

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4978 of 2023

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Sujit Kumar Jha Son of Late Dinesh Jha, resident of village - Nayagaon,
Police Station - Rayam, Block - Kewati, District - Darbhanga presently posted
as Jail Superintendent, Aurangabad, Bihar.

... .. Petitioner

Versus

1. The State of Bihar through the Additional Chief Secretary, Home Department, Govt. of Bihar, Patna.
2. The Joint Secretary-cum-Director (Prison), Home Department, Govt. of Bihar, Patna.
3. The Inspector General (Prison), Bihar, Patna.
4. The Deputy Inspector General (Administration) Home Department (Prison), Bihar, Patna.
5. The Commissioner -cum- Enquiry Officer, Purnea Division, Purnea.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Jitendra Prasad Singh, Sr. Advocate Mr. Venkatesh Kaushik, Advocate
For the Respondents	:	Mr. Md. N.H. Khan, S.C.-1

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

4 15-09-2025 Heard Mr. Jitendra Prasad Singh, learned Senior

counsel for the petitioner and Mr. Fazle Karim, learned A.C. to

S.C.-1.

2. The present petition has been filed for the

following reliefs:-

*“(i) For setting aside the resolution dated
09.11.2022 (Annexure-6) contained in Memo
No.11271 passed by the Joint Secretary-
cum-Director (Prison) (Respondent No.2)
whereby and whereunder an order of
punishment for withholding of four*



increments of pay with cumulative effect has been awarded to the petitioner in exercise of power Under the provisions of the Bihar Govt. Servants (Classification, Control and Appeal) Rules, 2005 hereinafter referred to CCA Rules”

3. The petitioner was posted as Jail Superintendent in Katihar Jail. At that time, a disciplinary proceeding was initiated and charge memo containing four charges was served, under Rule 17(3) of the C.C.A. Rules in *Prapatra 'Ka'* on 02.06.2020, alleging therein that a video went viral on social media about the quarrel which took place on 30.8.2017 between the prisoners and as such, the petitioner has violated the provisions of Bihar Jail Manual in performing his duties. The aforesaid proceeding was initiated vide resolution dated 08.03.2021. Thereafter, the Enquiry Officer asked the petitioner to submit his response in defence of his case vide order dated 25.3.2021. Accordingly, the petitioner filed his reply on 14.09.2021 stating therein that he has not violated any provisions of the Jail Manual and rather has been performing his duties diligently, inasmuch, he has filed several criminal cases against the accused persons who wanted to disturb the smooth functioning of the jail.

4. The Enquiry Officer after a detailed enquiry



has submitted his report dated 30.03.2022 and found that the charge nos. 1, 3 and 4 are not proved against the petitioner and the charge no.2 was partially proved. However, the disciplinary authority disagreeing with the finding of the Enquiry Officer issued a second show-cause notice dated 26.05.2022 directing the petitioner to file reply to the same. After receiving the second show cause notice, the petitioner filed his reply dated 09.06.2022 with a prayer to drop the proceeding initiated against him. The petitioner has stated in his reply that incident took place about five years back and at that time, the Inspector General and Deputy Inspector General (Prison) has also, after proper enquiry, exonerated the petitioner and even the enquiry officer has not found charges to be proved save and except charge no.2. which was found partially proved and as such, he requested to exonerate him. However, the disciplinary authority being not satisfied with the second show-cause reply has passed the impugned order of punishment vide resolution dated 09.11.2022 withholding four increments of pay with cumulative effect.

5. Against the punishment order, the petitioner filed an application/representation dated 24.1.2023 before the Additional Chief Secretary, Home Department, Government of



Bihar unsuccessfully.

6. Learned counsel for the petitioner has adverted to the provisions of the Bihar Jail Manual to argue that the petitioner has not violated any provision of the aforesaid Jail Manual.

7. Relying upon the provisions of Rule 18(2) of the Bihar CCA Rules, it has been submitted by learned counsel for the petitioner that if the disciplinary authority is disagreed with the findings of the Enquiry Officer then he has to record the valid reasons for his disagreement and has to record its own findings on such charge with the evidence on record. However, in the present case, the disciplinary authority has recorded a cryptic finding without evaluating and considering the evidences available on the record and has presumed that the petitioner has not performed the duty as envisaged under the Jail Manual.

8. Learned counsel for the petitioner submits that the disciplinary authority without considering the materials available on the record has come to the conclusion while issuing second show cause notice that the petitioner has failed to perform the duty and has violated the provisions of Jail manual.

