

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.587 of 2021**

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Arun Kumar @ Arun Paswan, S/o Late Rameshwar Paswan, Resident of  
Village-Nanuak, P.S. Buniyadganj, District-Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through Commissioner-cum-Secretary, Department of Home (Special), Patna.
2. Commissioner-cum-Secretary, Department of Home (Special), Patna.
3. The District Magistrate-cum-Collector, Gaya.
4. The Collector, Gaya.
5. The Senior Superintendent of Police, Gaya.
6. The S.D.O., Sadar, Gaya.
7. The O/C of Buniyadganj P.S.

... .. Respondent/s

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**Appearance :**

|                      |   |                                                              |
|----------------------|---|--------------------------------------------------------------|
| For the Petitioner/s | : | Mr. Durgsh Nandan, Advocate<br>Mrs. Lilawati Singh, Advocate |
| For the Respondent/s | : | Mr. Suman Kumar Jha, AC to AAG-3                             |

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**CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR**  
**ORAL JUDGMENT**

**Date : 04-02-2025**

Heard the parties.

2. The petitioner is aggrieved with the order dated 04.02.2020 passed in Service Appeal Case No. 145 of 2014 by the learned Commissioner, Magadh Division, Gaya by which while rejecting the appeal of the petitioner, he affirmed the order dated 06.07.2019 passed by the learned Collector, Gaya vide Memo No. 954 dated 06.07.2017, whereby the petitioner has been inflicted with the punishment of censure, as well as, he has been denied the salary for the period of suspension in terms of rule 4(i) of Chapter V(ka) of the Bihar Government Servant



(Classification, Control and Appeal) Rule, 2005, (hereinafter referred to as Rules, 2005). The petitioner also assailed the order inflicting the punishment, afore-noted, passed by the District Magistrate-cum-Collector, Gaya.

3.The short facts as culled out from the materials available on record are that the the petitioner was appointed as a Chowkidar of Circle No. 5/7, by the order of the District Magistrate-cum-Collector, Gaya way back on 05.01.1993. While the petitioner was posted as a Guard at Madhya Bihar Gramin Bank, Sadipur Branch in the year 2015, in the mean while the officer-in-charge of Buniyadganj police station made a complaint to the Senior Superintendent of Police, Gaya on 22.01.2016, stating therein that upon repeated request made by the officer-in-charge of Buniyadganj police station, the petitioner has not cooperated with him in apprehending the absconded accused persons, who are villagers of the petitioner.

4. In the aforesaid premise, request has been made to take a suitable action against the petitioner. In pursuant to the aforenoted complaint, the respondent no. 5 recommended to respondent no. 3 to take administrative action. A show cause notice was issued to the petitioner seeking his explanation with



respect to allegation made against him, vide order as contained in memo no. 314 dated 28.03.2016. In response thereto, the petitioner submitted his detailed explanation on 07.04.2016.

5. While denying the allegation of non-cooperation in apprehending the absconded accused persons, it is contended by the petitioner that he was all along working as a Guard at Madhya Bihar Gramin Bank since 10.09.2015 to 15.06.2016 and, as such, he was not in touch with the officer-in-charge of Buniyadganj police station, besides the aforesaid facts the information about accused coming to the village was not available to villagers. The explanation of the petitioner did not find favour and he was placed under suspension vide memo no. 689 dated 18.04.2016. Charges were framed and the S.D.O. Neemchak Bathani was appointed as conducting officer whereas, the Circle Officer of Manpur Block was appointed as presenting officer.

6. The petitioner entered his appearance before the conducting officer and filed a detailed defense statement. After thorough inquiry, the conducting officer submitted his inquiry report on 18.01.2017 on being found the charges not proved against the petitioner.

7. The District Magistrate-cum-Collector, Gaya differing with the enquiry report submitted by the conducting



officer, though revoked the suspension of the petitioner, however awarded the punishment of censure vide memo no. 954 dated 06.07.2017 and ordered for withholding of salary of the petitioner for the suspension period.

