

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 12121 of 2023

Praduman Kumar Prasad Son of Late Krishan Deo Prasad, Resident of Village-Mahammadpur, P.S.-Patahi, District-East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, SC/ST Welfare Department, Govt. of Bihar, Patna.
2. The Director, SC/ST Welfare Department, Govt. of Bihar, Patna.
3. The Deputy Director SC/ST Welfare Department, Govt. of Bihar, Patna.
4. The District Welfare Officer, Bhagalpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr Shashank Chandra, Advocate
For the Respondent/s : Ms Kumari Amrita, GP III

CORAM: HONOURABLE MR JUSTICE ARVIND SINGH CHANDEL
CAV JUDGMENT

Date : 25-02-2025

This petition has been preferred by the petitioner being aggrieved with the order dated 28.06.2023 (Annexure P/18) whereby respondent No 1, i e, the Disciplinary Authority has passed the order for fresh enquiry against the petitioner.

2 Brief facts of the case are that the petitioner was appointed as Clerk and joined the services in the office of Child Development Project Office at Patepur, Vaishali on 15.06.1984. Subsequently, he was given the charge of *Nazir* in the District Welfare Office, West Champaran, Bettiah, where Bettiah Town PS Case No 794 of 2024 was registered against him for the alleged offence punishable under Sections 467, 468, 471, 406, 420, 120B/34 of the Indian Penal Code. On the basis of said, disciplinary proceeding was initiated against the petitioner and he was suspended vide order dated 08.08.2013 (Annexure P/2).



Charge memo was issued to the petitioner (Annexure P/3). The enquiry officer submitted his report on 24.12.2014 (Annexure P/4). Second show cause notice was issued to the petitioner which was duly replied by him. Thereafter, the disciplinary authority, on 17.02.2016 passed the order of punishment of compulsory retirement (Annexure P/5). It was also directed that recovery of Rs 37,41,060/- shall be made from the petitioner and only subsistence allowance will be paid to the petitioner. Appeal preferred by the petitioner was also rejected (Annexure 6).

3 The petitioner filed a petition before this Court being CWJC No 1088 of 2017 which was disposed of vide order dated 26.06.2018 by which the order of punishment as well as appellate order were set aside. The matter was remitted back to the respondents with a direction that proceeding should be initiated from the stage of second show cause notice.

4 The disciplinary authority again passed the order of punishment of compulsory retirement from service and recovery of Rs 37,41,060/- vide order dated 16.04.2019 (Annexure P/8). The appeal preferred by the petitioner was also rejected vide order dated 19.02.2019 (Annexure P/9). The petitioner filed the petition being CWJC No 21841 of 2019 which was allowed vide order dated 25.04.2022 (Annexure P/10) on the finding that the charge



memo was not accompanied by the list of statement of imputation, list of documents and list of witnesses. It was also found that there was violation of Rule 17 (4) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (for brevity ***the 2005 Rules***). Liberty was given to the disciplinary authority to commence the enquiry from the defective stage and the disciplinary authority was directed to proceed and complete the enquiry within the period of six months from the date of receipt of a copy of the order. Thereafter again, the same charge memo dated 02.03.2013 was served on the petitioner on 12.07.2022 which has been replied by the petitioner. The enquiry officer submitted his report on 18.10.2022 (Annexure P/14). Second show cause notice was issued to the petitioner which has been replied by the petitioner on 06.12.2022 wherein it has been specifically mentioned by the petitioner that charge memo dated 02.03.2013 on the basis of which disciplinary enquiry was conducted was not in accordance with the 2005 Rules and also in violation of the order dated 25.04.2022 passed by this Court in ***CWJC No 21841 of 2019***. Thereafter, decision of conducting a fresh enquiry was taken by respondent No 2 vide impugned order dated 28.06.2023. Hence, this petition has been preferred by the petitioner.



5 It is submitted by the learned counsel for the petitioner that in terms of Rule 18 of the 2005 Rules, once the enquiry officer submitted the report, action was required to be taken by either accepting the same or diverting with the same or directing further enquiry by a speaking order indicating the reasons but in this case, it has not been done. On the contrary, a fresh charge memo has been served containing the same for which the enquiry report was earlier submitted. Thus, the disciplinary authority, while passing the impugned order, started a de novo enquiry which is not permissible. Once this Court directed the disciplinary authority giving liberty to continue the disciplinary proceedings from the defective stage then the disciplinary authority ought to have continued the disciplinary proceedings from the defective stage, as observed by this Court in *CWJC No 21841 of 2019*. It is submitted by the counsel that this is a third round of litigation. As of now, the petitioner stood retired from the services. One of the criminal proceedings has already been quashed and in another criminal proceeding, no charge sheet has been submitted despite lapse of the period of 90 days. Therefore, no purpose will be served to allow the respondent-authorities to proceed any further with the disciplinary proceedings. Reliance has been placed by the counsel on the judgment passed by a Division Bench of this Court



in the case of *State of Bihar & Others -Versus- Ashok Kumar Tiwari*, reported in *MANU/BH/0089/2025*. Also reliance has been placed by the counsel on the judgment passed by a coordinate Bench of this Court in the case of *Narendra Prasad -Versus- State of Bihar & Others*, reported in *2019 (6) BLJ 342*.