9. Learned counsel for the petitioner submits



that the Enquiry Officer after full-fledged and detailed enquiry has submitted his enquiry report finding three charges are not proved and one i.e. charge no.2 is partially proved. However, even with regard to charge no.2, it has submitted by the petitioner that the findings are not based on materials available on the record because of the fact that petitioner repeatedly conducted raid and search in the jail which was evident from the minutes book but the same has not been considered by the Enquiry Officer.

10. Learned Senior Counsel for the petitioner has relied upon the judgments of the Hon'ble Supreme Court in the cases of *Punjab National Bank & Ors. vs. Kunj Behari Misra*, reported in (1998) 7 SCC 84, and *Yoginath D. Bagde vs. State of Maharashtra & Anr.*, reported in (1999) 7 SCC 739 to argue that when a disciplinary authority disagrees with a favourable finding of the Enquiry Officer it is mandatory to record cogent reasons and to arrive at his own independent and tentative findings.

11. Learned counsel for the State has filed a counter affidavit and has supported impugned order of punishment by submitting that there is no illegality in the disciplinary proceeding, however, the State has not been able to



make any submission as to whether the disciplinary authority had followed the mandate under Rule 18(2) of the Bihar CCA Rules.

12. I have considered the submissions of the parties and perused the materials on record.

13. From perusal of the charges, it appears that the petitioner, while posted as the Jail Superintendent has failed to perform his duties as laid down under Rule 140, 796 (i)(ii) and 870 (iii) of the Bihar Jail Manual, 2012 because of the fact that during his period of posting some videos went viral on social media about the quarrel which took place between the prisoners on 30.08.2017.

14. From the report of the Enquiry Officer, it appears that save and except charge no.2 the remaining three charges were not proved and even the charge no.2 was only partially proved. It also appears that while recording the findings, the Enquiry Officer has applied his mind to arrive at his findings.

15. From perusal of the enquiry report it appears that the petitioner has not violated Rule 140 which provides additional security arrangement in the Jail, Rule 796, which provides work and power of Superintendence over the sub-



ordinate authorities under the Jail in order to reform the Welfare Scheme for the prisoners and Rule 870 which provides duty of the jail authority. Further, it is evident that the Enquiry Officer has recorded his categorical and detailed findings on each and every charges, however, the Disciplinary Authority after differing with the report of the Enquiry Officer passed the order disagreeing and issuing fresh show cause without recording reasons for his disagreement.

16. It would be apposite to refer to Rule 18(2) of the Bihar CCA Rules, 2005, which reads thus:

“(2) The disciplinary authority, after receipt of the enquiry report as per rule 17 (23) (ii) or as per sub-rule (t), shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own finding on such charge, if the evidences on record is sufficient for the purpose.”

17. Rule 9(2) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 is *in pari materia* with the Rule 18(2) of the Bihar Government (Classification, Control & Appeal) Rules, 2005. The Hon’ble Supreme Court in the case of ***Yoginath D. Bagde V/s State of Maharashtra & Anr*** (supra) in paragraph no. 29 has held as follows:



“23. It was next contended by learned counsel for the appellant that the Disciplinary Committee, which had disagreed with the findings recorded by the enquiry officer and had held that the charges against the appellant were proved, had acted in violation of the “principles of natural justice” inasmuch as it did not give an opportunity of hearing at the stage when it developed the inclination that the findings recorded by the enquiry officer were not acceptable and were liable to be reversed. It was further contended that the findings of the enquiry officer, which were based essentially on an appreciation of the evidence recorded by him were considered by the Disciplinary Committee in the absence of the appellant without any notice to him and the disciplinary authority on a reappraisal of the evidence came to the conclusion that the charges against the appellant were established. The Disciplinary Committee thus having taken a decision, proceeded thereafter to issue a notice to the appellant to show cause why he should not be dismissed from service and a recommendation to that effect be not made to the Governor. It was also contended that the Disciplinary Committee had already made up its mind and it was only in respect of the proposed punishment that a notice was issued to the appellant. Consequently, the appellant, it is



contended, was denied an adequate opportunity of hearing which should have been afforded to him before taking a decision that he was guilty of the charges levelled against him.

