

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.290 of 2022

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Mantoo Kumar, Son of Sri Prem Nath, resident of Village-Sheopur, P.S.
Nawanagar, District-Buxar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Director General of Police, Bihar, Patna.
2. The Deputy Inspector General of Police, Munger Range, Munger.
3. The Superintendent of Police, Sheikhpura, District-Sheikhpura.
4. The Senior Superintendent of Police, Patna.
5. The Inspector of Police, Twarit Bicharan Koshan, Sheikhpura-cum-Enquiry Officer.
6. The Sub Inspector of Police, Sheikhpura Police Station-cum-Presenting Officer.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Siyaram Shahi, Adv. Mr. Indu Bhushan, Adv.
For the Respondent/s	:	Mr. Sheo Shankar Prasad, SC-8 Mr. Anil Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 08-07-2025

Heard the parties.

2. The challenge in the present writ petition is made to an order as contained in Memo No. 908 dated 19.05.2021 whereby the petitioner has been inflicted with the punishment of dismissal. The appeal preferred by the petitioner against the order of dismissal also came to be rejected by the appellate authority vide his order contained in Memo No. 1368 dated 28.09.2021. Both the orders are put to challenge in the present writ petition.



3. The necessary facts as culled out from the records for consideration of the case in hand are in narrow compass.

4. The petitioner was posted as Constable in Sheikhpura Police Force, where he was directed to discharge the duty of Computer Operator in pursuant to the direction of the Accountant and Deputy Superintendent of Police (Head Office, Sheikhpura). On the allegation levelled by one Manorama Devi, posted as In-charge Accounts Clerk, that the petitioner is indulged in misappropriating huge amount of Government money, by way of transferring it into the account of other employees posted at Sheikhpura Police Force and withdrawal of the same; a preliminary enquiry was conducted and the allegation has been found to be true, which led to institution of an FIR bearing Sheikhpura P.S. Case No. 719 of 2018 dated 01.11.2018 registered for the offences punishable under Section 406, 409, 420, 120(B) of the Indian Penal Code and Section 66(D) of Information & Technology Act, 2008. The petitioner was apprehended and remanded to judicial custody on 02.11.2018.

5. While the petitioner was in judicial custody, he was served with a show cause notice, however, the response of the petitioner was not found satisfactory. The aforesaid fact led to initiation of a departmental proceeding, by framing of memo of



charge, the copy of which is marked as Annexure 1 to the writ petition. The petitioner was served with the copy of memo of charge alongwith the report of the Deputy Superintendent of Police, Headquarter, and directed to submit his written defense. The petitioner in response to the notice as contained in Memo No. 925 dated 19.12.2019 submitted his application that as he has been in custody since 02.11.2018, he has no access of necessary documents, the computer and the laptop, hence, he would not be in a position to submit proper reply, so he requested to allow some more time, so that after getting bail from the competent Court, he may file the appropriate explanation. The copy of the application has also been placed on record as Annexure 4 to the writ petition.

6. Notwithstanding the aforesaid fact, a second show cause notice was served upon the petitioner on 28.01.2020, and he was directed to submit reply to the second show cause. The same was also responded by filing a detailed show cause reply on 05.03.2020 (Annexure 6). The show cause reply of the petitioner did not persuade the disciplinary authority and finally the impugned order of dismissal came to be passed, which was challenged before the appellate authority, however, it also came to be rejected; hence, the present writ petition.

7. Mr. Siyaram Shahi, learned Advocate for the



petitioner while assailing the impugned order has contended that admittedly the date on which the memo of charge was issued, the petitioner was behind the bar and in fact, he was all along in judicial custody since 02.11.2018 till 22.01.2020. Referring to Annexure 2 to the writ petition, it is vehemently contended that from perusal thereof it is evident that all the witnesses have been examined behind the back of the petitioner, while he was in judicial custody; hence, admittedly the petitioner has not been offered opportunity to cross-examine and therefore, in complete disregard to the principles of natural justice. The petitioner has shown his difficulty in giving reply to the show cause notice as contained in Annexure 2, but that has never been taken note of and surprisingly, the petitioner was served with the second show cause notice on 28.01.2020, that too without any enquiry report. For this reason alone the entire proceeding suffers from illegality and any action taken by the disciplinary authority is *non-est* in the eyes of law.

