

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21139 of 2021

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Rajesh Sharan Son of Late Murari Sharan Shrivastava Resident of Mohalla-
Jaiprakash Nagar, Bettiah, P.S.- Bettiah Muffasil, District- West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar Through, Principal Secretary, Department of Home (Police), Government of Bihar, Patna.
2. The Director General of Police, Bihar, Patna
3. The Deputy Inspector General of Police, Munger Range, Munger
4. The Superintendent of Police, Munger
5. The Inspector of Police, Jamalpur Circle, Munger.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Akhilesh Dutta Verma Ms. Harshita
For the Respondent/s	:	Mr. Sheo Shankar Prasad (SC8) Mr. Sanjay Kumar

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CORAM: HONOURABLE MR. JUSTICE ARVIND SINGH CHANDEL
ORAL JUDGMENT

Date : 23-07-2025

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

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

i.) “For issuance of writ of certiorari for setting aside/quashing vide memo no. 1297 dated 02.02.2017 (Annexure-26 herein) issued by the Appellate/Reviewing Authority i.e. DGP, Bihar by which the petitioner has been awarded punishment of withholding of one increment for one year having



effect equal to two black spot.”

ii. “For issuance of further writ of mandamus for directing/ commanding the respondent authorities to grant all the consequential benefits to the petitioner which petitioner could not get due to impugned punishment awarded to the petitioner in Munger District Departmental Proceeding No. 05/14, i.e. present departmental proceeding.”

3. It is the second round of litigation. Initially, the departmental enquiry was initiated against the petitioner wherein the enquiry officer in its report dated 25.05.2014, Annexure P/15, exonerated the petitioner from all the charges levelled against him. The Superintendent of Police, Munger, vide its order dated 29.05.2014, Annexure-P/16, also exonerated the petitioner from all the charges. Thereafter, the petitioner filed a representation on 12.08.2014, Annexure-P/17, whereby and whereunder he requested for grant of his promotion, thereafter, without considering the legal position or factual position or without giving any finding and reasons regarding agreement or disagreement from the enquiry report submitted by the enquiry officer and final report submitted by the Superintendent of Police, Patna, the second show cause notice



was issued to the petitioner vide Annexure-18 dated 11.09.2014, which has been replied by the petitioner. Thereafter, the Director General of Police passed the punishment order, Annexure-P/20, whereby and whereunder the petitioner was awarded punishment by way of withholding of one increment for one year having two equal black spot, which amounts to a major punishment. The appeal preferred by the petitioner has also been dismissed.

4. Thereafter, the petitioner filed the writ petition being C.W.J.C. No. 22255 of 2014. The Co-ordinate Bench of this Court vide its order dated 05.04.2016, Annexure-21, quashed the order and remitted back the matter with liberty to the disciplinary authority to proceed a fresh from the stage of second show cause notice. In compliance of the said, the respondent-authorities issued second show cause notice, Annexure-P/22, which was replied by the petitioner vide Annexure-P/23. Thereafter, the said second show cause, Annexure-22, was withdrawn and fresh show cause, Annexure-P/25, issued and subsequently, the punishment order, Annexure-P/26, has been passed whereby and whereunder the petitioner was again awarded punishment by way of withholding of one increment for one year having effect equal to two black spot,



which amounts to a major punishment and hence, this writ petition.

5. It is submitted by the learned counsel for the petitioner that the order impugned whereby punishment has been awarded to the petitioner is arbitrary, illegal and unconstitutional because the order passed by the respondent no.2 is without application of mind and contrary to the provisions laid down by the Rules 17 and 18 of the Bihar CCA Rules. He further submits that in the first round of litigation, the order of punishment has been set aside by the Co-ordinate Bench of this Court only on the ground that the respondent-authorities issued the second show cause notice, Annexure-P/22 to the petitioner without giving any finding or reason or point of agreement or disagreement from the enquiry report submitted by the enquiry officer and the final order passed by the Superintendent of Police, in spite of that, again the same mistake has been committed by the respondent-authorities while issuing a fresh second show cause, Annexure-P/22 and Annexure-P/25, therefore, on this ground alone, the impugned order and all the orders passed by the authorities subsequently are liable to be set aside.

6. Learned counsel for the State opposes the



argument raised by the counsel for the petitioner.

7. Heard both the counsels appearing for the parties and perused the documents annexed with the petition as well as counter affidavit and rejoinder submitted by the petitioner.

8. At this juncture, it would be appropriate to reproduce the relevant paragraphs of the order passed by the Co-ordinate Bench of this Court in the first round of litigation, which reads thus :

Para-7. I find that the second show-cause notice, dated 12.09.2014 is defective and in teeth of Rule 18(2) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005. If a disciplinary authority disagrees with the findings of the enquiry officer, he has to give his tentative reasons for such disagreement. I find that no reason has been assigned in the show-cause notice, save and except that the conduct of the petitioner is not satisfactory. It is not necessary for the disciplinary authority to mention the reasons of disagreement in detail, but at least there could be some tentative reasons for such disagreement. Reference can be had to the decisions in the case of Punjab National Bank & Ors. Vs. Kunj



Behari Mishra, reported in (1998) 7 SCC 84 and Lav Nigam Vs. Chairman and Managing Director, ITI Ltd. & another, reported in (2006) 9 SCC 440.

Para-8. Besides this, the disciplinary authority at the stage of issuing second show-cause notice has come to a final conclusion with respect to the guilt of the petitioner. In such circumstances, issuance of show-cause notice would be a mere formality rendering the consideration of show-cause reply an empty formality. The Court in the case of Oryx Fisheries Private Limited Vs. Union of India & Ors., reported in (2010) 13 SCC 427 has observed that a disciplinary authority ought not a pre-determine the guilt of a delinquent at the stage of issuance of show-cause notice and should manifestly keep its mind open.”

9. Perusal of the said, it is quite vivid that categorical finding has been given by the Court that the disciplinary authority if disagrees with the findings of the enquiry officer, he has to give his tentative reason for such disagreement. Perusal of the second show cause, which has been issued by the respondents-authority after remand order of this case, further shows that in this second show cause also the



disciplinary authority has not recorded his tentative reasons for his such disagreement from the findings of the enquiry officer and again the disciplinary authority passed the order of punishment i.e. Annexure-P/26. Since in the second show cause notice reason of disagreement has not been recorded by the disciplinary authority and without considering this aspect again the petitioner has been punished vide its order dated 02.02.2017, Annexure-P/26, all the orders are liable to be set aside only on this ground.

10. Resultantly, the writ petition is allowed. The impugned order dated 02.02.2017 (Annexure-P/26) is, hereby, quashed.

11. The matter is remitted back to the disciplinary authority again with the direction to proceed afresh from the stage of issuance of second show cause notice as earlier directed by this Court in C.W.J.C. No. 22255 of 2016 vide its order dated 05.04.2016.

(Arvind Singh Chandel , J)

shailendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.07.2025
Transmission Date	NA

