

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10441 of 2016

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Ram Karan Ranjan Son of late Foudar Paswan, resident of Hesal Suryapuri,
Devi Mandap Road, Police Station Sukhdeo Nagar, District- Ranchi.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Bihar, Patna.
2. The Principal Secretary, Welfare Department, Government of Bihar, Old Secretariat, Patna.
3. The Secretary, Welfare Department, Government of Bihar, Old Secretariat, Patna.
4. The Deputy Secretary, Welfare Department, Government of Bihar, Old Secretariat, Patna.
5. The State of Jharkhand through the Principal Secretary, Welfare Department, Government of Jharkhand, Ranchi, Jharkhand.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rupak Kumar, Advocate
		Mr. Raj Kishore Ray, GP-18
For the Respondent/s	:	Mr. M.N. Roy, Advocate

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 15-07-2025

Heard learned Counsel for the petitioner, learned
Counsel for the State of Bihar and learned Counsel for the State
of Jharkhand.

2. The present writ petition has been filed for
quashing of notification contained in Memo No.5014 dated
04.12.2003, by which punishment has been imposed against the
petitioner for withholding of two increments with cumulative
effect and recording of censure in character roll has been



inflicted.

3. Learned Counsel for the petitioner submits that the petitioner has filed the present writ petition in the year 2016, in which the order of punishment passed in 2003 has been challenged. He submits that delay has not been made; rather he has challenged the said order before Hon'ble Jharkhand High Court in W.P. (S) No.2624 of 2014, but writ petition was dismissed as withdrawn vide order dated 28.10.2015 granting liberty to the petitioner to approach before Hon'ble Patna High Court for redressal of his grievance. It is due to this reason the petitioner has preferred the writ petition in the year 2016. Counsel submits that the punishment order is Annexure-1. He further submits that the enquiry has been conducted following the charge memo, copy of the enquiry report dated 22.02.2003 is annexed as part of Annexure-7. Counsel submits that in the enquiry report petitioner has been exonerated from the charges, but even then the authority concerned has issued second show-cause and in the second show-cause, one line statement that Disciplinary Authority is not agree with the enquiry report and proposes to impose punishment.

4. Learned Counsel for the petitioner further submits that the said punishment has been imposed against the



petitioner in the year 2003 and at that very time, the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 had not been enacted; rather it is guided by the Rules of 1930. In support of his argument, learned Counsel submits that Hon'ble Supreme Court in the Case of **Punjab National Bank Vs. Kunj Bihari Mishra**, reported in (1998) 7 SCC 84, a Full Bench decision has pleased to acknowledge in paragraph-15 and discussed Article 311(2) of the Constitution of India before its deletion by 42nd Amendment and discussed the case of **Managing Director, ECIL Vs. B. Karunakar** reported in (1993) 4 SCC 727, in which it has been discussed that in case the findings of the enquiry report is in favour of the delinquent officer but the Disciplinary Authority disagree with the said findings and proceed to issue notice, in such case it would obviously necessitated that the Disciplinary Authority should expressly State that it differs from the findings recorded in the inquiry report and then indicate the nature of action proposed to be taken against the delinquent officer. It has also been held that without any such express statement in the notice, it would be impossible to issue notice at all. Here in the present case the Disciplinary Authority without differing from findings of the Inquiry Report which is in favour of the petitioner reached on



the nature of action proposed to be taken against the petitioner and he submits that passing such type of punishment order is not sustainable in the eye of law. He submits that the same view has subsequently been inserted in the later enactment of Bihar CCA Rules, 2005 also, particularly in Rule 18 of the Bihar CCA Rules, 2005, where the Disciplinary Authority has reached on the specific conclusion as to why he is disagreeing on the inquiry report.

Here in the present case these things are lacking and it is due to this reason learned Counsel for the petitioner submits that the order has been passed in gross violation of law and against the service jurisprudence, therefore, fit to be set aside.

5. Learned Counsel for the State, on the other hand, submits that there is no procedural irregularity, order has been passed complete in accordance with law and punishment order is also as per the charge alleged against the petitioner.

6. After hearing the parties and going through the pleadings made by the petitioner, it transpires to this Court that second show-cause is not indicating any reasoning as to why the disciplinary authority is not in agreement with the inquiry report. Nothing has been narrated and the judgment and the



finding of the Court in Punjab National Bank (Supra) para-15 states as follows:

“15. At this stage, it will be appropriate to refer to the case of State of Assam v. Bimal Kumar Pandit [AIR 1963 SC 1612] decided by a Constitution Bench of this Court. A question arose regarding the contents of the second show-cause notice when the Government accepts, rejects or partly accepts or partly rejects the findings of the enquiry officer. Even though that case relates to Article 311(2) before its deletion by the 42nd Amendment, the principle laid down therein, at p. 10 of the Report, when read along with the decision of this Court in Karunakar case will clearly apply here. The Court observed at SCR pp. 10-11 as follows:

"We ought, however, to add that if the dismissing authority differs from the findings recorded in the enquiry report, it is necessary that its provisional conclusions in that behalf should be specified in the second notice. It may be that the report makes findings in favour of the delinquent officer, but the dismissing authority disagrees with the said findings and proceeds to issue the notice under Article 311(2). In such a case, it would obviously be necessary that the dismissing authority



should expressly state that it differs from the findings recorded in the enquiry report and then indicate the nature of the action proposed to be taken against the delinquent officer. Without such an express statement in the notice, it would be impossible to issue the notice at all. There may also be cases in which the enquiry report may make findings in favour of the delinquent officer on some issues and against him on some other issues. That is precisely what has happened in the present case. If the dismissing authority accepts all the said findings in their entirety, it is another matter: but if the dismissing authority accepts the findings recorded against the delinquent officer and differs from some or all of those recorded in his favour and proceeds to specify the nature of the action proposed to be taken on its own conclusions, it would be necessary that the said conclusions should be briefly indicated in the notice. In this category of cases, the action proposed to be taken would be based not only on the findings recorded against the delinquent officer in the enquiry report, but also on the view of the dismissing authority that the other charges not held proved by the enquiring officer are, according to the dismissing authority, proved. In order to give the delinquent officer a reasonable



opportunity to show cause under Article 311(2), it is essential that the conclusions provisionally reached by the dismissing authority must, in such cases, be specified in the notice. But where the dismissing authority purports to proceed to issue the notice against the delinquent officer after accepting the enquiry report in its entirety, it cannot be said that it is essential that the dismissing authority must say that it has so accepted the report. As we have already indicated, it is desirable that even in such cases a statement to that effect should be made. But we do not think that the words used in Article 311(2) justify the view that the failure to make such a statement amounts to contravention of Article 311(2). In dealing with this point, we must bear in mind the fact that a copy of the enquiry report had been enclosed with the notice, and so, reading the notice in common sense manner, the respondent would not have found any difficulty in realising that the action proposed to be taken against him proceeded on the basis that the appellants had accepted the conclusions of the enquiring officer in their entirety.""

7. The situation prior to 42nd amendment grants protection to the delinquent under Article 311(2) of the



Constitution of India, but after amendment of Article 42 such provision has been amended. The present case is prior to 42nd Amendment and, therefore, the present provision as discussed in paragraph-15 of the above judgment is applicable upon the petitioner. There is absolute lacking of any separate finding against the delinquent either in second show-cause or in final order, which is impugned here, and therefore, this Court is of the firm view that the said punishment order is in gross violation of settled proposition of law.

8. In result, the punishment order contained in Memo No.5014 dated 04.12.2003 is hereby set aside. Accordingly, this writ petition stands allowed.

(Dr. Anshuman, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.07.2025
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