6 Learned counsel for the respondent-State opposes the argument raised by the learned counsel for the petitioner.

7 Heard learned counsel for the parties, perused the pleadings made by both the parties, gone through the documents as well as the counter affidavit submitted by the respondent-State.

8 Perusal of the order dated 25.04.2022 passed by a Division Bench of this Court in *CWJC No 21841 of 2019* clearly shows that it was found that the charge memo was not accompanied by the list of statement of imputation, list of documents and list of witnesses. It was found that there was non-compliance of sub-rule (4) of Rule 17 of the 2005 Rules. Therefore, the petition was allowed by this Court. However, liberty was given to the disciplinary authority to commence the enquiry from the defective stage. The relevant part of the observation made by this Court in the above mentioned case is reproduced herein below:

***“The Disciplinary Authority imposed
the penalty of compulsory retirement on***



16.04.2019 and it was confirmed by the Appellate Authority on 19.09.2019. Perusal of charge memo at Annexure '8', it is crystal clear that it is not accompanied by list of statement of imputation, list of documents and list of witnesses which are mandatory requirements in terms of sub-rule (4) of Rule 17 of 2005 Rules. Further it is to be noted that the petitioner has specifically taken the contention against the second show cause notice dated 19.02.2015 in his explanation dated 11.03.2015 contended that the copy of the documents and list of witnesses have not been furnished. Further it is also stated that the petitioner was not permitted to inspect the records. The aforesaid contentions have not been countered by the State Counsel Mr S K Mandal with reference to records. Therefore, perusal of the records, it is evident that there is a non-compliance to sub-rule (4) of Rule 17 of 2005 Rules. On this legal issue, the Disciplinary and Appellate Authority have not apprised the petitioner's contention in their orders dated 16.04.2019 and 19.09.2019. Thus, the petitioner has made out a prima facie case so as to interfere with the impugned order contained in Memo No 1081 dated 16.04.2019 (Annexure 26) and the order contained to Memo No 141 dated 19.09.2019. Accordingly they are set aside.

Reserving liberty to the Disciplinary Authority to commence the enquiry from the defective stage and proceed to complete the enquiry proceedings within a period of 6 months from the date of receipt of this order."

9 In the light of the order passed by this Court, the same charge sheet dated 02.03.2013 was again served on the petitioner which transpires from perusal of Annexure P/11. The enquiry officer submitted his report (Annexure P/14). Therefore, second



show cause notice was issued against the petitioner through Annexure P/15. On the basis of the objection raised by the petitioner in his reply to the second show cause notice, the impugned order dated 28.06.2023 has been passed by the disciplinary authority. From perusal of the order dated 28.06.2023, it transpires that the disciplinary authority again appointed an enquiry officer as well as the presenting officer. Fresh charge memo along with list of statement of imputation, list of documents and list of witnesses were also enclosed (Annexure P/18) which has not been denied by the respondents in their counter affidavit. Thus, it is quite clear that despite the order of this Court, the disciplinary authority took a decision for conducting a fresh enquiry (de novo enquiry). What would be the power of the disciplinary authority on submission of enquiry report has been dealt with by the Division Bench of this Court in the case of *The State of Bihar & Others -Versus- Md Shamim Akhtar & Another* vide judgment dated 19.01.2023 passed in LPA No 1653 of 2016 and it has been held in paragraph 2 of the judgment as follows:

“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."

10 In the case of *Ashok Kumar -Versus- State of Bihar*

& Ors, 2021 (2) *BLJ* 117, it has been held at 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."



11 Reiterating the above view, a Division of this Court, in the case of *Ashok Kumar Tiwari (supra)*, has held at paragraph 11 as under:

“11. As seen above, this Court in the case of Md Shamin Akhtar (supra) held that the disciplinary authority has no power to amend the charge at the stage of consideration of inquiring officer’s report/finding. The only option that the disciplinary authority has is to either accept or reject the finding of the inquiring officer’s report or in case he disagrees with the inquiring officer’s report, to issue a show-cause notice to the concerned person to the extent of the disagreement. The only option he has is to remand the matter to the inquiring authority to commence the inquiry from the defective stage. Further, the Hon’ble Supreme Court in the case of Kanailal Bera (supra) held that once a disciplinary proceeding has been initiated, the same has to be taken to its logical end.”

12 Thus, law is well settled that after submission of the enquiry report by the enquiry officer, the disciplinary authority has no power or right to start a fresh enquiry. However, vide impugned order 28.06.2023, the disciplinary authority started a fresh enquiry by issuing a fresh charge memo which is impermissible in law.

13 In such view of the matter, the impugned order dated 28.06.2023 (Annexure P/18) is not sustainable and is, accordingly, set aside.



14 The matter is remanded back to the disciplinary authority to pass a fresh order on the report of enquiry officer strictly in accordance with the statutory provisions under Rule 18 (1) of the 2005 Rules.

15 Since this is the fourth round of litigation and the departmental enquiry is continuously going on for the last 11 years, the disciplinary authority is directed to pass order within two weeks from the date of receipt of a copy of this order.

16 It is further directed that if the disciplinary authority remitted back the matter to the enquiry officer in the light of power given to him under Rule 18 (1) of the 2005 Rules then the enquiry officer would complete the enquiry proceeding as early as possible preferably within 90 days from the date of order passed by the disciplinary authority, if any.

17 With the aforesaid observation, the petition stands allowed.

(Arvind Singh Chandel , J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	18.02.2025
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Transmission Date	NA

