

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5323 of 2018

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Nirmal Kumar Singh son of Late Kamdeo Singh, resident of Village-
Dayalpur, P.O.- Siris, P.S.- Barun, District- Aurangabad, presently posted as
Revenue Karamchari, Anchal- Kutumba, District- Aurangabad.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Divisional Commissioner, Magadh Division, Gaya.
3. The District Magistrate, Aurangabad.
4. The Deputy Collector, Aurangabad.
5. The Deputy Development Commissioner, Aurangabad.
6. The District Panchayati Raj Officer, Aurangabad.
7. The Sub- Divisional Officer, Aurangabad.
8. The Circle Officer, Kutumba, District- Aurangabad.
9. The Block Development Officer, Kutumba, District- Aurangabad.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Pramod Mishra, Advocate Mr. Suraj Kumar, Advocate
For the State	:	Mr. Manoj Kumar Sinha, AC to SC- 19

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 24-04-2025

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

2. The present writ petition has been filed for the
following reliefs:-

*i) A certiorari setting aside the
order dated 29.11.2017 passed in Service
Appeal No.94/2017 by the Divisional
Commissioner, Magadh Division, Gaya,
whereby and where- under the lower
Appellate Authority has illegally rejected the*



Service Appeal filed on behalf of the petitioner in a very casual, mechanical and prejudiced manner without application of his own judicial mind as well as without proper consideration of the arguments and documents adduced on behalf of the appellant-petitioner.

ii) A further certiorari setting aside also the order No.168/2016-17 contained in Memo no. 233 dated 10.04.2017 passed by the Respondent District Magistrate, whereby and where-under the Respondent Disciplinary Authority has in a very illegal, unjust and influenced manner punished the petitioner in departmental proceeding with 'withholding of three increments with cumulative effect' which is a major punishment as per law, which order stood affirmed by the Respondent Divisional Commissioner in Service Appeal.

iii) A Mandamus commanding and directing the Respondent concerned not to withhold any increment of the petitioner whatsoever and pay him all his pay and allowances in accordance with law.

iv) Any other order/orders for granting any other relief/reliefs for which the petitioner is found entitled to in the facts and circumstances of this case.



3. Learned counsel for the petitioner submits that the order imposing the major punishment of withholding three increments with cumulative effect, without considering the material facts, is improper, unjust, and malafide. Counsel further submits that the petitioner was posted as Revenue Karamchari under Anchal-Kutumba, District Aurangabad, and he was discharging his duties regularly, sincerely, and honestly. Counsel also submits that an Anchal-Kutumba meeting was arranged on 13.05.2015, in the presence of the District Panchayati Raj Officer-cum-Senior Officer, to assess the losses incurred by the earthquake. In the said meeting, some derogatory language was used against the petitioner by the officials. The subordinate Karamchari filed a written application on 14.05.2015 and reported the matter to the District Magistrate, Aurangabad, by way of joint representation dated 14.05.2015. In this regard, on 10.06.2015, the Principal Secretary of the Bihar Government reminded all concerned officers and requested that they behave in an ethical and decent manner towards their subordinates. Counsel further submits that the respondent, the District Panchayati Raj Officer, made allegations against the petitioner before the District Magistrate, Aurangabad, and as a result, the petitioner was suspended by the District Magistrate with effect



from 13.05.2015, as per order No. 18/2015-16.

4. Counsel for the petitioner further submits that a departmental proceeding has been initiated against the petitioner, in which the Additional Collector has been appointed as the Inquiring Authority and the Anchal Adhikari, Kutumba, was appointed as the Presenting Officer vide Memo No. 939, dated 12.11.2015. The petitioner has filed his written statement in response to the charges framed. Counsel further submits that, in the case of the petitioner, the mandatory provisions of Rule 17(3) and 17(4) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as CCA Rules, 2005), have not been complied with. The petitioner filed his written statement denying the misconduct, but without any proper inquiry, as mentioned in the CCA Rules, 2005. The inquiry report was submitted, in which the petitioner was found guilty. A second show cause notice was issued, and thereafter, the punishment order was passed on 10.04.2017, as contained in Memo No. 233, annexed as Annexure-6 to the writ petition. The petitioner has challenged this order before the Commissioner in Service Appeal No. 94 of 2017 (Annexure-7), but the appeal was also rejected.

