

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 12262 of 2024

Chandan Kumar Son of Sri Jawahar Prasad, Resident of Raghopur, P.S.-
Bakhtiyarpur, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home Department,
Government of Bihar, Patna.
2. The Director General of Police, Government of Bihar, Patna.
3. The Additional Director General of Police (Budget, Appeal and Welfare)
Police Headquarter, Police Headquarter, Bihar, Patna.
4. The Inspector General of Police, Magadh Range, Gaya, Bihar.
5. The Additional Inspector General of Police, Law and Order, Bihar.
6. The Superintendent of Police, Nalanda, Bihar.
7. The Superintendent of Police, Nawada, Bihar.
8. The Additional Superintendent of Police, Nawada, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr Mrigank Mauli, Sr Advocate with M/s Sanjay KrNavin Kr Singh, Venkatesh Kr Singh, Advocates
For the Respondent/s	:	Mr.Addl. Advocate General (13)

CORAM: HONOURABLE MR JUSTICE ARVIND SINGH CHANDEL

CAV JUDGMENT

Date : 11-07-2025

This petition has been preferred by the petitioner
seeking the following reliefs:

***“(a) For issuance of writ in the nature
of certiorari quashing Order No 285/2023
contained in Memo No 809 dated 10.02.2023
passed by the Superintendent of Police, Nalanda
in Departmental Proceeding No 89/20 whereby***



the petitioner has been dismissed from the service as the proceeding was based upon the de novo enquiry.

(b) For issuance of writ in the nature of certiorari quashing the Memo of Charge dated 12.05.2020 contained in letter No 2114 dated 12.05.2020 issued by the Superintendent of Police, Nawada as the fresh Memo of Charge dated 12.05.020 contained the similar allegations and charges which were incorporated in the previous Memo of Charge dated 12.06.2014 for which the Bihar CCA Rules, 2005 does not provide for issuance of fresh Memo of Charge.

(c) For issuance of writ in the nature of certiorari for quashing the enquiry report dated 09.07.2022 submitted in the departmental enquiry 89/20, which was initiated in pursuance of the fresh Memo of Charge containing the same set of charges for which earlier enquiry report has been submitted vide Memo No 3455 dated 28.08.2019 as no illegality or irregularity was pointed out in the earlier enquiry report.

(d) For issuance of writ in the nature of certiorari quashing the order dated 14.06.2023 passed by the Additional Director General of Police (Budget, Appeal & Welfare), Bihar, Patna whereby the appeal preferred by the petitioner has been rejected and further quash the order dated 27.06.2024 passed by the Upper Secretary, Home Department, Government of Bihar whereby the Memorial filed by the petitioner has also been rejected.

(e) For directing the respondent authorities to comply the order dated 15.03.2021 passed in CWJC No 7756 of 2020 whereby the Hon'ble Court has been pleased to quash the orer dated 16.03.2020 whereby the respondents were restrained from proceeding further in the investigation and were directed to give effect to



the order dated 03.09.2019 passed in CWJC No 14656 of 2014 but the Disciplinary Authority went against the order of the Hon'ble Court and directed to conduct the de novo enquiry after issuing fresh memo of charge which is unsustainable and contemptuous.

(f) For directing the respondents to consider that the charges were altogether similar and identical and the evidences, witnesses and circumstances were all same in the departmental proceeding and criminal case and the petitioner has been acquitted in the Special Case No 48/14 arising out of Vigilance Case No 41/2014 by order dated 06.09.2018 passed by the Special Judge Vigilance.

(g) For issuance of writ in the nature of mandamus as a consequence of setting aside the dismissal order – directing the Respondent Authorities for reinstating the petitioner with full back wages and consequential benefits as the petitioner has not been gainfully employed elsewhere since the date of his dismissal.

(h) For any other writ/writs, order/orders, directions for which he petitioner is found to be entitled in the facts and circumstances of the present case.”

