IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 923 of 2023

==

Birendra Kumar Son of Late Ram Lakhan Sah Resident - Near Shiv Hanuman Mandir, New Area Shikandarpur, Akharaghat Road P.S.- Muzaffarpur Town, District- Muzaffarpur.

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary General Administration Department, Govt. of Bihar, Patna.
3. The Joint Secretary, General Administration Department, Govt. of Bihar, Patna.
4. The Deputy Secretary, General Administration Department, Govt. of Bihar, Patna.
5. The Secretary, Board of Revenue, Govt. of Bihar, Patna.
6. The Deputy Secretary, Board of Revenue, Govt. of Bihar, Patna.
7. The Under Secretary Board of Revenue, Govt. of Bihar, Patna.
8. The Departmental Enquiry Commissioner, Bihar, Patna-cum-Enquiry Officer.
9. The Presenting Officer, Board of Revenue, Govt. of Bihar, Patna.
10. The Deputy Secretary-cum-Centre Superintendent, Central Examination Committee (Board of Revenue), Bihar.

... ... Respondent/s

==

Appearance :

For the Petitioner/s	:	Mr Lalit Kishore, Sr Advocate with Mr Ranjeet Kumar Pandey, Advocate
For the Respondent/s	:	Mr Sheo Shankar Prasad, SC VIII with Mr Sanjay Kumar, AC to SC VIII

==

CORAM: HONOURABLE MR JUSTICE RITESH KUMAR

ORAL JUDGMENT

Date : 05-02-2026

Heard the parties.

2 The present writ petition has been filed for the following reliefs :

"(i) For issuance of writ/writs, order/orders or direction/directions in the nature of certiorari for setting aside Resolution as contained in Memo No 6187 dated 22.04.2022 issued under the signature of Under Secretary to the Government, General Administration Department, Government of Bihar whereby and where under an application filed by the petitioner to reconsider order of punishment awarded to the petitioner vide Resolution as contained in Memo No 12113 dated 10.09.2018 has been rejected merely on the ground of limitation without considering merit of the application.

(ii) For issuance of writ/writs, order/orders or direction/directions in the nature of certiorari for setting aside Resolution as contained in Memo No 12113 dated 10.09.2018 issued under the signature of Under Secretary to Government, General Administration Department, Government of Bihar whereby and where under the petitioner has been awarded major penalties of withholding three pay increments with cumulative effect and further stoppage of promotion for three years from the due date under Section 14 of the Bihar CCA Rules 2005.

(iii) For any other relief/reliefs for which the petitioner may be found entitled to in the eye of law and in the facts and circumstances of the case may also be granted in favour of the petitioner."

3 At the outset, the learned Senior Counsel for the petitioner submits that the petitioner, while posted as Probationer Deputy Collector, Munger, the Central Examination Committee (Board of Revenue), Bihar conducted second half yearly departmental examination 2011 for gazetted officers from

01.02.2012 to 04.02.2012 in which the petitioner appeared on 02.02.2012 in the first sitting at the designated center at Patna. The petitioner and three other persons were found indulged in cheating, therefore, were expelled from the examination on the ground of misconduct vide office order No 03 (Camp) dated 02.02.2012 issued under the signature of the Center Superintendent, Rajkiya Kanya Uchcha Vidyalaya, Shastri Nagar, Patna. A show cause notice contained in Memo No 3647 dated 06.03.2012 was issued under the signature of the Officer on Special Duty -cum- Deputy Secretary to the Government, General Administration Department, Government of Bihar, Patna by which the petitioner was asked to submit his reply to the show cause within one week. Along with the show cause notice, letter No 06 (Camp) dated 03.02.2012, letter No 21 dated 03.02.2012 and letter No 173 dated 21.12.2012 were also enclosed.

4 It has further been submitted by the learned Senior Counsel for the petitioner that along with letter dated 21.02.2012, a copy of ***Prapatra Ka*** was also served. It has been submitted that from perusal of ***Prapatra Ka***, it would transpire that the same was not signed by the Principal Secretary, General Administration Department, Bihar, Patna who is the Disciplinary Authority of the petitioner and, as such, ***Prapatra Ka*** itself is said to be defective.