5. Counsel for the petitioner further submits that the



Inquiry Officer completely violated Rule 17 of the CCA Rules, 2005, and reached on the conclusion in the inquiry report without any substantial oral or documentary evidence. Only a letter, which recommended that the petitioner had used unparliamentary language, was considered. Based on this, the Inquiry Officer on the conclusion that the petitioner was guilty. Counsel further submits that reaching this conclusion without following the norms laid down in the CCA Rules, 2005, is absolutely illegal, and for this reason, the entire departmental proceeding should be vitiated.

6. Counsel for the petitioner further submits that the second show-cause notice was issued, which was replied by the petitioner, but this reply was also not considered, and the punishment order was passed in appeal also. The petitioner raised all the relevant points, but none of them were considered. Therefore, the order imposing the major punishment is bad in law.

7. Learned counsel for the State submits that it is well within the law to pass an order after demanding an explanation and considering the reply. However, he submits that the said order, based on the lack of evidence, was passed for a minor punishment and not for a major punishment. Counsel



further submits that the order passed in the departmental proceeding is completely in accordance with the law. Counsel also submits that the grounds raised in the writ petition were not raised in the service appeal. He submits that due procedure of law has been followed, the Inquiry Officer and Presenting Officer have been appointed, the petitioner was granted the opportunity to file a written statement, and the petitioner was given the opportunity to appear and defend his case before the Inquiry Officer. A second show-cause notice was issued, the reply to the second show-cause was entertained, and after considering all the material, the order was passed.

8. Counsel for the State further submits that the point regarding violation of procedural mistakes was not taken either before the Disciplinary Authority or before the Appellate Authority, and therefore, it is not available to the petitioner to raise those points before this Court.

9. In light of the submissions made by the parties, and upon particularly going through the Inquiry Report, this Court finds that not a single witness has been examined. Neither the officer who made the allegation nor the officers who were present there were examined. Even the allegation has not been exhibited, which it transpires from the record.



10. It also transpires to this Court that the written statement filed by the petitioner was not properly considered by the Inquiry Officer, and the second show-cause reply was also ignored. The points raised were not taken into account at the time of passing the final order by the Disciplinary Authority, and the Appellate Authority has also passed the order evasively.

11. So far as the point raised by the State regarding violation of procedural mistake, this Court is of the view that a point of law can be raised at any stage of the proceedings. Even if the petitioner has not raised the issue of violation of rules laid down under the CCA Rules, 2005 before the Original Authority or the Appellate Authority, he can still raise such violations and those rules directly before the High Court. Therefore, this plea of the State is not accepted.

12. But, on the other hand, it transpires to this Court that under the law, an order of punishment may be imposed even without taking evidence or examining witnesses, but such orders can only be in the nature of minor punishment, and in this regard, Rule 19 of the CCA Rules, 2005, is very clear. However, in the present case, it transpires to this Court that order of major punishment has been imposed, for which strict compliance with Rule 17 of the CCA Rules, 2005, is



required. Therefore, for this reason, the order No. 168/2016-17, contained in Memo No. 233, dated 10.04.2017 (Annexure- 6) and order dated 29.11.2017, passed in Service Appeal No. 94 of 2017 (Annexure- 7), are bad in law and are hereby set aside.

13. Liberty is hereby granted to the State officials to pass order on the basis of the petitioner’s reply, but that order shall be strictly in accordance with Rule 19 of the CCA Rules, 2005, and not in accordance with Rule 17 of the CCA Rules, 2005. If the respondent wants to proceed against the petitioner, then in that case, the respondent authority shall be at liberty to pass order against him only under Rule 19 of the CCA Rules, 2005,, within 90 days from the date of production of this order.

14. Accordingly, the writ petition stands allowed.

(Dr. Anshuman, J.)

Aman Kumar/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	01.05.2025
Transmission Date	NA