2 Facts of the case are that the petitioner, being an Assistant Sub Inspector of Police, was arrested on the allegation of accepting bribe of Rs 90,000/- from a flour mill owner. This led to lodging of FIR being Vigilance PS Case No 41 of 2014 for the offence punishable under Sections 7/13 (2) read with Sections 13 (1) (d) of the Prevention of Corruption Act, 1988. A departmental proceeding was also initiated against him in which he was held



guilty. However, another departmental enquiry was initiated under Rule 17 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (for brevity, ***Bihar CCA Rules, 2005***) and a fresh enquiry commenced on 12.06.2014. Finally, the Enquiry Officer prepared a report. However, before the same could be placed before the Disciplinary Authority, the petitioner approached this Court by filing CWJC No 14656 of 2014 for quashing the charge memo on the ground that in the criminal case, he has been acquitted from all the charges. This Court, vide its order dated 03.09.2019 (Anexure P/5) passed in CWJC No 14656 of 2014 directed that if the petitioner seeks consideration of the Disciplinary Authority on account of his acquittal in the criminal case for the same charge, he would be at liberty to bring to the notice of Disciplinary Authority the judgment of acquittal dated 06.09.2018 (Annexure P/3) as also a representation placing reliance on the decisions of ***Capt M Paul Anthony -Versus- Bharat Gold Mines Limited & Others***, reported in ***(1999) 3 SCC 679*** and ***G M Tank -Versus – The State of Gujarat & Others*** reported in ***(2006) 5 SCC 446***. The Disciplinary Authority was directed to consider whether the petitioner was entitled to any benefit on account of his acquittal in the criminal case. As directed by this Court, a decision has to be taken by the Disciplinary



Authority/Superintendent of Police, Nawada. Instead of that, the Inspector General (for brevity, **IG**) of Police, vide order dated 16.03.2020, sent back the matter to the Superintendent of Police, Nawada with a direction to continue with the proceedings and conclude the proceedings against the petitioner according to the provisions of Bihar CCA Rules, 2005 on the ground that there was some procedural error in the departmental proceedings.

3 The petitioner challenged the order dated 16.03.2020 passed by the Inspector General of Police, Magadh Range, Gaya in writ petition being CWJC No 7756 of 2020. This Court, vide its order dated 15.03.2021 (Annexure P/9) allowed the writ petition and quashed the order dated 16.03.2020. Simultaneously, the Enquiry Officer submitted the enquiry report vide Memo No 2857 dated 09.07.2022 wherein the alleged charges were found to be proved. The Disciplinary Authority, vide letter dated 12.09.2022, asked the petitioner to submit his explanation on the proposed punishment. Petitioner submitted his reply on 11.11.2022 (Annexure P/11). The Superintendent of Police, Nawada, vide order No 285 as contained in Memo No 809 dated 10.02.2023 (Annexure P/12) imposed the major penalty, i e, dismissal of the petitioner from the services. The petitioner filed an application before the Additional Director General of Police, Patna which has



also been rejected vide order dated 14.06.2023 (Annexure P/13). The memorial preferred by the petitioner has also been rejected vide order dated 27.06.2024 (Annexure P/15). Hence, this petition.

4 It is submitted by the learned counsel for the petitioner that the departmental proceeding No 89 of 2020 (Annexure P/8) is not maintainable for the reason that without pointing out any patent illegality or irregularity in the enquiry proceedings conducted by the previous Enquiry Officer, the order for de novo enquiry was given by the Disciplinary Authority. He further submits that the Disciplinary Authority issued fresh memo of charge containing the same charges for which earlier enquiry report has been submitted. The Bihar CCA Rules, 2005 does not provide such fresh memo of charge which is itself unsustainable in the eyes of law. He further submits that the departmental proceeding and the criminal case were based on the identical and similar set of facts and even the charges, evidences, witnesses and the circumstances were same and identical. The learned trial Court, in its acquittal order, has observed that the prosecution did not examine any witness on the point of demand, delivery and acceptance of the bribe and on these grounds, the trial Court acquitted the petitioner on complete exoneration without any



