

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14950 of 2012

Vijay Kumar Mishra S/O Late Vishwamvher Mishra R/O Vill-Dhanga West ,
P.S.-Arear, Distt-Madhubani At Present Posted And Working As Junior
Accounts Clerk , Block Office Babu Barhi, Distt-Madhubani

... .. Petitioner/s

Versus

1. The State Of Bihar, Patna
2. The Divisional Commissioner , Darbhanga At Laheriasarai Darbhanga
3. The Collector Cum District Magistrate At and P.O.-Madhubani, Distt-Madhubani
4. The Additional Collector Land Ceiling Cum Enquiry Officer Collectorate Madhubani, Distt-Madhubani
5. The Block Development Officer Block -Khajauli, P.S.-Khajauli, Distt-Madhubani

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Dharmeshwar Mishra, Sr. Advocate
Mr. Indrajeet Bhushan, Advocate
Ms. Sarwat Rafi, Advocate
Mr. Subham Saurabh, Advocate

For the State : Mr. Rajeshwar Singh, GA-10
Mr. Manoj Kumar Yadav, AC to GA-10

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 28-04-2025

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

2. Learned Senior Counsel for the petitioner submits
that, vide Order No. 9 dated 17.03.2025, this Hon'ble Court was
pleased to identify material discrepancies in the matter. He
submits that the original order in the departmental proceeding
against the petitioner was passed on 04.03.2009, vide Memo
No. 259, by the District Magistrate, Madhubani (as contained in



Annexure-9 to the writ petition). The said order was challenged before the Commissioner in Service Appeal No. 01 of 2011, but the appeal was dismissed on the ground of limitation without addressing any of the grounds raised in the memo of appeal, by order dated 16.07.2009. Learned Senior Counsel further submits that both the order passed by the disciplinary authority and the appellate authority were challenged before this Hon'ble Court in CWJC No. 5454 of 2010. By order dated 26.11.2010, the petition was dismissed with liberty to avail the remedy under Rule 28 of the Bihar CCA Rules, 2005. In compliance with the said direction, the petitioner filed a revision before the Revisional Authority. However, the Revisional Authority remanded the matter back to the District Collector, who decided the case afresh in Service Appeal No. 01 of 2011, vide order dated 24.05.2012/28.05.2012 (Annexure-12 to the writ petition).

3. Learned Sr. Counsel for the petitioner submits that there is no inconsistency or discrepancy in the present writ petition. Due to the absence of the petitioner's counsel during earlier hearings, the State presented the matter in a manner that created an impression of discrepancies, although none exist. The petitioner is presently seeks quashing of the charge memo contained in Annexure -3, the enquiry report dated 02.06.2008



contained in Annexure-6, the punishment order dated 04.03.2009 contained in Annexure-9 and order dated 24.05.2012/28.05.2012 passed in Service Appeal No. 01 of 2011 (Annexure-12 to the writ petition).

4. Learned Sr. Counsel for the petitioner further submits that the entire departmental proceeding is in gross violation of the Bihar CCA Rules, 2005 and is full of bias. The charge memo was not issued in accordance with Rule 17(4) of the CCA Rules, 2005. No Presenting Officer was appointed; instead, the Conducting Officer functioned as the Presenting Officer, compromising the fairness of the proceeding. It is further submitted that preliminary enquiry was conducted on the direction of the District Magistrate by the Additional Collector, Shri Vijay Kumar Jha, who subsequently submitted a report but he was appointed as the Enquiry Officer, thus, he tested the veracity of his own allegations in the preliminary enquiry, which renders the entire proceeding tainted with bias.

5. Learned Senior Counsel further submits that the petitioner was posted as Nazir in Khajauli Block of Madhubani District on a regular cadre post. On 31.07.2006, some beneficiaries of the Indira Awas Yojana submitted a written complaint during a Janata Darbar to the respondent no. 3 against



