

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21988 of 2012

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Sunil Kumar Sinha, Son of Late Uday Narayan Prasad, Resident of Mohalla-Baluatal, Behind of Satkar Hotel, P.S.- Motihari Town, District- East Champaran

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Divisional Commissioner, Tirhut Division, Muzaffarpur
3. The District Collector, Motihari East Champaran
4. The District Certificate Officer, Motihari, East Champaran
5. The District Establishment Deputy Collector, East Champaran, Motihari
6. The Sub Divisional Officer, Chakia, District- East Champaran
7. The Block Development Officer, Chakia, District- East Champaran

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sunil Singh, Advocate
		Mr. Vijay Shankar Shrivastava, Advocate
For the Respondent/s	:	Mr. Kameshwar Pd. Gupta, GP-10
		Mr. Virendra Kuar, AC to GP-10

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT

Date : 13-10-2025

1. Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The petitioner has filed the instant application praying for quashing the order dated 11.2.2012 passed by the District Collector, Motihari, East Champaran imposing the punishment of dismissal from service on the petitioner and further ordering to institute a certificate case. The petitioner



has further prayed for quashing the initiation of the proceedings of Certificate Case no. 5/11-12 pending in the Court of the District Certificate Officer, Motihari, East Champaran, which has been initiated on the basis of the letter no.482 dated 19.3.2012 of the Block Development Officer, Chakia, for quashing the order dated 20.3.2012 passed in Certificate Case no.5/11-12 by the District Certificate Officer, Motihari, East Champaran, to treat the petitioner in regular service since 21.2.2003 and to release full dues of payment of salary etc from 1.2.2003 to 30.6.2005 and from 1.4.2008 onwards and for grant of other reliefs to which the petitioner is found entitled.

3. The case of the petitioner in brief is that while he was posted as Block Nazir in Barachakia Block in the District of East Champaran, the then Block Development Officer (B.D.O) of Chakia Block namely Rajesh Kumar did not hand over charge of cash to one Arun Kumar Singh. This led to an enquiry being conducted by the Land Reforms Deputy Collector (L.R.D.C) on the direction of the District Collector, Motihari who proceeded to submit a report alleging misappropriation of a total amount of Rs.45,99,278.43 by Rajesh Kumar, the then B.D.O and the petitioner. This led to



registration of an F.I.R being Chakia P.S. Case no.146 of 2002. The petitioner was thereafter placed under suspension, vide order dated 21.2.2003. The petitioner challenged the order of suspension by filing CWJC no. 11698 of 2004 in this Court, which was disposed of by order dated 4.5.2005 directing the respondent to issue charge-sheet against the petitioner within a period of 21 days, to commence the disciplinary proceeding and to conclude the same within a period of 1 year. It was further ordered that in case the charge-sheet is not issued within the time mentioned in the order, on the expiry of the period to issue the charge-sheet, the order of suspension shall automatically stand revoked and the petitioner should be permitted to rejoin his duties.

4. The petitioner was served with a charge-sheet on 10.8.2005 and was directed to submit his explanation. It was further ordered that the order of suspension of the petitioner shall continue. The petitioner submitted his explanation before the Conducting Officer. Subsequently by order dated 22.8.2006, the petitioner was released from suspension while the disciplinary proceedings continued.

5. The Conducting Officer submitted his enquiry report in the case, a copy of which was served on the petitioner



along with the letter dated 26.8.2006, asking the petitioner to reply to the same within a period of 15 days.

6. It is the case of the petitioner that the documents demanded by him were not supplied, still he submitted his reply to the second show-cause notice on 4.9.2006. The petitioner was released from suspension, however, without furnishing the documents demanded by the petitioner, the respondents came out with the order of punishment of dismissal from service of the petitioner on 31.3.2008.

7. The petitioner filed his statutory service appeal before the Divisional Commissioner, Tirhut Division, Muzaffarpur on 29.4.2008, however the same was dismissed on 20.4.2009.