benefit of doubt as the prosecution has miserably failed to prove the charges. He further submits that vide order dated 15.03.2021 (Annexure P/9), this Court quashed the order dated 16.03.2020 passed by the IG of Police whereby the records of the case has been remitted back to the Disciplinary Authority with a direction to continue the departmental proceedings against the petitioner. The respondents were restrained from conducting the further enquiry in the case and were required to act in accordance with the directions passed in CWJC No 14656 of 2014 (Annexure P/5). Vide the said order, this Court had directed the Disciplinary Authority, i e, Superintendent of Police, Nawada to take into account the factum of acquittal of the petitioner before passing any order in the light of judgment rendered by the Apex Court in the cases of ***Captain M Paul Anthony (supra)*** and ***G M Tank (supra)***. In spite of that, the Disciplinary Authority passed the order to conduct a fresh enquiry against the petitioner which is not permissible. He further submits that once the enquiry report has been submitted, it is no longer permissible to issue a fresh charge sheet and thereby institute a departmental enquiry de novo. Reliance has been placed by the counsel for the petitioner on the judgment dated 19.01.2023 passed by a Division Bench of this Court in the case of ***State of Bihar & Others -Versus- Md***



Shamim Akhtar & Another passed in ***LPA No 1653 of 2016***. Also reliance has been placed by the counsel on the judgment passed by the Supreme Court in the case of ***Ram Lal -Versus- State of Rajasthan & Others, (2024) 1 SCC 175***.

5 Learned counsel for the respondent-State opposes the argument raised by the learned counsel for the petitioner and submits that though the petitioner has been acquitted by the trial Court but the acquittal of the petitioner was not honourable acquittal. Instead of that, he has been acquitted giving benefit of doubt. Therefore, steps were taken against the petitioner pursuant to the letter issued by the GAD vide letter No 3/M-17/2020 GA-6831/Patna dated 23.07.2020. Reliance has also been placed on the judgment passed by the Supreme Court in the case of ***Avtar Singh -Versus-Union of India & Others (2016) 8 Supreme Court cases 471***. So far as the second charge memo is concerned, it is submitted by the counsel that being Appointing Authority of the petitioner, the IG of Police, Magadh Range found procedural error in conduction of the departmental proceeding, therefore, the matter was remitted back to the Enquiry Officer in accordance with Bihar CCA Rules, 2005 on the same charges as the previous memo of charge was not prepared on proper format.



6 I have heard learned counsel for the parties, perused the documents annexed with the petition and the counter affidavit and the rejoinder.

7 Undisputedly, the first charge memo has been issued to the petitioner vide Annexure P/2 dated 12.06.2014. Vide judgment dated 06.09.2018 (Annexure P/3), the petitioner has been acquitted from all the charges in Special Case No 48 of 2014. Perusal of the record further shows that vide order dated 03.09.2019 passed in CWJC No 14656 of 2014 (Annexure P/5). The writ petition has been disposed of with the following observations:

“As submitted by counsel for the petitioner, petitioner would be at liberty to submit the same along with a representation placing reliance on the decision of the Apex Court in the case of Capt M Paul Anthony vs Bharat Gold Mines Ltd & Ors reported in (1999) 3 SCC 679 and G M Tank vs State of Gujarat & Ors reported in (2006) 5 SCC 446 within two weeks from today.

In the event, such application is filed, this Court would expect that authority would consider whether petitioner is entitled to any benefit on account of his acquittal.

Proceedings in the department should be taken only after decision by respondent No 3 on the claim of the petitioner which should be expeditiously taken within eight weeks thereafter.

Writ petition is disposed of with the aforesaid observations/directions.”



8 Vide order dated 03.09.2019 (Annexure P/5) passed in CWJC No 14656 of 2014, this Court directed the SP, Nawada to consider the representation of the petitioner. However, the SP, Nawada himself has not passed any order rather he referred the matter to the Inspector General of Police, Magadh Range, Gaya and the I G, Magadh Range, Gaya passed the order dated 16.03.2020 (Annexure P/6). Pursuant to that, a fresh memo of charge dated 12.05.2020 (Annexure P/7) was prepared and the New Departmental Proceeding No 89 of 2020 was initiated vide order dated 25.08.2020 (Annexure P/8). The order dated 16.03.2020 (Annexure P/6) has been assailed by the petitioner before this Court being CWJC No 7756 of 2020. This Court, vide its order dated 15.03.2021 (Annexure P/9), set aside the order dated 16.03.2020 passed by the I G, Magadh Range, Gaya on the ground that, as directed by this Court vide its order dated 03.09.2019 passed in CWJC No 14656 of 2014, the decision has not been taken by the Superintendent of Police, Nawada. Instead of that, the decision has been taken by the I G of Police, Magadh Range, Gaya. The relevant paragraph of the said judgment is quoted herein below:

“14. This Court vide order dated 03.09.2019 passed in CWJC No 14656 of 2014 had directed the Disciplinary Authority to take a decision on the representation within two weeks



from the date of the order. Instead of the Disciplinary Authority taking a decision in the matter, he transmitted it to a superior authority, namely, the Inspector General of Police, Magadh Range, Gaya.

15. This was not the mandate of the order.

16. For the aforesaid reason, the order dated 16.03.2020 is set aside. The matter is remitted before the Disciplinary Authority to act in accordance with the direction passed by this Court vide order dated 03.09.2019 passed in CWJC No 14656 of 2014.”

9 Once the order dated 16.03.2020 (Annexure P/6) passed by the I G, Magadh Range, Gaya has been set aside by this Court then respondents have had no occasion to issue a fresh charge memo dated 12.05.2020 (Annexure P/7) and to initiate New Departmental Proceeding No 89 of 2020 as the order dated 16.03.2020 (Annexure P/6) has already been quashed/set aside by this Court. Therefore, on these grounds, the entire proceedings, as done by the respondents after passing the order dated 15.03.2021 in CWJC No 7756 of 2020 (Annexure P/9) are liable to be set aside.

10 The document further shows that even after the passing of the order dated 15.03.2021 whereby the order dated 16.03.2020 has been set aside, new/fresh departmental proceeding



No 89 of 2020 has been initiated against the petitioner. New charges were framed. Enquiry Officer was also changed.

11 Dealing with the issue, this Court, in the case of *State of Bihar & Others -Versus- Md Shamim Akhtar & Another (supra)*, the Division Bench of this Court has observed in paragraph 2 as under:

“02. Perusal of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005, it is evident that the disciplinary authority has no power to amend the charge at the stage of consideration of inquiring officer’s report/finding. The disciplinary authority had option of either accepting or rejecting the finding of the Inquiring Officer’s report or in the event of disagreeing with the inquiring officer report or finding. In that event disciplinary authority has option of issuing of show cause notice to the concerned person to the extent of disagreeing with the inquiring officer’s report or finding and he had option of remanding the matter to the inquiring authority to commence the inquiry from the defective stage and complete the process of inquiry or he/she can complete the inquiry. On the other hand, in the present case disciplinary authority proceeded to amend the charge and ordering fresh inquiry. Such procedure is not in consonance to the law for the reason that Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 do not provide for such procedure. In fact, the petitioner in para 25 and 56 of the writ petition has specifically contended that ordering fresh inquiry is bad in law.”



12 In the case of *Ahok Kumar -Versus- The State of Bihar & Others, 2021 (2) BLJ 117*, it has further been held by this Court in paragraph 9 as under:

“9. No provision under the Rules contemplates a second departmental inquiry. In case, a Disciplinary Authority notices any serious defect having crept into the inquiry or some important witnesses could not be examined because of their nonavailability, he could have remitted the matter back to the Enquiring Authority for further inquiry as contemplated under sub-rule (1) of Rule 18 of the Rules.”

13 Thus, the law is well settled that after submission of the enquiry report by the Enquiry Officer, the Disciplinary Authority has no power to order to start fresh enquiry. In this case, the Disciplinary Authority, vide order dated 25.08.2020 (Annexure P/8) initiated New Departmental Proceeding No 89 of 2020 and also issued fresh memo of charge (Annexure P/7) dated 12.05.2020 which is not permissible.