the then Mukhiya of Phahar Panchayat. Importantly, no allegation was made against the petitioner. Nevertheless, the District Magistrate directed the Additional Collector to conduct a preliminary enquiry, which culminated in a report dated 02.08.2006. On the basis of this report, the BDO, Khajauli, was directed to lodge an FIR, and the Additional Collector, who prepared the preliminary enquiry report, was appointed as Enquiry Officer. It is further submitted that the charge memo does not mention the names of any witnesses or documentary evidence to support the charges. The Enquiry Officer himself, in the enquiry report, explicitly stated that the proceedings were conducted in the absence of a Presenting Officer. Thus, the Enquiry Officer adjudicated upon his own preliminary findings, violating the principles of natural justice. Upon receiving the enquiry report, a second show cause notice was issued to the petitioner, and despite submission of a reply, no points raised by the petitioner were considered, and punishment was imposed. Subsequently, the petitioner challenged the punishment order in appeal. However, the appeal was rejected by the Secretary to the Commissioner, not by the Commissioner himself on the ground of limitation, without considering the merits of the case. Thereafter, the petitioner approached this Hon'ble Court in



CWJC No. 5454 of 2010, in which vide order dated 26.11.2010, he was granted liberty to file a revision under Rule 28 of the Bihar CCA Rules. The revision was duly filed and was eventually treated as a service appeal by the Commissioner and decided as Service Appeal No. 01 of 2011, vide the impugned order. However, none of the issues raised in the memo of appeal were considered, and the appeal was summarily rejected.

6. Learned Senior Counsel further submits that there was a fundamental violation of the Bihar CCA Rules, 2005, particularly issuance of defective charge memo. The failure to appoint a Presenting Officer, coupled with the fact that the same officer conducted both the preliminary and regular enquiry, renders the entire proceeding legally unsustainable and bad in law.

7. In support of his submissions, learned Senior Counsel for the petitioner relies on the judgment of this Hon'ble Court in ***Rama Shankar Choudhary v. State of Bihar***, reported in 2018 (1) PLJR 91, particularly paragraphs 7 and 8, and ***Aman Kumar v. Chairman, Uttar Bihar Gramin Bank & Ors.***, reported in ***2018 (1) PLJR 95***, paragraph 12. He submits that these decisions lay down categorically that the conduct of a departmental proceeding in the absence of a Presenting Officer



is *per se* bad in law.

8. On the other hand, learned counsel for the State supports the disciplinary authority's order dated 04.03.2009 (Annexure-9) and contends that the departmental proceeding was conducted in compliance with the rules. He submits that although the charge memo was served by the Enquiry Officer, the petitioner was afforded sufficient opportunity to defend himself. A reasoned enquiry report was submitted, a second show cause notice was issued, and a final order was passed after considering the reply. The appellate authority also passed its order in accordance with law. However, he concedes that upon perusal of the enquiry report, it appears that no Presenting Officer was appointed.

9. In this context, learned counsel for the State submits that the absence of a Presenting Officer alone does not invalidate the entire proceeding, particularly where the delinquent has been afforded reasonable opportunity to present his case.

10. Upon consideration of the rival submissions and perusal of the records, this Court finds the following material discrepancies in the departmental proceeding:

(i) The charge memo does not specify any oral or



documentary evidence proposed to be relied upon to substantiate the charges.

(ii) No Presenting Officer was appointed in the proceeding, as expressly acknowledged in the Enquiry Report.

(iii) The preliminary enquiry was conducted by the Additional Collector, Madhubani, who, based on his own report, became the Enquiry Officer in the departmental proceeding thereby effectively testing the veracity of his own allegations; and

(iv) The charge memo lacks the list of witnesses and supporting documents, depriving the petitioner of a fair opportunity to prepare his defence.

11. A very recent judgement of a Division Bench of this Hon'ble Court rendered in the case of Upendra Pandit Vs. the State of Bihar LPA No. 507 of 2017 arising from CWJC No. 17227 of 2008, the Division Bench has held in paragraph 10, 11, and 12 as under :-

“10. So far as the facts of the instant case are concerned, on perusal of the charge-sheet in Form-'ka', this Court finds that the same mentions about the charges levelled against the appellant, which are ten in



number. It also transpires from the records that as many as fourteen witnesses were examined in support of the charges. However, so far as the contents of the charge-sheet and/or the covering letter dated 27.11.2004 is concerned, the same neither contains the list of documents nor the list of witnesses by which the articles of charges were proposed to be sustained.