8. The petitioner challenged the order of punishment of his dismissal from service dated 31.3.2008 as also the order dated 20.4.2009 rejecting his appeal in CWJC no.17253 of 2009. Taking into consideration the contention of the petitioner that the documents asked for by him had not been supplied to him. The order of punishment dated 31.3.2008 as also the appellate order dated 20.4.2009 were both set aside and the writ application was disposed of remanding the matter to the Enquiry Officer with the observation that either the documents



asked for by the petitioner are to be supplied or else the Enquiry Officer has to record his finding of irrelevance of the documents asked for.

9. It is submitted by learned counsel appearing for the petitioner that on the matter being remanded back, the petitioner was served with another charge-sheet in *Prapatra-Ka* on 23.11.2010 asking him to show-cause within a period of 15 days to which the petitioner filed his reply. The petitioner again demanded the relevant documents mentioned in the said show-cause. In spite of repeated communications by the Conducting Officer to the Block Development Officer to make the documents available to the petitioner, the documents were not made available. The Conducting Officer proceeded to submit his enquiry report, a copy of which was served on the petitioner along with letter dated 18.10.2011 asking the petitioner to submit his show-cause to the same within a period of 15 days. The petitioner filed his reply to the second show-cause on which the District Magistrate, East Champaran, Motihari came out with the order of punishment dated 11.2.2012 dismissing the petitioner from service and also ordering the institution of a certificate case for recovery of the defalcated amount of Rs. 45,99,278.43.



10. Learned counsel for the petitioner submits that the petitioner was not provided with the relevant documents in support of the charge as also those demanded by him which disabled the petitioner from giving an effective reply to the charges levelled. It was further submitted that no audit report etc were provided to the petitioner nor the irrelevancy of the document so demanded has been dealt with in the enquiry report or the order of punishment. It is further submitted that the petitioner, in absence of the order of punishment of dismissal, would have retired from service on 31.12.2016. The finding of guilt against the petitioner is based on hypothetical presumption and on that basis no recovery can be made under the Bihar and Odissa Public Demands Recovery Act, 1914. As such, the initiation of the certificate proceedings under the P.D.R Act is bad in the eyes of law and the same be also set aside.

11. The application is opposed by learned counsel appearing for the respondents. It is submitted by learned counsel for the respondents that the petitioner had been proceeded against on an earlier occasion which ended in order of dismissal being passed against him on 31.3.2008 and the appeal preferred by the petitioner being rejected on 20.4.2009.



The writ application preferred by the petitioner being CWJC no.17253 of 2009 was allowed by order dated 31.3.2010, however the matter was remanded to the Enquiry Officer to proceed with the departmental proceeding after supply of the documents demanded by the petitioner and giving him an opportunity to file his show-cause.

12. It is further submitted by learned counsel appearing for the respondents that the petitioner was once again served with a charge-sheet in *Prapatra-Ka* on 23.11.2010 giving him an opportunity to submit his show-cause but the petitioner at every stage of the proceedings started making demand of documents. It is submitted in reference to the statement made in counter affidavit that the Presenting Officer filed his opinion against the show-cause of the writ petitioner and the copy of the documents demanded by the writ petitioner was served on him. Those documents like the counterfoil of the cheque, providing a photocopy of which was difficult, in those cases the petitioner was given an opportunity to physically inspect the same. The petitioner filed his reply to the show-cause and the Conducting Officer having considered the contents of the reply as also the evidence produced by the Presenting Officer in course of enquiry



reached the conclusion in his report that the charges levelled against the petitioner were proved.

13. The petitioner was supplied with a copy of the enquiry report and asked to file his show-cause as to why punishment be not imposed. It was on the petitioner filing his reply to the show-cause that the Disciplinary Authority ie the Collector-cum-District Magistrate, East Champaran, Motihari passed the order of punishment dated 11.2.2012, impugned herein. There is no irregularity in the proceedings conducted against the petitioner nor any merit in the instant application. It is thus prayed that the application be dismissed.

14. Heard learned counsel for the petitioner and learned counsel for the respondents. Perused the material on record.

15. The relevant facts in brief are that while the petitioner was posted as Block Nazir at Barachakia Block in the District of East Champaran, on the then B.D.O, Chakia Block not handing over charge to the new B.D.O, on the directions of the District Magistrate, an enquiry was conducted by the L.R.D.C, who submitted a report to the effect that a sum of Rs.45.99 lakhs (approx) had been misappropriated by the then B.D.O Rajesh Kumar and the



petitioner herein. This also led to institution of an F.I.R being Chakia P.S. Case no.146 of 2002.