The charge against the petitioner was that he was found involved in cheating with the help of book/guide in the examination which comes under the category of misconduct and as such, on the report of the invigilator, the petitioner was expelled from the examination for other papers also. Accordingly, the petitioner filed his reply on 26.03.2012, denying the charge, but without proper consideration of the show cause reply dated 26.03.2012 filed by the petitioner, a Resolution contained in Memo No 18516 dated 09.11.2012 was issued under the signature of the Joint Secretary to the Government, General Administration Department, Government of Bihar, Patna by which decision was taken to initiate departmental proceeding against the petitioner and the Departmental Enquiry Commissioner, Bihar, Patna was appointed as the Enquiry Officer and the officer nominated by the Board of Revenue, Bihar, Patna was appointed as Presenting Officer. Along with the Resolution dated 09.11.2012, copy of the opinion of the Board of Revenue dated 14.06.2012 on the show cause reply submitted by the petitioner was also annexed. Pursuant thereto, departmental enquiry was initiated by the Departmental Enquiry Commissioner -cum- Enquiry Officer and vide order dated 23.11.2012, the Enquiry Officer found certain errors/irregularities which have been mentioned in paragraph No 5 of the proceeding of the

Departmental Proceeding No 43 of 2012. The Departmental Enquiry Commissioner observed that the enquiry letter is not annexed and the charge sheet ***(Prapatra Ka)*** does not bear the signature of the Disciplinary Authority and the next date was fixed on 13.12.2012. The said defect, pointed out by the Enquiry Officer, was never rectified by the Department as neither enquiry letter nor charge sheet ***(Prapatra Ka)***, duly signed by the Disciplinary Authority, was ever submitted before the Enquiry Officer and as such, the entire enquiry proceeded on defective ***Prapatra Ka***, therefore, the entire proceeding vitiates. After conclusion of the enquiry, the petitioner was directed to submit his written argument before the Additional Departmental Enquiry Commissioner -cum- Principal Secretary, Environment and Forest Department, Bihar, Patna and in compliance thereof, a detailed written argument was submitted by the petitioner whereby he denied all the charges levelled against him and requested to exonerate him from the said charges.

5 It has further been submitted by the learned Senior Counsel for the petitioner that the Enquiry Officer submitted his enquiry report on 03.11.2017 to the General Administration Department, Government of Bihar, Patna vide letter No 148 dated 06.11.2017, wherein the Enquiry Officer found the charges against the petitioner proved, which clearly suggests that the Enquiry Officer, without considering the written submissions filed on behalf of the petitioner, has come to the conclusion that the charges levelled against the petitioner are proved. The enquiry report dated 03.11.2017 was sent to the petitioner along with letter No 14799 dated 22.11.2017 issued under the signature of Under Secretary to the Government, General Administration Department, Government of Bihar, Patna by which the petitioner was directed to submit his written submission within a period of 15 days and in compliance thereof, the petitioner submitted his written submission on 07.12.2017. After submission of the written argument on behalf of the petitioner, a Resolution contained in Memo No 12113 dated 10.09.2018 was issued under the signature of Under Secretary to the Government, General Administration Department, Government of Bihar, Patna by which punishment was awarded to the petitioner under Section 14 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (for brevity, ***Bihar CCA Rules***) of withholding of three increments of pay with cumulative effect and withholding of Promotion for three years from the due date.

6 It has further been submitted by the learned Senior Counsel for the petitioner that from perusal of the punishment order dated 10.09.2018, it would transpire that the Department vide letter No 3853 dated 20.03.2018 sought consent from the Bihar Public Service Commission (for brevity, ***BPSC***) but the BPSC, vide letter No 1273 dated 03.08.2018, did not give its consent on the ground that the proposed punishment was disproportionate. Even then, ignoring the advice of the BPSC, the Disciplinary Authority proceeded to award punishment to the petitioner without applying his mind. It has further been submitted that for the same and similar set of charges, one Shri Ehsan Ahmad, who was also found indulged in cheating in the same examination, was also proceeded with departmentally, but has been awarded lesser punishment than the petitioner, although in case of said Ehsan Ahmad, the BPSC has given its consent for grant of punishment, but even then he has been awarded the punishment of Censure (for the year, 2011 -2012) and withholding of two increments with cumulative effect.