8. The petitioner being aggrieved with the aforementioned order preferred Service Appeal No. 145 of 2017 before the learned Commissioner, Magadh Division, Gaya which also came to be dismissed by affirming the order of the learned District Magistrate-cum-Collector vide order dated 04.02.2020. Both the orders are put to challenge before this Court.

9. Learned Advocate for the petitioner referring to the impugned order passed by the District Magistrate, Gaya, as contained in Annexure-9, has submitted that the inquiry officer has completely exonerated the petitioner, inasmuch as, no charge has been stands proved against the petitioner, nonetheless, the District Magistrate without assigning any reason for difference of the opinion with the findings recorded by the inquiry officer has inflicted the punishment of censure and withheld the salary for the suspension period. The action of the respondent is in complete defiance of Rule 18(2) of the Rules, 2005.

10. Learned Advocate for the petitioner further



contended that had the respondent District Magistrate not been agreed with the findings recorded by the inquiry officer, he would have given the tentative reason for disagreement and thereafter an opportunity ought to be given to the petitioner to file a response on such disagreement. There is no compliance as such.

11. The impugned order causing civil and evil consequences to the petitioner is wholly illegal and contrary to the statutory rules as prescribed hereinabove. Similar mistake has been committed by the appellate authority, while mechanically affirming the order of the District Magistrate; he completely failed to take into consideration the submissions advanced by the petitioner in the memo of appeal. Thus, learned Advocate for the petitioner urged that both the impugned orders are fit to be set aside, in view of the fact that the prescriptions as provided in the statutory rules, has been given a complete go by.

12. *Per contra*, learned Advocate for the State submits that the District Magistrate, Gaya while inflicting the punishment has assigned the reasons for disagreement by stating therein that nonetheless the petitioner is the resident of the same village and his house is also situated nearby the house of accused person, but he failed to inform the officer-in-charge of Buniyadganj police station. It is the prime duty of the



Chowkidar to give information with regard to the movement of the accused persons. He further contended that the petitioner has been inflicted a minor punishment and he had preferred appeal, which also came to be dismissed.

13. This Court has heard the submissions advanced on behalf of the learned Advocate for the respective parties and also perused the impugned orders passed by the District Magistrate, Gaya as well as the Commissioner, Magadh Division, Gaya in appeal.

14. This Court *prima facie* finds substance in the submissions of the learned Advocate for the petitioner that while differing with the inquiry report, no difference of opinion has been assigned by the District Magistrate, Gaya as to why the report of the conducting officer is not acceptable. The law in this regard has been crystallized by the Hon'ble Supreme Court in the case of ***Punjab National Bank & Ors. vs. Kunj Behari Misra, AIR 1998 SC 2713*** wherein the Hon'ble Supreme Court held as follows:-

*“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.*

*19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary*



*authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. ....”*

15. It would also be pertinent to observe here that the proceeding as has been initiated against the petitioner under the Rules, 2005 prescribes the prescriptions which are required to be followed for inflicting the punishment. Rule 18(2) clearly stipulated that “the disciplinary authority, after receipt of the inquiry report as per Rule 17(23)(ii) or as per Sub-rule (1), shall, if it disagrees with the finding of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidences on record is sufficient for the purpose”. There is no compliance of the prescription noted hereinbefore.

16. In view of the settled legal position, this Court finds that the impugned orders as contained in Annexure 9 and 10 are not legally sustainable and thus, hereby fit to be set aside.

17. On account of setting aside both the orders, suffice it to observe that the petitioners shall be entitled to the salary for the period aforesaid. The same must be paid preferably within



a period of twelve weeks from the date of receipt/production of a copy of this order, after adjusting the subsistence allowance, if paid during the period of suspension.

18. The writ petition stands allowed.

(Harish Kumar, J)

supratim/-

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