16. The order placing the petitioner under suspension on 21.2.2003 was challenged by him in CWJC no.11698 of 2004, which was disposed of by order dated 4.5.2005 in the following terms :-

“However, there is no just reason forthcoming as to why a disciplinary proceeding could not be initiated against the petitioner by issuing a charge-sheet even after expiry of more than two years from the date the petitioner was put under suspension. The respondents have deliberately failed to supply proper information to the Court by not filing counter affidavit despite obtaining leave to do. The respondents have acted in a manner unwarranted by not responding to the Fax message sent by their lawyer.

In those circumstances, the respondent no.2 is directed to issue a chargesheet against the petitioner within a period of twenty one days from the date of service of a copy of this order upon him and thereby to commence the disciplinary proceeding and to grant to the petitioner fifteen days time to give a reply to the charge-sheet and also to conclude finally disciplinary proceeding within one year from the date of receipt of the reply. The expression conclude should denote passing of the final order in the disciplinary proceeding including an order required to be passed under Rule 97 of the said Code in relation



to the period the petitioner was under suspension. In the event, the chargesheet is not issued within the time as mentioned above, on the expiry of the period to issue the chargesheet, the order of suspension shall automatically stand revoked and the petitioner should be permitted to rejoin his duties. In such event, the order under Rule 97 shall be passed within one year from the date the petitioner would rejoin his services.”

17. Bereft of unnecessary details, it may be stated here that the proceedings continued against the petitioner ending in an order of punishment of dismissal from service being passed against the petitioner on 31.3.2008. The statutory appeal preferred by the petitioner was also rejected by order dated 20.4.2009.

18. Both the order of punishment as also the order rejecting his appeal were challenged by the petitioner by filing CWJC no.17253 of 2009, wherein both the orders were set aside and the matter remanded to the Enquiry Officer asking him to provide the documents to the petitioner at the stage of second show-cause notice and the petitioner was given the liberty to file a further reply in pursuance of the documents given to him. It was further observed that if the petitioner is dissatisfied with the documents supplied and files any application for more documents and satisfies the Enquiry



Officer, the same have to be supplied or else the Enquiry Officer was required to record his finding of the irrelevance of the documents asked for. The relevant part of the order dated 31.3.2010 disposing CWJC no.17253 of 2009 is reproduced herein below for ready reference :-

“The order of punishment dated 31.3.2008 does not deal with these objections of the petitioner at all that the departmental proceeding was vitiated by severe procedural irregularities when the enquiry officer adopted a procedure for completing the enquiry unknown to law. For the same reason the appellate order dated 20.4.2009 also becomes unsustainable. The orders dated 31.3.2008 and 20.4.2009 are accordingly set aside.

The matter is remanded to the enquiry officer. The petitioner, if so advised, may file further reply in pursuance of the documents given to him by the respondents at the stage of second show cause notice with their communication dated 1.12.2006.

If the petitioner is dissatisfied with the documents supplied in context of his request dated 2.9.2005 and files any application for more documents and satisfies the enquiry officer, the same have to be supplied as otherwise the enquiry officer has to record his finding of the irrelevance of the documents asked for.

Let the enquiry proceed thereafter afresh in accordance with law and in the manner as discussed above, to be concluded within a maximum period of four months from the date of receipt/production of a copy of this order before the disciplinary authority.

The original records of the departmental proceedings are directed to be returned to the counsel appearing on behalf of the State.



*The petitioner shall be deemed to continue under suspension for this period of four months and shall therefore be entitled for his subsistence allowance including arrears, if any.
The writ application stands disposed.”*

19. It transpires from the records of the case that the petitioner filed an application before the District Collector on 13.4.2010, enclosing a copy of the order dated 31.3.2010 and asking for the following documents ie (i) the report bearing no.724246 and 724247 dated 7.7.2004 of the audit conducted by the team of the Block Office, Chakia; (ii) audit report no.724256 dated 8.7.2004; (iii) the enquiry report contained in letter no.868 dated 18.8.2002 of the then L.R.D.C, Chakia, Shri. Vishwamohan Prasad; (iv) the F.I.R. letter no.833 dated 9.8.2002 of the then B.D.O-cum-Circle Officer, Shri. Arun Kumar Singh; (v) Bank passbooks and; (vi) the counterfoils of the cheque book for the period the then B.D.O, Chakia Rajesh Kumar was in-charge. The same was followed by another representation dated 30.10.2010.

