

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13408 of 2021

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Pintu Kumar Son of Kamleshwari Yadav Resident of Village- Rasalpur, P.O.
and P.S.- Naugachiya, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Government of Bihar, Patna.
2. The Principal Secretary, Department of Home, Government of Bihar, Patna.
3. The Director General of Police, Bihar, Patna.
4. The Deputy Inspector General of Police, Bhagalpur.
5. The Chairman, Central Selection Board (Constable Recruitment), Bihar, Patna.
6. The Senior Superintendent of Police, Bhagalpur.
7. The Officer on Special Duty, Central Selection Board (Constable Recruitment), Bihar, Patna.
8. The Inquiry Officer-cum-Inspector of Police, Hisua Circle, Nawada.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mayanand Jha, Sr. Adv. Mr. Gaurav Prakash, Adv.
For the Respondent/s	:	Mr. Md. Nadim Seraj, GP-5
For the CSBC	:	Mr. Sanjay Pandey, Adv. Mr. Binod Kumar Mishra, Adv. Mr. Vivek Anand Amrithesh, Adv.

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
Date : 29-04-2025

Heard the parties.

2. The petitioner is aggrieved with the order as contained in Memo No. 4431 dated 11.09.2020 passed by the Senior Superintendent of Police, Bhagalpur whereby the petitioner has been inflicted with the punishment of dismissal from services. The appeal preferred against the order of dismissal also came to be rejected vide order dated 22.05.2021



by the Deputy Inspector General of Police, Eastern Range, Bhagalpur, which also put to challenge in the present writ petition. The petitioner further moved before the Director General of Police by preferring a memorial, which did not find favour and the same also came to be rejected, which is questioned by filing an interlocutory application bearing I.A. No. 02 of 2024.

3. The short matrix of the case is that pursuant to an advertisement no. 1/2014 published by the “Central Selection Board for Constable” (in short, “the Board”) for selection to the post of constables in the Bihar Police, the petitioner along with the other eligible candidates applied.

4. Having duly qualified in the examination, the petitioner was called upon for screening test and thereafter physical test was also conducted. The petitioner having successfully completed all the examination and test was appointed vide memo no. 414 dated 23.06.2015 and further posted at Bhagalpur Police Lines after allotting Brass no. 1439. In the meanwhile, based upon a complaint, the Officer on Special Duty of the Board vide Letter No. 992 dated 28.09.2015 informed the Senior Superintendent of Police, Bhagalpur that there is allegation against the petitioner and few others of using



some scholar to clear the written examination and thus, request was made to produce them before the Board for verification of the same.

5. The petitioner along with two others were produced before the Board on 06.10.2015. After verification of signature, left thumb impression, writing of the petitioner, discrepancies were found in the handwriting and the screening, as well as left thumb impression, which led to suspension of the petitioner and simultaneous departmental proceeding. An FIR has also been registered bearing Ishachak (Bhagalpur) P.S. Case No. 147 of 2015, against the petitioner and others, for the offences under Section 419, 420, 467, 468, 471 and 120(B) of the Indian Penal Code.

6. The petitioner on being aggrieved with the suspension and the non-payment of the subsistence allowance moved this Court in CWJC No. 9290 of 2018, which came to be disposed off with a direction to conclude the departmental proceeding within six months, failing which the suspension shall stand revoked. Since the departmental proceeding could not be concluded, the suspension of the petitioner stood revoked vide order dated 13.03.2019. Subsequent thereto, after completion of the enquiry, a report was submitted by the



Conducting Officer resulting into issuance of second show-cause notice and finally the impugned order of dismissal came to be passed by the Senior Superintendent of Police, Bhagalpur, which was unsuccessfully challenged before the appellate authority as well as the Director General of Police.

7. Learned Senior Advocate, Mr. Mayanand Jha, representing the petitioner has taken this Court through the materials available on record and strenuously argued that apart from the fact that the mandatory prescriptions as prescribed in the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 has been given a complete go-by, it is the fact that material witnesses have not been examined. The complainant on whose complaint, the entire proceeding has been initiated, has not been examined by the Enquiry Officer and, as such, the petitioner has been deprived from the cross examination. Hence, the enquiry report does not stand to the complete fairness in the departmental proceeding. The Presenting Officer which was duly appointed is only for the name sake and the Enquiry Officer has conducted the enquiry as an agent of the department. There is serious infirmity, inasmuch as, the defence statement of the petitioner has not been taken note of while giving finding of the guilt against the petitioner by



the Enquiry Officer. All the more, the enquiry report has not been served along with the second show-cause notice to the petitioner. Hence, in any view of the matter, the entire departmental proceeding sans any merit.