7 It has further been submitted by the learned Senior Counsel for the petitioner that for the same set of charges, discriminatory treatment has been meted out to the petitioner, since he has been given harsher punishment than Shri Ehsan Ahmad. The learned Senior Counsel for the petitioner further submits that some other persons, namely Amarendra Kumar

Pandey and Sheo Shankar Paswan were also found indulged in misconduct during the said examination, but have been given lesser punishment. The petitioner filed review before the competent authority against the order of punishment, but the same was dismissed vide Memo No 6187 dated 22.04.2022 on the ground of limitation.

8 The learned Senior Counsel for the petitioner relied upon the judgment delivered by the Hon'ble Supreme Court of India in ***Civil Appeal No 7761 of 2013 (Union of India & Ors -Versus- B V Gopinath)*** and its analogous cases wherein, in paragraphs No 40, 45, 46 and 49, the Hon'ble Supreme Court of India has observed as under:

> ***"40 Disciplinary proceedings against the respondent herein were initiated in terms of Rule 14 of the aforesaid Rules. Rule 14 (3) clearly lays down that where it is proposed to hold an inquiry against a government servant under Rule 14 or Rule 15, the disciplinary authority shall draw up or cause to be drawn up the charge sheet. Rule 14 (4) again mandates that the disciplinary authority shall deliver or cause to be delivered to the government servant, a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and the supporting documents including a list of witnesses by which each article of charge is proposed to be proved. We are unable to interpret this provision as suggested by the Additional Solicitor General, that once the disciplinary authority approves the initiation of the disciplinary proceedings, the charge sheet can be drawn up by an authority other than the***

disciplinary authority. This would destroy the underlying protection guaranteed under Article 311 (1) of the Constitution of India. Such procedure would also do violence to the protective provisions contained under Article 311 (2) which ensures that no public servant is dismissed, removed or suspended without following a fair procedure in which he/she has been given a reasonable opportunity to meet the allegations contained in the charge sheet. Such a charge sheet can only be issued upon approval by the appointing authority i e Finance Minister.

45 Much was sought to be made by Ms Indira Jaising on clause (10) of the order which provides that once the Finance Minister has approved the initiation of departmental proceedings, the ancillary action can be initiated by the CVO. According to the learned Addl Solicitor General, the decision taken by the Finance Minister would also include the decision for approval of charge memo. She pointed out the procedure followed for initiation of penalty proceedings/disciplinary proceedings. She submitted that the decision to initiate disciplinary proceedings is based on a Satisfaction Memo prepared by the CVO. This satisfaction memo is submitted to the Member (P&V), Central Board of Direct Taxes, New Delhi who after being satisfied that the memo is in order, forwards it to the Chairman, CBDT who in turn, upon his own satisfaction forwards it to Secretary (Revenue) and finally to the Finance Minister. Based on the satisfaction memo, the Finance Minister, who is the disciplinary authority in this case, takes the decision to initiate disciplinary proceedings. While taking the said decision, the Finance Minister has before him, the details of the alleged misconduct with the relevant materials regarding the imputation of allegations based on which the charge memo was issued. Therefore, approval by the Finance Minister for initiation of the departmental proceedings would also *cover the approval of the charge memo. We are unable to accept the submission of the learned Addl Solicitor General. Initially, when the file comes to the Finance Minster, it is only to take a decision in principle as to whether departmental proceedings ought to be initiated against the officer. Clause (11) deals with reference to CVC for second stage advice. In case of proposal for major penalties, the decision is to be taken by the Finance Minister. Similarly, under Clause (12) reconsideration of CVC's second stage advice is to be taken by the Finance Minister. All further proceedings including approval for referring the case to DOP & T, issuance of show cause notice in case of disagreement with the enquiry officer report; tentative decision after CVC's second stage advice on imposition of penalty; final decision of penalty and revision/review/memorial have to be taken by the Finance Minister. In our opinion, the Central Administrative Tribunal as well as the High Court has correctly interpreted the provisions of the Office Order No 205 of 2005. Factually also, a perusal of the record would show that the file was put up to the Finance Minister by the Director General of Income Tax (Vigilance) seeking the approval of the Finance Minister for sanctioning prosecution against one officer and for initiation of major penalty proceeding under Rule 3 (1) (i) and (3) (1) (iii) of the Central Civil Services (Conduct Rules against the officers mentioned in the note which included the appellant herein. Ultimately, it appears that the charge memo was not put up for approval by the Finance Minister. Therefore, it would not be possible to accept the submission of Ms Indira Jaising that the approval granted by the Finance Minister for initiation of departmental proceedings would also amount to approval of the charge memo.*

