

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.8728 of 2016**

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Sanjay Kumar Srivastava Son of Late Tej Narayan Prasad Srivastava Resident  
of village - Borahan, P.S. Sheyampur Bhatahan, District Sheohar

... .. Petitioner/s

Versus

1. The State Of Bihar through the Secretary, Rural Development Department,  
Government of Bihar, Patna.
2. The District Magistrate, Sitamarhi
3. The Block Development officer, Majorganj Block, District Sitamarhi
4. The Block Development officer, Nanpur Block District Sitamarhi
5. The Executive Magistrate, Sitamarhi - Cum - Conducting Officer
6. The Divisional Commissioner, Tirhut Division, Muzaffarpur

... .. Respondent/s

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**Appearance :**

|                      |   |                                                                                           |
|----------------------|---|-------------------------------------------------------------------------------------------|
| For the Petitioner/s | : | Mr. Sarvadeo Singh, Advocate<br>Md. Anisur Rahman, Advocate<br>Md. Khalid Anwar, Advocate |
| For the State        | : | Mr. Sitaram Yadav, GP-16<br>Mr. Yatindar Narayan, AC to GP-16                             |

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**CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN**  
**ORAL JUDGMENT**

**Date : 17-06-2025**

Heard learned counsel for the petitioner and learned  
counsel for the State.

2. The present writ petition has been filed for quashing the order dated 09.02.2016 passed in Service Appeal No. 211 of 2015 by the Divisional Commissioner, Tirhut Division, Muzaffarpur, whereby the appeal preferred by the petitioner was rejected, as contained in Annexure-9 to the writ petition. The petitioner has also sought quashing of the order dated 27.08.2015 issued under Memo No. 463 by the District



Magistrate, Sitamarhi, whereby the petitioner has been dismissed from service with effect from the date of issuance of the said order, as contained in Annexure-7 to the writ petition.

3. Learned counsel for the petitioner submits that the petitioner is innocent and has not committed any misconduct. It is further submitted that a departmental proceeding was initiated against the petitioner, which was conducted without the appointment of a Presenting Officer. In the absence of a Presenting Officer, it is contended, the entire disciplinary proceeding, including the final order of punishment, stands vitiated. It is also submitted that a copy of the enquiry report was not supplied to the petitioner along with the second show cause notice.

4. On the other hand, learned counsel for the State submits that the petitioner had earlier approached this Hon'ble Court by filing CWJC No. 17889 of 2012, which was disposed of vide order dated 16.01.2014, granting liberty to the petitioner to raise all objections and make submissions in response to the second show cause notice before the disciplinary authority, who was directed to decide the matter in accordance with law. It is further submitted that in the aforesaid order, the Hon'ble Court took note of the issuance of the second show cause notice dated



06.01.2014 and observed that even if the petitioner had not received the said notice, the service of counter affidavit along with its annexures would be deemed to constitute sufficient notice. The petitioner was directed to respond to the second show cause within fifteen days, and the disciplinary authority was to take a final decision within one month thereafter. Learned counsel for the State fairly concedes that no submission was made on behalf of the State regarding appointment of a Presenting Officer, whereas the petitioner has specifically pleaded in paragraph 37 of the writ petition that no Presenting Officer was appointed to present the case before the Enquiry Officer.

5. In the aforesaid background, and without entering into the merits of the case, this Court finds substance in the petitioner's submission in view of the judgment dated 05.09.2023 rendered by a Division Bench of this Court in **LPA No. 507 of 2017 (Upendra Pandit vs. State of Bihar & Ors.)** reported in **2023 (4) PLJR 568**. In the said judgment, the Hon'ble Division Bench held that the order of punishment cannot be sustained if the departmental proceeding has been conducted in the absence of a Presenting Officer.

6. On consideration of the materials on record, this



Court finds that the appointment of a Presenting Officer was conspicuously absent in the present case, thereby vitiating the entire disciplinary proceeding.

7. Accordingly, the order dated 09.02.2016 passed in Service Appeal No. 211 of 2015 by the Divisional Commissioner, Tirhut Division, Muzaffarpur (Annexure-9), and the order dated 27.08.2015 issued under Memo No. 463 by the District Magistrate, Sitamarhi (Annexure-7), are hereby set aside. The matter is remanded to the disciplinary authority with liberty to proceed afresh against the petitioner, strictly in accordance with law and in the presence of a duly appointed Presenting Officer. The entire exercise shall be completed within a period of 90 days from the date of receipt or production of a copy of this order.

8. With the aforesaid observation and direction, the writ petition stands disposed off.

**(Dr. Anshuman, J)**

Ashwini/-

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| AFR/NAFR          | NAFR       |
| CAV DATE          | NA         |
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