8. Irrespective of the aforesaid fact, the petitioner has submitted his detailed reply, but that has not been considered and a cryptic and non-speaking order is passed by the disciplinary authority. The appellate authority also failed to consider the grounds which were taken by the petitioner, before affirming the order of the dismissal.



9. Learned Advocate for the State while refuting the afore-noted arguments, submitted that irrespective of the fact the petitioner was in the judicial custody, he had been served with all the necessary papers/ documents and has given proper opportunity to file explanation/ written statement but, he failed to satisfy the authority concerned. The order of punishment also came to be affirmed by the appellate authority and, moreover, there is no infirmity in the procedure adopted by the disciplinary authority as well as the appellate authority.

10. It has further been contended that this is the second round of litigation, earlier against the order of dismissal, the petitioner had preferred C.W.J.C. No. 13595 of 2021 which was disposed off by a Bench of this Court with a direction to the appellate authority to examine the petitioner's memorandum of appeal, after giving due consideration of each of the contention raised. In compliance therewith, the appellate authority considered all the grounds taken by the petitioner. However, no infirmity has been found in the order of dismissal and the same came to be affirmed.

11. Having heard the learned Advocate for the respective parties and on perusal of the materials available on record, this Court *prima facie* finds that the facts are admitted to the extent that after institution of the FIR bearing Sheikhpura



P.S. Case No. 719 of 2018 on 01.11.2018, the petitioner was taken into judicial custody on 02.11.2018 and he was granted bail on 22.01.2020. Admittedly, the memo of charge was served upon him, the date on which he was under the judicial custody and all the witnesses were examined behind the petitioner; and even the second show cause was served during this period.

12. Well settled it is that justice is not to be done only, but manifestly it is seen to be done. The petitioner in no way can be said to be afforded opportunity to defend his case. The request of the petitioner seeking indulgence of time, has also not been adhered to and the departmental proceeding proceeded further and all the witnesses have been examined behind his back, hence the petitioner has also been deprived from cross-examining the witnesses.

13. It would be worth noting that in the identical facts where the enquiry was proceeded against the delinquent, while he was in judicial custody, a Bench of this Court in ***Kailash Paswan vs. The State of Bihar (C.W.J.C. No. 17783 of 2015) 2019 SCC Online Pat 721***, has held it unfair and set aside the impugned order. The relevant paragraph are reproduced hereunder:-

“4. The short point has been raised by the petitioner that in this case while the petitioner was in jail the entire departmental proceeding was conducted,



where the probity lies to the Department that while he was in jail either he should have been brought from the jail custody to participate in the enquiry or the enquiry should be adjourned till the grant of bail and sufficient opportunity should have been given to participate in the inquiry, but in the present case, the enquiry has been conducted behind his back without following the proper procedure of law and they have not followed the minimum level of fairness in holding the departmental proceeding.

5. The State has tried to justify the action of the Department, but in the present case, inquiry has not been conducted in fair manner, without understanding the fairness of inquiry, is hallmark for any administrative action, it cannot be done in an arbitrary or whimsical manner that too in a departmental proceeding and it was expected from the Department that they should conduct the enquiry fairly and properly so that he may get an opportunity to participate in the proceeding."

14. The contention of the petitioner that the second show cause notice was also served without the enquiry report, finds corroborated from the record, which has been produced before this Court. The record clearly suggest that the enquiry report has never been served upon the petitioner before inflicting the order of punishment. For the first time the enquiry report has been served to the petitioner on his demand being made on 07.07.2021 when the petitioner requested to supply the same for preferring appeal.



15. It would be worth noting here that the Hon’ble Apex Court in its landmark judgment; *Managing Director ECIL vs. B. Karunakar (1994) Suppl (2) SCC 391*, emphasized that denying the enquiry report amounted to violation of natural justice. The ruling ensures that employees must have a fair opportunity to defend themselves against allegations of misconduct.

16. The afore-mentioned reasons are sufficient to set aside the impugned order as well as the appellate order, as there is complete disregard to the principles of natural justice and fair play. Accordingly, the impugned order dated 19.05.2021 as also the appellate order stands set aside. The petitioner is directed to be reinstated with all consequential benefits.

17. The respondents are at liberty to proceed further, if so advised in the departmental proceeding.

18. The writ petition stands allowed.

(Harish Kumar, J)

supratim/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.07.2025
Transmission Date	NA

