

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9650 of 2016

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Md. Tanwirul Quamar S/o Late Md. Sulaiman R/o Vill- Haidarganj Karah,
P.S.- Silao, District- Nalanda, presently posted as Senior Deputy Collector,
Purnea.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, General Administration Department, Government of Bihar, Patna.
2. The Principal Secretary, General Administration Department, Govt. of Bihar, Patna.
3. The Joint Secretary, General Administration Department, Govt. of Bihar, Patna.
4. The Additional Secretary, General Administration Department, Govt. of Bihar, Patna.
5. Sri Manoj Kumar Srivastava, Department Enquiry Commissioner, General Administration Department, Govt. of Bihar, Patna.
6. The District Magistrate, Samastipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Munna Prasad Dixit, Advocate Mr. Sanjay Kumar Dixit, Advocate Mr. Sanjay Kumar Chaubey, Advocate Mr. Shailendra Kumar, Advocate Mr. Punit Ranjan Dixit, Advocate Mr. Milind Raj Dixit, Advocate Mr. Priyadarshi Matri Sharan, Advocate
For the Respondent/s	:	Mr. Raghwanand, GA-11 Mr. Pratik Kumar, AC to GA-11

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
CAV JUDGMENT
Date : 04-08-2025

Heard learned Counsel for the petitioner and

learned Counsel for the State.

2. The present writ petition has been filed by the



petitioner with the following reliefs:-

“1. To quash the order contained in Memo No.7036 dated 17.05.2016 issued by Additional Secretary to Government, General Administration Department, by which the representation dated 27.01.2015 submitted by the petitioner against Departmental Enquiry Commissioner has been rejected. For further direction to the respondent authorities to conduct fresh enquiry after appointing another conducting officer.

“1(a). To quash the notification contained in Memo No.9119 dated 28.06.2016, issued by the Additional Secretary, Department of General Administration, Government of Bihar, Patna (respondent No.4) whereby the petitioner, who was posted as Senior Deputy Collector, Purnea, has been dismissed from service.

1(b). To direct the respondents to reinstate the petitioner on his post with all consequential benefits forthwith.

1(c). To issue an appropriate writ/order/direction in the nature of certiorari for quashing the Enquiry Report dated 29.07.2015 as contained in Annexure-4 to the writ petition being perverse, unfair



and in flagrant violation of the principle of natural justice.”

3. Learned Counsel for the petitioner submits that petitioner was appointed as Deputy Collector in the year 1999 on the recommendation of the BPSC and sent to Dumka (now Jharkhand) for training. He submits that after completion of training, he was posted as Executive Magistrate in Latehar (now in Jharkhand) in the year 2000 where he discharged his duty to the satisfaction of the authorities concerned. In the year 2007, he was posted as Circle Officer-cum-Block Development Officer in Shivajinagar, Samastipur. On 12.05.2008 while the petitioner was posted as Circle Officer, the then Mukhiya of Shankarpur Panchayat, Shivaji Nagar, Samastipur, made a complaint in Vigilance against the petitioner. On the said complaint, verification was conducted and a pre-trap memorandum was prepared on 14.05.2008. On 15.05.2008, a trap team conducted raid and petitioner was arrested taking bribe of Rs.50,000/- from one Ram Dayal Singh and based on the trap, a post-trap memorandum was prepared and Vigilance P.S. Case No.28 of 2008 was registered against the petitioner. Counsel submits that vide Memo No.6332 dated 11.06.2008, petitioner was suspended while he was in custody. On being released from the custody, the petitioner filed CWJC No.19825



of 2010 against the order of suspension before this Hon'ble Court. Counsel submits that a show-cause notice was issued to the petitioner asking as to why departmental proceeding be not initiated against him. The petitioner gave his reply to the show-cause on 05.03.2010. Thereafter, vide Memo No.2099 dated 21.02.2011, departmental proceeding was initiated and memo of charge was also issued framing two charges against the petitioner and Departmental Enquiry Commissioner was appointed as the Conducting Officer. Counsel submits that vide order dated 11.04.2011, CWJC No.19825 of 2010 was allowed and the order by which petitioner was suspended was set aside. However, against the order dated 11.04.2011, the State had preferred Review application bearing Civil Review No.494 of 2011. Counsel submits that petitioner has also filed contempt in MJC No.973 of 2012, against the non-compliance of the aforesaid order. He submits that both review as well as contempt were heard together and vide order dated 02.09.2013, the review application was allowed and the writ petition was proposed to be heard afresh and contempt application stood dismissed as infructuous. Thereafter, CWJC was heard afresh and the Hon'ble Court allowed the writ petition setting aside the order of suspension of the petitioner. Counsel further submits that the



