

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15769 of 2013

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Madan Kumar Roy Son Of Late Sri Kishuni Roy Village - P.O. Baharampur,
P.S. Raghapur, District - Vaishali

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. Director General of Police, Bihar, Patna
3. D.I.G. Of Police, Military Police, Central Zone, Patna
4. The Commandant, B.M.P.3, Bodh Gaya, Gaya

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ram Hriday Prasad, Advocate
For the Respondent/s : Mrs. Shail Kumari, Advocate

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 14-07-2025

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

2. The present writ petition has been filed to quash
the order dated 30.09.2009 passed by the Commandant, B.M.P.-
3, Bodh Gaya (Annexure-3), as well as the appellate order dated
13.09.2010 passed by the D.I.G. of Police, Military Police,
Central Zone, Patna (Annexure-4), and for the grant of all
consequential benefits.

3. Learned counsel for the petitioner submits that
the petitioner was appointed as a Constable in B.M.P.-11, Jamui,
on 19.10.1971. He was promoted to the post of Sub-Inspector of



Police (Arms) in 2002. He further submits that while the petitioner was posted as a Sub-Inspector of Police in B.M.P.-3, Bodh Gaya, a charge memo was issued against him on 06.03.2009. It was alleged therein that the petitioner told the trainee Sub-Inspectors that an order had been received allowing them to go to their respective homes. Acting on his statement, the trainee Sub-Inspectors went home and could not attend the duty of maintenance of law and order. Counsel further submits that, vide order dated 10.06.2009, the enquiry report found the petitioner guilty, and on the basis of the said enquiry report, the Commandant / Disciplinary Authority imposed the punishment of withholding of increment for six months, which is equivalent to one black mark.

4. Learned counsel further submits that being aggrieved and dissatisfied with the order dated 30.09.2009 passed by the Commandant / Disciplinary Authority, the petitioner preferred an appeal before the D.I.G. of Police, Military Police, Central Zone, Patna, which was also rejected on 13.09.2010. Counsel further submits that according to Police Manual Rules 824 to 828, the punishment imposed, being equivalent to one black mark, amounts to a major punishment. He submits that for the imposition of a major punishment,



issuance of a second show-cause notice after the enquiry report is mandatory. However, in the present case, there has been a complete failure to follow this procedure. In view of the above, the orders impugned are not in accordance with law and are fit to be set aside.

5. Learned counsel for the State, on the other hand, submits that the petitioner himself was not willing to file a show-cause reply, despite being issued show-cause notices twice. He submits that it has been specifically stated in the counter affidavit that show-cause notices were served upon the petitioner vide Memo No. 1416 dated 27.05.2009 and again vide Memo No. 1467 dated 05.06.2009. However, the petitioner failed to submit any reply in his defence. Therefore, the contention raised by the petitioner that no show-cause notice was issued is incorrect, and on this ground alone, the writ petition is not maintainable and is fit to be dismissed.

6. Upon perusal of the pleadings made by the parties, it transpires to this Court that the enquiry report was submitted on 10.06.2009. As per the pleadings of the State, show-cause notices were issued twice, i.e., on 27.05.2009 and 05.06.2009. It, therefore, becomes crystal clear that these show-cause notices were issued during the pendency of the



disciplinary proceeding and not thereafter. For the purpose of imposing a major punishment, it is a settled principle that a second show-cause notice is required to be issued after the submission of the enquiry report. In the present case, a specific pleading has been made by learned counsel for the petitioner that no second show-cause notice was issued after the enquiry report, and the final order was passed without an opportunity.

7. Upon perusal of the referred dates, it transpires to this Court that the show-cause notices were issued during the course of the disciplinary proceeding, i.e., prior to the submission of the enquiry report. However, no show-cause notice was issued thereafter, and the punishment order, being a major punishment, was passed against the petitioner.

8. In view of the above, this Court is of the firm opinion that the non-issuance of a second show-cause notice constitutes a procedural mistake in the conduct of the departmental proceeding. The order of major punishment which has been passed without issuance of second show-cause is bad in law, and therefore, the appellate order is also bad in law.

9. Hence, both the order dated 30.09.2009 passed by the Commandant, B.M.P.-3, Bodh Gaya (Annexure-3), and the appellate order dated 13.09.2010 passed by the D.I.G. of



Police, Military Police, Central Zone, Patna (Annexure-4), are
hereby set aside.

10. Accordingly, the present writ petition stands
allowed.

(Dr. Anshuman, J.)

Aman Kumar/-

AFR/NAFR	NA
CAV DATE	NA
Uploading Date	16.07.2025
Transmission Date	NA