14 So far as the enquiry report dated 09.07.2022 (Annexure R/1), as submitted by the Enquiry Officer is concerned, it quite appears that the Enquiry Officer recorded the statements of 15 witnesses including the complainant of the said Vigilance PS Case No 41 of 2014, namely, Kaulesh Kumar and one independent witness, namely, Aftab Alam. Both Kaulesh Kumar and Aftab Alam did not support the case of the Department and were



declared hostile. In spite of that, the Enquiry Officer, only on the basis of statements of other police witnesses, arrived on the conclusion that all the charges levelled against the petitioner have been duly proved. Perusal of the judgment of acquittal dated 06.09.2018 (Annexure P/3) shows that before the trial Court also, complainant as well as independent witness have not supported the case of the prosecution and the trial Court has categorically held that both the demand and acceptance of the bribe were not proved. However, the learned trial Court acquitted the petitioner accused giving the benefit of doubt. Since the main ingredients of the offence, i.e., demand and acceptance, both were not proved. Therefore, the trial Court ought to acquit the petitioner/accused honourably instead of giving benefit of doubt.

15 Dealing with the issue, the Supreme Court, in the case of **Ram Lal (supra)** observed and held in paragraphs 28, 29, 30 as under:

“28. Expressions like “benefit of doubt” and “honourably acquitted”, used in judgments are not to be understood as magic incantations. A court of law will not be carried away by the mere use of such terminology. In the present case, the Appellate Judge has recorded that Ext P-3, the original mark sheet carries the date of birth as 21-4-1972 and the same has also been proved by the witnesses examined on behalf of the prosecution. The conclusion that the acquittal in the criminal proceeding as after full consideration of the



prosecution evidence and that the prosecution miserably failed to prove the charge can only be arrived at after a reading of the judgment in its entirety. The Court in judicial review is obliged to examine the substance of the judgment and not go by the form of expression used.

29. We are satisfied that the findings of the Appellate Judge in the criminal case clearly indicate that the charge against the appellant was not just, “not proved” - in fact the charge even stood “disproved” by the very prosecution evidence. As held by this Court, a fact is said to be “disproved” when, after considering the matters before it, the court either believes that it does not exist or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist. A fact is said to be “not proved” when it is neither “proved” nor “disproved”

30. We are additionally satisfied that in the teeth of the finding of the Appellate Judge, the disciplinary proceedings and the orders passed thereon cannot be allowed to stand. The charges were not just similar but identical and the evidence, witnesses and circumstances were all the same. This is a case where in exercise of our discretion, we quash the orders of the disciplinary authority and the appellate authority as allowing them to stand will be unjust, unfair and oppressive. This case is very similar to the situation that arose in G M Tank.”

16 In the light of above and on examination of facts and the evidence, as adduced by the prosecution before the trial Court as well as the evidence adduced by the Department during the departmental proceeding, it is obvious that in both the proceedings, identical charges were framed against the petitioner.



All the witnesses were the same and in both the proceedings, the complainant as well as independent witness, namely, Aftab Alam have not supported the case of the prosecution/department. Resultantly, in the criminal trial, the trial Court has acquitted the petitioner accused from all the charges. However, in the departmental proceeding, the Enquiry Officer found the charges proved against the petitioner. Since, there is no evidence available on record which establishes the fact that the petitioner demanded or accepted any bribe. Therefore, the finding, as recorded by the Enquiry Officer in his enquiry report, is not in accordance with the evidence available on record. Therefore, on this ground also, the enquiry report as well as all the impugned orders, which were passed by the authorities on the basis of said enquiry report, are liable to be set aside.

17 As discussed herein above, this Court finds that all the orders impugned are liable to be set aside.

18 Resultantly, this writ petition is allowed.

19 The impugned orders dated 10.02.2023 (Annexure P/12), 14.06.2023 (Annexure P/13) and 27.06.2014 (Annexure P/15) are set aside.

20 The respondents are directed to reinstate the services of the petitioner forthwith along with all consequential benefits as



permissible which will be done within three months from the date
of receipt of a copy of this order.

(Arvind Singh Chandel, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	18.06.2025
Uploading Date	11.07.2025
Transmission Date	NA