24. *Before entering into the merits of this question, we may point out that the action against the appellant was taken under the provisions of the Maharashtra Civil Services (Discipline and Appeal Rules), 1979. Part III of the rules deals with “penalties and disciplinary authorities”. Penalties are mentioned in Rule 5. Dismissal from service is one of the major penalties mentioned in Rule 5(1)(ix). The disciplinary authorities are indicated in Rule 6. The authority which can institute disciplinary proceedings is indicated in Rule 7.*

25. *Part IV of the rules deals with the procedure for imposing penalties. Rule 8 prescribes the procedure for imposing major penalties. The enquiring authority, after completing the enquiry, is required to prepare a report as provided by clause (25) of Rule 8 which provides as under:*

“(25) After the conclusion of the enquiry, a report shall be prepared by the enquiring authority. Such report shall contain—

(a) the articles of the charge and the statement of the imputation of misconduct or misbehaviour;



- (b) the defence of the government servant in respect of each article of charge;*
- (c) an assessment of the evidence in respect of each article of charge;*
- (d) the findings on each article of charge and the reasons therefor;*
- (e) recommendation regarding the quantum of punishment.”*

26. The enquiring authority is thereafter required to forward the report as also all other relevant records, including the report prepared by it under sub-rule (25); the written statement of defence, if any, submitted by the government servant; the oral and documentary evidence produced in the course of the enquiry; written briefs, if any, filed by the presenting officer or the government servant or both during the course of the enquiry and the orders, if any, made by the disciplinary authority and the enquiring authority in regard to the enquiry, to the disciplinary authority.

27. What action would be taken on this report and in what manner will this report be dealt with is indicated in Rule 9. Relevant portions of this rule are quoted below:

“9. Action on the enquiry report.—(1) The disciplinary authority, if it is not itself the enquiring authority may, for reasons to be recorded by it in writing, remit the case to the enquiring authority for further enquiry and report, and the



enquiring authority shall thereupon proceed to hold the further enquiry according to the provisions of Rule 8 of these rules as far as may be.

(2) The disciplinary authority shall if it is not the enquiring authority, consider the record of the enquiry and record its findings on each charge. If it disagrees with the findings of the enquiring authority on any article of charge, it shall record its reasons for such disagreement.

*(3)****

(4)(i) If the disciplinary authority, having regard to its findings on all or any of the articles of charge, is of the opinion that any of the major penalties should be imposed on the government servant, it shall—

(a) furnish to the government servant a copy of the report of the enquiry held by it and its findings on each article of charge, or, where the enquiry has been held by an enquiring authority appointed by it, a copy of the report of such authority and a statement of its findings on each article of charge expressly stating whether or not it agrees with the



findings of the enquiry authority, together with brief reasons for its disagreement, if any, with the findings of the enquiring authority; and

(b) give to the government servant a notice stating the penalty proposed to be imposed on him and calling upon him to submit within fifteen days of receipt of the notice or such further time not exceeding fifteen days, as may be allowed, such representation as he may wish to make on the proposed penalty on the basis of the evidence adduced during the enquiry held under Rule 8 of these rules.

*(ii)(a)-(b)****

(iii) Where it is not necessary to consult the Commission, the disciplinary authority shall consider the representation, if any, made by the government servant in pursuance of the notice given to him under clause (i)(b) of this sub-rule and determine what penalty, if any, should be imposed on him on the basis of the evidence



adduced during the enquiry held under Rule 8 and make such order as it may deem fit.”

28. *In view of the provisions contained in the statutory rule extracted above, it is open to the disciplinary authority either to agree with the findings recorded by the enquiring authority or disagree with those findings. If it does not agree with the findings of the enquiring authority, it may record its own findings. Where the enquiring authority has found the delinquent officer guilty of the charges framed against him and the disciplinary authority agrees with those findings, there would arise no difficulty. So also, if the enquiring authority has held the charges proved, but the disciplinary authority disagrees and records a finding that the charges were not established, there would arise no difficulty. Difficulties have arisen in all those cases in which the enquiring authority has recorded a positive finding that the charges were not established and the delinquent officer was recommended to be exonerated, but the disciplinary authority disagreed with those findings and recorded its own findings that the charges were established and the delinquent officer was liable to be punished. This difficulty relates to the question of giving an opportunity of hearing to the delinquent officer at that*



stage. Such an opportunity may either be provided specifically by the rules made under Article 309 of the Constitution or the disciplinary authority may, of its own, provide such an opportunity. Where the rules are in this regard silent and the disciplinary authority also does not give an opportunity of hearing to the delinquent officer and records findings different from those of the enquiring authority that the charges were established, “an opportunity of hearing” may have to be read into the rule by which the procedure for dealing with the enquiring authority's report is provided principally because it would be contrary to the principles of natural justice if a delinquent officer, who has already been held to be “not guilty” by the enquiring authority, is found “guilty” without being afforded an opportunity of hearing on the basis of the same evidence and material on which a finding of “not guilty” has already been recorded.