20. In the meantime, on 23.11.2010 the petitioner was served with a charge-sheet in *Prapatra-ka* asking him to submit his show-cause within a period of 15 days. While submitting his detailed show-cause, the petitioner once again demanded the aforesaid six documents, which had not been



made available to him inspite of his earlier requests.

21. It further transpires that letters/communications dated 19.1.2011 and 31.3.2011 were also written by the Enquiry Officer to the B.D.O, Chakia informing him that the documents asked for by the petitioner had still not been made available to him as a result of which he has not been able to file his final reply to the show-cause. He was directed to make available the documents asked for by the petitioner within a period of 24 hours.

22. The stand of the respondents is that the documents asked for by the petitioner were handed over to him on 31.1.2011, however the petitioner in his reply to the show-cause continued to demand more documents which was more in the nature of delaying tactics by the petitioner.

23. At this stage it would be relevant to refer to one of the representations filed by the petitioner addressed to the Conducting Officer dated 4.2.2011 (Annexure-23) wherein the petitioner mentions about the documents asked for by him as also the documents which have been made available to show that the relevant documents for the relevant period were not made available to him.

24. Even in absence of the documents, while making



repeated demand for the same, the petitioner proceeded to file his reply to the show-cause notice.

25. The Conducting Officer submitted his enquiry report dated 2.8.2011 (Annexure-29) finding all the six charges against the petitioner to have been proved.

26. Enclosing the copy of the enquiry report, the petitioner was served with a notice dated 18.10.2011 asking the petitioner to file his reply to the enquiry report within a period of 15 days. The petitioner filed his detailed reply on 31.10.2011, once again reiterating the non-supply of the relevant documents in absence of which he had been unable to file a proper reply.

27. The Disciplinary Authority came out with an order dated 11.2.2012, impunged herein inflicting the punishment of dismissal from service on the petitioner and directing for proceeding in a certificate case for recovery of the defalcated amount.

28. On perusal of the contents of the enquiry report, it would transpire that in dealing with the six charges separately, the Conducting Officer refers to various enquiry reports, F.I.Rs etc in coming to the finding of the charges having been proved, however this Court finds that neither any



witness has been examined nor any document/report marked as an Exhibit or proved by any witness in course of enquiry. This is clearly contrary to the law laid down by the Hon'ble Supreme Court in the case of **Roop Singh Negi vs. Punjab National Bank & Ors.**; (2009) 2 SCC 570 wherein it was held that the evidence collected by the Investigating Officer cannot be treated to be evidence in a departmental proceeding and the same will have to be proved by examination of witness. It was further held that mere tendering of evidence would not be a proof of the contents thereof.

29. In addition to no witness having been examined on behalf of the management, it would be important to take note of the order of this Court dated 31.3.2010 quoted herein above wherein this Court while remanding the matter to the Enquiry Officer had given liberty to the petitioner that if so advised, he may file a further reply pursuant to the documents given to him by the respondents. It was further ordered that if the petitioner is dissatisfied with the documents supplied in context of his request dated 2.9.2005 and files any application for more documents and satisfies the Enquiry Officer, the same have to be supplied as otherwise the Enquiry Officer has to record his finding of the irrelevance of the documents asked



for.

30. A perusal of the final report of the Enquiry Officer not only does not deal with or mentions as to how the documents asked for by the petitioner are irrelevant but only states that the petitioner has been asking for documents again and again and as far as possible the documents have been made available. Similarly even in the order of punishment dated 11.2.2012, the Disciplinary Authority also in conclusion mentions about the report of the Conducting Officer wherein he observed that the document had been made available as far as possible.