District Magistrate, Samastipur has given a clean chit to the petitioner in its report vide Memo No.276 dated 09.07.2013 addressed to the Departmental Enquiry Commissioner. It is therefore clear that the petitioner was made a scapegoat at the behest of the then Mukhiya. He further submits that the Departmental Enquiry Commissioner did not take note of the District Magistrate's comment on the petitioner's show-cause. He submits that on 14.08.2015 the petitioner was posted as Senior Deputy Collector, Purnea, and is discharging his duties there since then. He submits that the departmental enquiry continued and the conducting officer submitted his enquiry report on 29.07.2015 and the petitioner was directed to submit his response on the enquiry report vide letter No.11565 dated 10.08.2015. Copies of the Enquiry Report dated 29.07.2015 and letter dated 10.08.2015 are annexed as Annexures-4 and 5 respectively to this application. Counsel submits that vide letter dated 12.08.2015 the petitioner was directed to submit an affidavit regarding the allegation made in application dated 27.01.2015 (Annexure-3). Counsel submits that the petitioner vide his letter dated 10.09.2015, asked for certain documents that were relied upon in the proceeding but the same was not supplied to the petitioner. The documents were supplied but no



decision as such was taken on the letter dated 27.01.2015. He submits that on 14.09.2015 and 23.12.2015, reminders for filing response on the enquiry report (Annexure-4) was served to the petitioner. The petitioner submitted his response so required on 14.01.2016 denying all the charges and findings in the enquiry report as also his grievance over not taking any action over his complaint (Annexure-3).

4. Learned Counsel for the petitioner further submits that when no action had been taken on the letter dated 27.01.2015 then the petitioner has filed CWJC No.1530 of 2016, which was disposed of by this Hon'ble Court on 11.04.2016 with a direction to the Principal Secretary to dispose of petitioner's representation within a period of one month. Thereafter, on 17.05.2016, the Additional Secretary, General Administration Department rejected the representation dated 27.01.2015 of the petitioner in quite whimsical manner without going into the issues raised by the petitioner. He submits that the impugned actions of the respondent authorities are in violation of Articles 14 and 21 of the Constitution of India as also in the principles of natural justice.

5. Counsel further submits that without waiting for the outcome of representation of the petitioner, enquiry



report has been submitted, which shows the mala fide intention of the respondents against the petitioner. Counsel submits that from perusal of the complaint it is apparent that it was not supported with an affidavit, which is the mandatory requirement for vigilance enquiry against anyone. But in the present case, the Vigilance Department contrary to its own guidelines/directives, accepted the complain of the complainant. He submits that it is relevant to state here that one Tapeswar Singh, Mukhiya, has made allegation against the petitioner that he is asking for Rs.55,000/- (Rupees fifty five thousand only), but from perusal of the verification report, it appears that along with Shashi Bhushan Pandey, Inspector, Vigilance, Ram Dayal Singh S/o. Tapeswar Singh went to meet the petitioner. It also appears from the verification report that when the petitioner and Ram Dayal Singh were having conversation, the Inspector was not present but even then he submitted the verification report against the petitioner. He submits that from perusal of post-trap memorandum, it is not clear that who had given or from whom the petitioner had taken Rs.50,000/- and signature of either complainant or his son was also not there on the post trap memorandum, which also show that none of them were present at the time of alleged trap. He submits that memo of charge



dated 12.09.2008 was served to the petitioner and the petitioner submitted his reply denying all the charges mentioned in the memo of charge. He submits that after a gap of almost a year of submission of reply by the petitioner, the departmental proceeding was initiated against the petitioner vide Memo No.2099 dated 21.02.2011, which was served on the petitioner on 23.04.2011. Counsel submits that the petitioner vide letter No.21.09.2021, addressed to the Principal Secretary, General Administration Department, submitted the list of documents required in the departmental proceeding from the Circle and Block Offices of Shivajinagar (Samastipur) and Vigilance Department, but all the documents as per the list of documents were not supplied to him which has prejudiced the case of the petitioner.

