herein above, he arrived on the conclusion that the petitioner was the person who supplied the mobile phone to the prisoner Ansu Sharma. Since the statement made by the above witnesses before the Enquiry Officer are based upon the



confessional statement of prisoner Ansu Sharma, who has not been examined, the conclusion recorded by the Enquiry Officer is not acceptable.

9 In my considered view, it is a case of no evidence. The Department has miserably failed to prove its charge levelled against the petitioner that he illegally supplied the mobile phone to the prisoner Ansu Sharma. Even after that, the Disciplinary Authority as well as the Appellate Authority, without considering this aspect, passed the order impugned (Annexures 1 and 2).

10 Therefore, for the reasons, as mentioned herein above, both the orders impugned (Annexure 1 and 2) are quashed and set aside.

11 Accordingly, both the orders are set aside.

12 The respondents are directed to reinstate the petitioner forthwith with all acceptable consequential benefits.

13 Accordingly, this writ petition is allowed.

(Arvind Singh Chandel, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.04.2025
Transmission Date	NA