11. In the opinion of the Court, Rule 17 (3) and (4) of the Rules of 2005 are very clear when they provide that where it is proposed to hold an inquiry against the government servant under the said Rules, the disciplinary authority shall draw up or cause to be drawn up the substance of the imputation of misconduct or misbehaviour in support of each article of charge, the same shall contain a statement of relevant facts, list of documents and list of witnesses by which the articles of charges are proposed to be sustained. Thus, non supply of the list of documents and the list of witnesses to the appellant in the instant case on which the disciplinary authority proposed to sustain the charges levelled against the appellant in the disciplinary proceeding as also the proceeding being conducted without appointment of a Presenting Officer was a clear and serious lapse of the provisions of



Rule 17 of the Act of 2005. The requirement of Rule 17 (3) and (4) not having been fulfilled, the order of punishment of dismissal from service of the appellant cannot be sustained. Both the orders of dismissal dated 29.12.2005 and the order dated 30.04.2008 rejecting the appeal preferred by the appellant are both set aside. The order of the learned Single Judge also cannot be sustained and is hereby set aside.

12. The appeal is allowed with all consequential benefits. There cannot be a resumption of the enquiry proceedings, from the stage at which the defect is noticed, since by virtue of the appellant having crossed the age of superannuation there exists no employer-employee relationship. In view of the order of dismissal having been passed on 29.12.2005 and the appellant having superannuated from service with the passage of time, although the appellant has not worked, in the facts of the case, it is directed that the appellant will be entitled for 50 percent of his arrears of salary which will be paid to the appellant within a period of four months. The appellant will also be entitled for pension admissible to him as per law and arrears, if any, under this head shall also be paid, fully within four months.



It is made clear that in computation of pension, the full salary due to the appellant shall be reckoned as the last pay drawn, despite our limiting disbursement of salary to 50% for the remaining period of service. In case of the petitioner not being paid the amount under any head, for no fault of his, he will be entitled for interest on the total unpaid amount at the rate of 8% p.a. from the date of this order.”

12. This Court also feels it necessary to quote the relevant paragraph 7 and 8 of the judgement rendered in the case of ***Rama Shankar Choudnary (supra)*** relied on by the learned Sr. Counsel for the petitioner, as under:-

“7. In my opinion, although the disciplinary authority has framed a charge in tune with Rule 17(3) of “the Rules” but he has neither sought an explanation from the delinquent on the charge in terms of Rule 17(4) nor there is a satisfaction on the part of the disciplinary authority for relegating the matter for enquiry in terms of Rule 17(5) by following the procedure provided under Rule 17(6). All these mandatory obligations have been thrown to the winds by the disciplinary authority in the present matter.

8. As I have observed, this case is not in isolation rather this court is burdened with litigations of present nature. I shall do no better than to reproduce my opinion in similar circumstances in a matter arising from C.W.J.C. No. 7207 of 2016 (*Shankar Dayalv. State of Bihar*) and the default committed by the disciplinary authority in the case of *Shankar Dayal* (supra) as taken note of by this Court, applies with full force to the case



in hand. The relevant extract of the judgment runs as under:

“The proceeding is clothed with gross statutory violations and confirms ignorance of statutory procedure provided under “the Rules” beginning from the stage of service of charge memo until the passing of the impugned order(s). The Disciplinary Authority has defaulted at each stage. The charge memo placed at Annexure-2/1 even though framed by the District Magistrate, Nalanda was never served upon the petitioner by the District Magistrate as mandated under Rule 17(3) of “the Rules” nor the records in the custody of Mr. Kumar Alok would reflect any delegation of power. Mr. Alok has also not been able to satisfy from the records whether any such delegation has been made by the Disciplinary Authority in favour of any officer. Now in such circumstances the service of the charge memo by the Enquiry Officer and his direction to the petitioner to reply thereto, is unheard of in service jurisprudence and contrary to the “Disciplinary Rules”.

Rule 17(3) of “the Rules” casts an obligation on the Disciplinary Authority to draw a charge against a delinquent Government servant or cause it to be drawn up against the officer delinquent. Sub-rule (4) thereof further mandates the delivery of such charge memo so drawn up either through the Disciplinary Authority or through an officer duly authorized. The obligation cast on the Disciplinary Authority does not stop here rather he has yet to satisfy himself whether the explanation so forwarded by a delinquent on the proposed charge, requires an enquiry by the Enquiry Officer or requires a closure. This power exclusively vested in the Disciplinary Authority under Rule 17(4) cannot be delegated.