6. Learned Counsel for the petitioner further submits that very claim of the complainant that a list of beneficiaries has been recommended and sent to the petitioner, which is the very foundation of the complaint, get falsified by the above said report/comment dated 09.07.2013. He submits that there was no mention of any reference of the said list in the complaint petition or in the verification report nor any such list was ever seized by the verifier or the Trap-team at the time of



raid. He submits that in course of the Departmental Proceeding No.09/11, the petitioner was not allowed to cross-examine the witnesses; rather in its place he was asked by the conducting officer to frame a written questionnaire for the witnesses and supply it to them, who will answer and submit the same before the conducting officer, which is apparently against the provisions so laid in the Indian Evidence Act. Counsel submits that the complainant was examined on the point of his complaint only and he was not at all examined on Pre-trap memorandum, post trap memorandum and about the alleged incident. He submits that one Shashi Bhushan Pandey, who is said to be the verifier, has also not been examined. He submits that copies of original deposition of witnesses have also not been provided to the petitioner and after a long gap, only typed copies had been made available to the petitioner. He submits that the Departmental Enquiry Commissioner vide its order dated 13.05.2014, contained in Memo No.231/CDE dated 20.05.2014, has also requested the S.P., Vigilance for making sure the appearance of the said Shashi Bhushan Pandey in the proceeding, but even then the said Shashibhushan Pandey, S.I., who had verified the allegation against the petitioner, did not appear in course of the proceeding. The Presenting Officer also



requested the said Shashi Bhushan Pandey (wrongly typed as Shashibhushan Jha) to appear in the proceeding, but even then also he did not appear. He submits that the petitioner again filed a protest against such act/conduct of the Conducting Officer vide letter dated 12.01.2015, but no action in this regard had been taken. He submits that the independent witnesses belong to the Shankarpur Panchayat and as such influence of the informant (Mukhiya) over them cannot be denied. He submits that before issuance of impugned order dated 28.06.2016 (Annexure-8), no second show cause has been asked from the petitioner. He submits that the entire proceeding against the petitioner, which is apparent from the facts and circumstances stated above, has been initiated with an intention to dismiss the petitioner from service and nothing else. He submits that apart from the present alleged incidence, the ACR of petitioner is outstanding. Counsel submits that the petitioner brings certain facts, pleadings and documents on record, which will prove that entire action and impugned order are fit to be set aside being based on perverse finding of the Conducting Officer and also the report submitted by him on 29.07.2015 as contained in Annexure-4 is based on conjecture, surmises and in violation of the principle of natural justice and also contrary to the allegation



of the charge of memorandum. He submits that the petitioner is having good prima facie case and balance of convenience is also in his favour, therefore, this application is fit to be allowed.

7. Learned Counsel for the petitioner concluded his argument relying on the following judgments. The first judgment on which he relied is case of **Indrani Bai Vs. Union of India and Others** reported in **1994 Supp (2) Supreme Court Cases 256**, the second is case of **Registrar of Cooperative Societies, Madras and Another Vs. F.X. Fernando** reported in **(1994) 2 Supreme Court Cases 746** and third is the case of **Chakradhar Das Vs. The State of Bihar & Others** reported in **2007 (3) PLJR**, in which he submits that the delinquent Officer has entertained a doubt about the impartiality of the inquiry to be conducted by the Inquiry Officer and when he made representation at the earliest, requesting to change the Inquiry Officer, the authority should have acceded to the request and appoint another Inquiry Officer, other than the one whose objectivity was doubted. Any order passed by the Inquiry Officer in a mechanical manner is not sustainable, more particularly when the order is cryptic without consideration of show-cause. He submits that the fundamental duty under the departmental proceeding lies on the Inquiry Officer to grant due



opportunity to the parties and then only pass order.

8. Learned Counsel for the State, on the other hand, submits that when the petitioner was posted as Circle Officer-cum-Block Development Officer, Shivaji Nagar, Samastipur, the Mukhiya of Shankarpur Panchayat submitted a complaint to the Vigilance Department alleging therein that the petitioner was demanding Rs.55,000/- illegal gratification/bribe for sanctioning the amount related to Indira Awas Yojna and compensation for the scheme relating to damage of crops among the beneficiaries of the aforesaid Block/Circle. He submits that on receipt of the complaint, a team of Vigilance Investigation Bureau on 15.05.2008 apprehended the petitioner with the amount of Rs.50,000/- and registered Vigilance P.S. Case No.28 of 2008. He submits that the petitioner was found guilty of gross misconduct as per the provisions contained in Rule 3(i)(i) of the Bihar Government Servant Conduct Rules, 1976 and the petitioner was suspended on 15.05.2008. He submits that for the same set of allegation, the Disciplinary Authority initiated departmental proceeding against the petitioner vide Memo No.2099 dated 21.02.2011. He submits that Enquiry Commissioner was appointed as conducting officer to look into the allegation levelled against the petitioner. He submits that the