31. Reference may be made to the decision of the Hon'ble Supreme Court in the case of **State of Uttar Pradesh & Ors. vs. Saroj Kumar Sinha; (2010) 2 SCC 772** wherein the Hon'ble Supreme Court held at paragraph nos. 28, 30, 34 and 39 as follows :-

“28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved,



and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

.....
30. *When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.*

.....
34. *This Court in Kashinath Dikshita v. Union of India [(1986) 3 SCC 229 : 1986 SCC (L&S) 502 : (1986) 1 ATC 176], had clearly stated the rationale for the rule requiring supply of copies of the documents, sought to be relied upon by the authorities to prove the charges levelled against a government servant. In that case the enquiry proceedings had been challenged on the ground that non-supply of the statements of the witnesses and copies of the documents had resulted in the breach of rules of natural justice. The appellant therein had requested for supply of the copies of the documents as well as the statements of the witnesses at the preliminary enquiry. The request made by the appellant was in terms turned down by the disciplinary authority.*

.....
39. *The proposition of law that a government employee facing a departmental enquiry is entitled to all the relevant statements, documents and other materials to enable him to have a reasonable opportunity to defend himself in the departmental enquiry against the charges is too well established to need any further reiteration.*



Nevertheless given the facts of this case we may re-emphasise the law as stated by this Court in State of Punjab v. Bhagat Ram [(1975) 1 SCC 155 : 1975 SCC (L&S) 18] : (SCC p. 156, paras 6-8)

“6. The State contended that the respondent was not entitled to get copies of statements. The reasoning of the State was that the respondent was given the opportunity to cross-examine the witnesses and during the cross-examination the respondent would have the opportunity of confronting the witnesses with the statements. It is contended that the synopsis was adequate to acquaint the respondent with the gist of the evidence.

7. The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the government servant is afforded a reasonable opportunity to defend himself against charges on which inquiry is held. The government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the government servant. Unless the statements are given to the government servant he will not be able to have an effective and useful cross-examination.

8. It is unjust and unfair to deny the government servant copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges levelled against the government



servant. A synopsis does not satisfy the requirements of giving the government servant a reasonable opportunity of showing cause against the action proposed to be taken.”

32. Coming to the facts of the instant case, the first order of dismissal passed against the petitioner on 31.3.2008 on being challenged by the petitioner in this Court in CWJC no.17253 of 2009 was allowed by order dated 31.3.2010 mainly on the ground that the departmental proceeding was vitiated by severe procedural irregularities with the documents asked for by the petitioner to enable him to give an effective reply not having been supplied to him. While setting aside the orders of punishment of dismissal as also the order rejecting the appeal, this Court had remanded the matter back to the Enquiry Officer with a direction that the petitioner may file his further reply pursuant to the documents given to him. It was also observed in the order that if the petitioner is not satisfied with the documents supplied and files an application for supply of more documents, the same have to be supplied or else the Enquiry Officer had to record his findings of the irrelevance of the documents asked for.

33. From the facts stated herein above what transpires is that on the petitioner asking for more documents,



neither the same were supplied by the Enquiry Officer to the petitioner nor have the irrelevance of the documents been dealt with by the Enquiry Officer in his report nor by the Disciplinary Authority.

34. Thus in the facts and circumstances of the case, in the opinion of this Court, there has been severe procedural irregularities and the entire departmental proceeding stands vitiated.

35. In the facts and circumstances of the case, the order of punishment dated 11.2.2012 passed by the District Collector, Motihari, East Champaran imposing the punishment of dismissal from service on the petitioner is unsustainable and is hereby set aside.

36. However, it is clarified that the departmental proceeding have been set aside for the reasons of non-supply of the relevant documents to enable the petitioner to give an effective reply, so far as the direction to institute a certificate case in the order dated 11.2.2012 of the District Collector, Motihari, East Champaran is concerned, the same being a completely different proceedings under the Bihar and Odissa Public Demands Recovery Act, 1914 which has led to the initiation of proceedings of Certificate Case no.5/11-12, the



same shall not be affected by this order and shall continue in accordance with law.

37. The petitioner shall be entitled for arrears of salary for the period of dismissal, however the same shall be paid after conclusion/final decision in the proceedings of Certificate Case no.5/11-12 and any appeal and/or revision preferred against the order passed therein.

38. The writ application stands partly allowed to the above extent.

(Partha Sarthy, J)

Shiv/avinash

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	14.10.2025
Transmission Date	