In the present case this mandatory obligation cast on Disciplinary Authority has been flouted as confirmed from the letter dated 1.2.2008 (Annexure-2) issued by the Enquiry Officer directing the petitioner to file his reply on the charges before him. This is a gross statutory violation and has been commented upon by a Division Bench of this Court in a judgment reported in [\(1996\) 2 PLJR 95](#) (*Ravindra Nath Singh v. Bihar State Road*



Transport Corporation) when the Division Bench has expressed the following opinion at paragraph 6 of the judgment:

“6.....The Enquiry Officer is not the competent authority to consider the reply to the charges. It is for the disciplinary authority to consider the reply to charges and on consideration of the causes shown in the reply to decide as to whether to close or to continue with the proceedings by holding domestic enquiry into the charges.”

In my opinion the enquiry at its very inception is vitiated for the Enquiry Officer has no business to seek reply on the charges from the delinquent. “The Rules” again do not authorize him to do so. The illegality did not stop here and continues further.

It is not in dispute that though a Presenting Officer was appointed for the enquiry but he did not choose to lead any evidence drawn against the petitioner or examine the petitioner on the allegation. On the contrary it is the Enquiry Officer who took this duty upon himself. Rule 17 of “the Rules” draws a complete scheme of the proceeding and details the manner in which a proceeding is to be conducted. Rule 17(14) very eloquently describes as to how a proceeding is to proceed on the date fixed. A mandatory duty has been cast on the Presenting Officer to examine the witnesses and lead evidence collected against a delinquent. This mandatory duty has not been discharged. Instead the Enquiry Officer took this duty upon himself even when such practice has been deprecated by the Courts on different occasions. For ready reference I would refer to a judgment of the Supreme Court reported in [\(2010\) 2 SCC 772](#) (*State of Uttar Pradesh v. Saroj Kumar Sinha*). At paragraph 28 of the judgment the Supreme Court has the following words of advise for the enquiry officer:

“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 un rebutted 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."

13. This Court further feels it necessary to quote the relevant paragraph 12 of the judgement rendered in the case of ***Aman Kumar (supra)*** relied on by the learned Sr. Counsel for the petitioner, as under:-

"12. In view of the uncontested facts noted above where the very initiation of the disciplinary proceedings was resting on a charge memo which was defective in absence of any evidence being mentioned therein and which defect was not bothered to be cured by the disciplinary authority at any stage of the proceedings rather the illegality was perpetuated when the Enquiry Officer has proceeded to draw his conclusion on mere conjectures and surmises in absence of evidence being led by the Bank to support the charge, the finding of the Enquiry Officer resting on no evidence is a perversity and its endorsement by the disciplinary authority as well as the appellate authority is a perpetuation of such illegality. For the reasons so discussed, the entire proceedings initiated against the petitioner beginning the service of the charge memo at Annexure-5, order of proposed punishment at Annexure-7 issued by the disciplinary authority, the order of punishment of removal at Annexure-9 as well as the order of appellate



authority at Annexure-13 are held illegal and are accordingly quashed and set aside.”

14. Upon a comprehensive examination of all three cases, it appears to this Court that the departmental proceeding conducted in the absence of a Presenting Officer is legally unsustainable. In the present case, the illegality is further aggravated by two additional procedural irregularities: first, the charge memorandum itself as it is defective; and secondly, the same person on whose preliminary report charges were framed, has been appointed as the Enquiry Officer. In the considered opinion of this Court, such grave procedural lapses render the entire departmental proceeding fundamentally defective and illegal, and the punishment imposed as a result thereof cannot be sustained in law.

15. Therefore, charge memo dated 09.10.2006 (as contained in Annexure-3 to the writ petition), Enquiry report dated 02.06.2008 (as contained in Annexure-6 to the writ petition) order of punishment dated 04.03.2009 issued vide Memo No. 259 by the District Magistrate, Madhubani (as contained in Annexure-9 to the writ petition) and appellate order dated 14.07.2009 communicated vide memo number 1072 dated 16.07.2009 (as contained in Annexure -13 to the supplementary



affidavit) all are hereby set aside. However, the petitioner shall be entitled to all consequential benefits in accordance with law.

16. With the above observation and direction the Writ Petition stands allowed.

(Dr. Anshuman, J)

Ashwini/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	08/05/2025
Transmission Date	NA