enquiry officer after going through the facts and circumstances of the case found the charges levelled against the petitioner proved and submitted enquiry report vide letter No.369 dated 29.07.2015. He submits that when petitioner was in apprehension that charges levelled against him cannot be refuted with cogent evidence, the petitioner filed *pariwad/complaint* dated 27.01.2015. Counsel submits that the allegation made by the petitioner against the conducting officer in his *pariwad* dated 27.01.2015 was merely an apprehension of the petitioner and his motive was only to delay the departmental proceeding. He submits that conducting officer in the instant departmental proceeding was an I.A.S. Departmental Enquiry Commissioner, Bihar, Patna, whose integrity can not be doubted. He submits that the enquiry report along with points of disagreement, if any, were supplied to the the petitioner as per the provisions of Rule 18(3) of Bihar C.C.A. Rules, 2005. Counsel submits that the petitioner had been given ample opportunity under Section 18(3) of the Bihar C.C.A. Rules, 2005. Counsel submits that the petitioner was supplied all the documents sought by him vide letter dated 23.12.2015 and he was again directed to submit his representation within 15 days. Thereafter, the petitioner submitted his reply vide his letter No.95 dated 14.01.2016 in



which instead submitting his defence, he argued that he has filed the instant writ petition and prayed that the departmental proceeding against him may be stayed till the final order passed by the Hon'ble High Court. He submits that the above stand taken by the petitioner itself proved that he is not interested in conclusion of departmental proceeding rather his intention was to delay the departmental proceeding. Learned Counsel for the State lastly submits that from the facts mentioned herein above, this writ petition is fit to be dismissed.

9. After hearing the parties and going through the materials available on record, it transpires to this Court that the departmental proceeding had been initiated against the petitioner after his arrest taking bribe of Rs.50,000/- based on pre-trap and post-trap memorandum resulting into Vigilance P.S. Case No.28 of 2008. He was arrested then suspended on 11.06.2008, enlarged on bail on 16.01.2009, moved before this Court in CWJC No.19825 of 2010 by which his order of suspension has been revoked followed by show-cause notice as to why departmental proceeding be not initiated against him and upon consideration of his reply to the show-cause departmental proceeding was initiated vide Memo No.2099 dated 21.02.2011 and memo of charge had also been served, in which



Departmental Inquiry Commissioner was appointed as Conducting Officer. Petitioner had also preferred Civil Review No.494 of 2011 as well as Contempt Petition bearing M.J.C. No.937 of 2012 arising from the order dated 11.04.2011 passed in CWJC No.19825 of 2010, in which MJC was dropped and CWJC No.19825 of 2010 with Civil Review No.494 of 2011 was disposed of on 20.03.2015 setting aside the order of suspension. Suspension was revoked and his departmental proceeding was continued during which he has filed an application on 27.01.2015 before the Principal Secretary, General Administration Department, about bias against him. The claim of the petitioner is that during pendency of the departmental inquiry no decision was taken on his application for bias. He has repeatedly submitted his reminder to change the Inquiry Officer, but nothing happened then he filed CWJC No.1530 of 2016 which was disposed of on 11.04.2016 with a direction to the Principal Secretary to dispose off the representation of the petitioner within one month. In compliance of the order passed by this Hon'ble Court the Additional Secretary, General Administration Department, has considered his application and rejected on 17.05.2016. Counsel has made allegation that petitioner has filed his representation on



27.01.2015 on which decision had been taken on 17.05.2016, but inquiry report was submitted on 29.07.2015 itself, and, therefore, the petitioner has moved before this Hon'ble Court initially with a prayer to quash the order contained in Memo No.7036 dated 17.05.2016 by which his representation of bias has been rejected but, subsequently, the final order has been passed by the Disciplinary Authority contained in Memo No.9119 dated 28.06.2016 as well as inquiry report dated 29.07.2015 has been challenge. It transpires to this Court that prior to filing of the present writ petition i.e., 16.06.2016 inquiry report has already been submitted.

10. From the argument made by Counsel for the petitioner that during the departmental proceeding the petitioner was not allowed to cross-examine witnesses; rather he was asked by the Conducting Officer to frame a written questionnaires for the witnesses and supply it to them, who will answer the same and submit before the Conducting Officer which, according to the petitioner, is apparent according to the provisions so laid in the Indian Evidence Act. In this regard, this Court is of the view that in the departmental proceeding the cross-examination shall not used to take place, according to strict compliance of the Evidence Act; rather no specific



guideline mentioned in Bihar C.C.A. Rules, 2005 save and except to cross-examine. In departmental proceeding, provision of cross-examination is there and in the opinion of the Court, it may be taken place either oral or written, therefore, there is no wrong done by the inquiry officer by asking to frame a written questionnaire for the witnesses, supplied to them so that they will answer, particularly, when the conduct of the petitioner is very much clear that he has moved before this Hon'ble Court on every point twice earlier with a view to delay the proceeding. Hence, there is no substance in the point of the petitioner.