29. *We have already extracted Rule 9(2) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 which enables the disciplinary authority to disagree with the findings of the enquiring authority on any article of charge. **The only requirement is that it shall record its reasoning for such disagreement. The rule does not specifically provide that before recording its own findings, the disciplinary authority***



will give an opportunity of hearing to a delinquent officer. But the requirement of “hearing” in consonance with the principles of natural justice even at that stage has to be read into Rule 9(2) and it has to be held that before the disciplinary authority finally disagrees with the findings of the enquiring authority, it would give an opportunity of hearing to the delinquent officer so that he may have the opportunity to indicate that the findings recorded by the enquiring authority do not suffer from any error and that there was no occasion to take a different view. The disciplinary authority, at the same time, has to communicate to the delinquent officer the “TENTATIVE” reasons for disagreeing with the findings of the enquiring authority so that the delinquent officer may further indicate that the reasons on the basis of which the disciplinary authority proposes to disagree with the findings recorded by the enquiring authority are not germane and the finding of “not guilty” already recorded by the enquiring authority was not liable to be interfered with.

30. Recently, a three-Judge Bench of this Court in *Punjab National Bank v. Kunj Behari Misra* [(1998) 7 SCC 84 : AIR 1998 SC 2713] relying upon the earlier decisions of this Court in *State of Assam v. Bimal Kumar Pandit* [AIR 1963 SC 1612 : (1964)



2 SCR 1], Institute of Chartered Accountants of India v. L.K. Ratna [(1986) 4 SCC 537 : (1986) 1 ATC 714] as also the Constitution Bench decision in Managing Director, ECIL v. B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] and the decision in Ram Kishan v. Union of India [(1995) 6 SCC 157 : 1995 SCC (L&S) 1357 : (1995) 31 ATC 475] has held that: (SCC p. 96, para 17)

“It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the enquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the enquiring officer holds the charges to be proved, then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the enquiry report is in favour of the



delinquent officer but the disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings, what is of ultimate importance is the finding of the disciplinary authority.”

The Court further observed as under: (SCC p. 96, para 18)

“When the enquiry is conducted by the enquiry officer, his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with the decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the enquiry officer. Where the disciplinary authority itself holds an enquiry, an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the enquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the enquiry officer, they are deprived of representing to the disciplinary authority before that



authority differs with the enquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation, the charged officer must have an opportunity to represent before the disciplinary authority before final findings on the charges are recorded and punishment imposed."

The Court further held that the contrary view expressed by this Court in State Bank of India v. S.S. Koshal [1994 Supp (2) SCC 468 : 1994 SCC (L&S) 1019 : (1994) 27 ATC 834] and State of Rajasthan v. M.C. Saxena [(1998) 3 SCC 385 : 1998 SCC (L&S) 875] was not correct."

18. In the present case, the disciplinary authority has mechanically differed with the findings arrived at by the Enquiry Officer, which is wholly impermissible under Rule 18(2) of the Bihar CCA Rules, 2005. Upon a close perusal of the aforesaid rule, it is clear that the Rule 18(2) requires, that if the evidence on record is sufficient for the purpose, then the disciplinary authority has to *firstly* record reasons for his disagreement and *secondly* arrive at his own independent tentative findings, therefore, the rule mandates that the disciplinary authority must record his reasons for disagreement with the findings arrived at by the Enquiry Officer based only on the evidence/material on record. Disciplinary Authority in



mechanically disagreeing without recording reasons and without discussing any material/evidence on record has committed a grave error. Pertinently in the case at hand, from perusal of the impugned order which is annexed as Annexure-4, it appears that Disciplinary Authority, without recording any valid and cogent reasons for disagreement had proceeded to issue a second show cause notice for awarding punishment which is not permissible in the eyes of law.

19. In view of the violation of the Rule 18(2) of the Bihar Government (Classification, Control & Appeal) Rules, 2005 and in view of the law laid down by Hon'ble Supreme Court in the case of *Yoginath D. Bagde (Supra)*, the impugned order is not sustainable in the eyes of law.

20. In these circumstances, this petition is allowed. Accordingly, the Resolution dated 09.11.2022 whereby the punishment of withholding of four increments of pay with cumulative effect has been awarded is hereby quashed. The petitioner shall be entitled to all consequential benefits, including monetary benefits.

(Sandeep Kumar, J)

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