8. Learned Senior Advocate taking this Court through the decision rendered by the Hon'ble Apex Court in the case of ***Managing Director, ECIL, Hyderabad & Ors. Vs. B. Karunakar & Ors., (1993) 4 SCC 727*** as also in ***Himachal Pradesh State Electricity Board Limited Vs. Mahesh Dahiya, (2017) 1 SCC 768*** has submitted that the non submission of the enquiry report along with the second show-cause notice to the petitioner vitiates the entire departmental proceeding and set at naught; further in absence of the material witnesses, the charges could not stand proved, as has been held in the case of ***Roop Singh Negi Vs. Punjab National Bank & Ors., (2009) 2 SCC 570***.

9. While concluding the submissions, learned Senior Advocate further contended that other two persons, who were found indulged in irregularities and against whom, there was also identical imputation of using some scholar to clear the written examination were put to departmental proceeding in identical fashion, resulted into similar punishment of dismissal.



Being aggrieved with the order of dismissal they moved before this Court in ***CWJC No. 19567 of 2016*** (Md. Ahtesham Khan Vs. The State of Bihar & Ors.) and further in ***CWJC No. 4515 of 2017*** (Amit Kumar Vs. The State of Bihar & Ors.) wherein a Bench of this Court on being found serious infirmities, inasmuch as, the Presenting Officer was not appointed, set-aside the impugned order of dismissal and remitted to the disciplinary authority to proceed afresh in the matter.

10. On the other hand, learned Advocate for the State and the Board refuting the aforesaid contention has vehemently submitted that the petitioner has been found indulge in impersonation, which led to filing of the FIR as well as initiation of a departmental proceeding. In fact, the petitioner has got his appointment on the post of Constable by committing fraud and forgery with the Board; and with the help of scholar, he succeeded in the written examination. In course of verification, the allegation stands established, which led to issuance of the memo of charge. The petitioner was given ample opportunity in the enquiry and on being found all the charges proved against the petitioner, he was duly served with the second show-cause notice. The explanation of the petitioner was duly considered and on being found it sans any merit, the



impugned order of dismissal came to be passed. The order of dismissal was duly affirmed in the appeal; and the memorial preferred by the petitioner also did not find favour.

11. This Court has given anxious consideration to the submissions advanced by the learned Senior Advocate for the petitioner, as well as learned Advocate for the State and the learned Advocate for the Board. Though various points have been raised by the learned Senior Advocate to support the submissions advanced on behalf of the petitioner, however, this Court prima facie satisfied with the submission of the petitioner that in absence of the enquiry report along with the second show-cause notice furnished to the petitioner, the entire departmental proceeding leading to order of punishment stands vitiated. The Hon'ble Apex Court in the case of **B. Karunakar** (supra) held in no uncertain terms as follows:-

“29. Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a



breach of the principles of natural justice.

30. Hence the incidental questions raised above may be answered as follows:

[i] Since the denial of the report of the enquiry officer is a denial of reasonable opportunity and a breach of the principles of natural justice, it follows that the statutory rules, if any, which deny the report to the employee are against the principles of natural justice and, therefore, invalid. The delinquent employee will, therefore, be entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject.

[ii] X X X

[iii] Since it is the right of the employee to have the report to defend himself effectively and he would not know in advance whether the report is in his favour or against him, it will not be proper to construe his failure to ask for the report, as the waiver of his right. Whether, therefore, the employee asks for the report or not, the report has to be furnished to him.

[iv] X X X

[v] The next question to be answered is what is the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles



of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an “unnatural expansion of natural justice” which in itself is antithetical to justice.”