11. Another point on which the Counsel for the petitioner put emphasis that the complainant was examined on the point of his complaint only by the Inquiry Officer and he was not at all cross-examined on pre-trap memorandum, post trap memorandum and about the alleged incident. In this regard, this Court is of the view that the examination and cross-examination of the complainant/informant shall definitely take place in the criminal proceeding in pending Vigilance case, where the allegations have to be proved beyond all reasonable doubts, but here in the departmental proceeding, the inquiry officer has to ascertain only that whether the complaint made by the complainant is really made by him or not and only



preponderance of probability has to be tested. Therefore, this Court is of the view that this point shall also not support the petitioner at all. In departmental proceeding, the complainant came forward, has been examined on the point of his complaint is sufficient, which has been done in the present case.

12. There is no need of examination of verifier in the departmental proceeding. It is made clear that when the departmental inquiry officer has directed the S.P. Vigilance about appearance of S.I. and if he has not appeared then, by virtue of same, the departmental proceeding shall not be failed and allegation of complainant is sufficient to proceed.

13. The further point he has taken that the petitioner has filed protest against the Conducting Officer and also to call the independent witnesses of the relevant Panchaiyat which has been denied by the Conducting Officer are concerned, in this regard the conducting officer has to test only that whether complaint has been made or not? Which has been proved by the complainant himself. There is no need of calling any independent witness. The question of bias against the Conducting Officer has already been tested by this Hon'ble Court, in which observation has come and officials have passed order in compliance of the Hon'ble Court's order. The



judgments on which petitioner relied, the first judgment **Indrani Bai's case** (supra) is not applicable in the present case due to the reason that in this case, the case has been decided on the factual matrix that the departmental proceeding was conducted ex parte and the delinquent could not appear before the Inquiry Officer. Here is not the same case, hence, this Court is of the firm view that case of **Indrani Bai** (supra) is not applicable in the present case. The second case is **Registrar of Cooperative Societies Madras and another** (supra) is also not applicable in the present case, due to the reason that in this case issuance of charge memo has been issued by an authority, who is not competent at all, who directed to conduct the inquiry proceeding has been the subject of test. But, here situation is quite different. The third case on which the petitioner relied is **Chakradhar Das** (supra), **Chakardhar Das** case is also not applicable in the present case due to the reason that the factual matrix of the present case is quite different as in the case the departmental proceeding is relating to disobedience of the transfer order, but here in the present case departmental proceeding is going against the petitioner, who was posted as Circle Officer-cum- Block Development Officer, Siwaji Nagar, Samastipur, and on the complaint of Mukhiya of Sankarpur



Panchayat that petitioner was demanding Rs.55,000/- illegal gratification/bribe for sanction of amount relating to Indira Awas Yojana and compensation for scheme relating to damage of crop amongst the beneficiaries of aforesaid Block/Circle. A Vigilance Investigation Bureau following the procedure, conducted a raid in which the petitioner was apprehended with Rs.50,000/- and particularly the complainant came forward and adduced evidence before the Conducting Officer that allegation is true, which was subsequently resulted into dismissal from service after following due process. Counsel submits that second show-cause has not been served upon him but vide letter No.11565 dated 10.08.2015 he was directed to submit his representation in the light of inquiry report in the form of second show-cause and then final order has been passed.

14. It is made clear that upon specific query of this Court that why petitioner had not preferred review, Counsel submits that the petitioner is a Gazetted Officer and instead of opting the review he submits that the inquiry report as well as the final order has been tested by the Council of Ministers and approved by the Bihar Public Service Commission. Therefore, this case has been filed directly before this Hon'ble Court.

15. In the light of the above said discussions that



petitioner has attained the age of superannuation on 28.02.2025
neither demand of fresh inquiry nor to interfere in the impugned
orders shall be permitted. This Court finds that there is neither
any procedural irregularity nor violation of natural justice nor
excess punishment has been imposed. As such, there is no need
to interfere in the punishment order imposed and, hence, this
writ petition is hereby dismissed.

(Dr. Anshuman, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	22.07.2025
Uploading Date	05.08.2025
Transmission Date	