12. The mandate of the Apex Court noted, hereinabove, also reiterated in the case of ***Mahesh Dahiya*** (supra). It is worth noting that Rule 18 (3) of the Rules, 2005 specifically mandates the disciplinary authority to forward or cause to be forwarded a copy of the enquiry report, together with its own findings, if any, as provided in sub-rule (2) to the government servant who may submit, if he or she so desires, his or her written representation.

13. After going through the aforementioned reports of the Hon’ble Apex Court and the statutory prescription, it is explicit that a denial of the Enquiry Officer’s report before the disciplinary authority takes its decision on the charges, is



nothing but a denial of reasonable opportunity to the employee to prove his innocence and is thus, a breach of the principles of natural justice. The petitioner has been deprived from the opportunity of making representation on the finding of the Enquiry Officer and, as such, the proceeding sans any fairness. The submission of the learned Senior Advocate that enquiry report is based on no evidence as no material witnesses were examined to prove the charges also stands settled in a decision rendered by the Apex Court in the case of **Roop Singh Negi** (supra), wherein the Court in paragraph no. 14 has held as follows:

“14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.”

14. This Court is reminded that the mandate of the Apex Court and the settled legal proposition that the result of



the fresh enquiry in such a case relates back to the date of termination. The Apex Court in the case of ***Chairman-cum-Managing Director, Coal India Limited & Ors. Vs. Ananta Saha & Ors.***, reported in ***(2011) 5 SCC 142*** after considering various rulings of the Apex Court including the decision rendered in the case of ***B. Karunakar*** (supra) and the ***Union of India Vs. Y. S. Sadhu, Ex-Inspector, [(2008) 12 SCC 30]*** observed that where the punishment awarded by the disciplinary authority is quashed by the Court/tribunal on some technical ground, the authority must be given an opportunity to conduct the enquiry afresh from the stage where it stood before the alleged vulnerability surfaced. However, for the purpose of holding fresh enquiry, the delinquent is to be reinstated and may be put under suspension. The question of back wages, etc. is determined by the disciplinary authority in accordance with law after the fresh enquiry is concluded. It would be worth benefitting to quote paragraph no. 49 of the said judgment:

“49. The issue of entitlement of back wages has been considered by this Court time and again and consistently held that even after punishment imposed upon the employee is quashed by the court or tribunal, the payment of back wages still remains discretionary. Power to grant back wages is to be exercised by the court/tribunal keeping in view the facts in their entirety as no straitjacket formula can be evolved, nor a rule of universal application can be laid for



such cases. Even if the delinquent is reinstated, it would not automatically make him entitled to back wages as entitlement to get back wages is independent of reinstatement. The factual scenario and the principles of justice, equity and good conscience have to be kept in view by an appropriate authority/court or tribunal. In such matters, the approach of the court or the tribunal should not be rigid or mechanical but flexible and realistic. (Vide U.P. SRTC v. Mitthu Singh [(2006) 7 SCC 180 : 2006 SCC (L&S) 1590 : AIR 2006 SC 3018] , Akola Taluka Education Society v. Shivaji [(2007) 9 SCC 564 : (2007) 2 SCC (L&S) 679] and Balasaheb Desai Sahakari S.K. Ltd. v. Kashinath Ganapati Kambale [(2009) 2 SCC 288 : (2009) 1 SCC (L&S) 372] .”

15. In the case in hand, apart from the fact that the petitioner has not been served with the enquiry report, there are other material infirmities, which also vitiates the enquiry conducted by the Enquiry Officer as well as the orders passed by the disciplinary authority, hence this Court left with no option but to set-aside the impugned order, as contained in Memo No. 4431 dated 11.09.2020, Memo No. 463 dated 22.05.2021 as also the order dated 28.12.2021 besides the enquiry report contained in Memo No. 107/2020 dated 21.08.2020 and remit the matter to the disciplinary authority to proceed afresh, if so advised, in accordance with law, after conducting fresh enquiry.

16. On account of the orders being set-aside, the consequences shall follow and the benefit, which has been



accorded to other identically situated person, whose order of dismissal also stood set-aside, the same shall be accorded to the petitioner, within a period of eight weeks.

17. The writ petition stands allowed.

18. Pending I.A. and other application also stand disposed.

(Harish Kumar, J)

shivank/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.05.2025
Transmission Date	NA