46 Ms Indira Jaising also submitted that the purpose behind Article 311, Rule 14 and also the Office Order of 2005 is to ensure that *only an authority that is not subordinate to the appointing authority takes disciplinary action and that rules of natural justice are complied with. According to the learned Addl Solicitor General, the respondent is not claiming that rules of natural justice have been violated as the charge memo was not approved by the disciplinary authority. Therefore, according to the Addl Solicitor General, the CAT as well as the High Court erred in quashing the charge sheet as no prejudice has been caused to the respondent. In our opinion, the submission of the learned Addl Solicitor General is not factually correct. The primary submission of the respondent was that the charge sheet not having been issued by the disciplinary authority is without authority of law and, therefore non est in the eye of law. This plea of the respondent has been accepted by the CAT as also by the High Court. The action has been taken against the respondent in Rule 14 (3) of the CCS (CCA) Rules which enjoins the disciplinary authority to draw up or cause to be drawn up the substance of imputation of misconduct or misbehaviour into definite and distinct articles of charges. The term "cause to be drawn up" does not mean that the definite and distinct articles of charges once drawn up do not have to be approved by the disciplinary authority. The term "cause to be drawn up" merely refers to a delegation by the disciplinary authority to a subordinate authority to perform the task of drawing up substance of proposed "definite and distinct articles of charge sheet". These proposed articles of charge would only be finalized upon approval by the disciplinary authority. Undoubtedly, this Court in the case of P V Srinivasa Sastry & Ors Vs Comptroller and Auditor General & Ors has held that Article 311 (1) does not say that even the departmental proceeding must be initiated only by the appointing authority. However, at the same time it is pointed out that "However, it is open to Union of India or a State Government to make any rule prescribing that even the***

proceeding against any delinquent officer shall be initiated by an officer not subordinate to the appointing authority." It is further held that "Any such rule shall not be inconsistent with Article 311 of the Constitution because it will amount to providing an additional safeguard or protection to the holders of a civil post."

49 Although number of collateral issues had been raised by the learned counsel for the appellants as well the respondents, we deem it appropriate not to opine on the same in view of the conclusion that the charge sheet/charge memo having not been approved by the disciplinary authority was non est in the eye of law."

9 The learned Senior Counsel for the petitioner also relies on a judgment of the Hon'ble Supreme Court of India passed in ***Civil Appeal No 7764 of 2021 (Sunny Abraham -Versus-Union of India & Another).*** Paragraph 12 of the said judgment is being quoted herein below:

"12 The next question we shall address is as to whether there would be any difference in the position of law in this case vis-a-vis the case of B V Gopinath (supra). In the latter authority, the charge memorandum without approval of the Disciplinary Authority was held to be non est in a concluded proceeding. The High Court has referred to the variants of the expression non est used in two legal phrases in the judgment under appeal. In the context of our jurisprudence, the term non est conveys the meaning of something treated to be not in existence because of some legal lacuna in the process of creation of the subject-instrument. It goes beyond a remediable irregularity. That is how the Coordinate Bench has construed the impact of not having approval of the Disciplinary Authority in issuing the

charge memorandum. In the event a legal instrument is deemed to be not in existence, because of certain fundamental defect in its issuance, subsequent approval cannot revive its existence and ratify acts done in pursuance of such instrument, treating the same to be valid. The fact that initiation of proceeding received approval of the Disciplinary Authority could not lighten the obligation on the part of the employer (in this case the Union of India) in complying with the requirement of sub-clause (3) of Rule 14 of CCS (CCA), 1965. We have quoted the two relevant sub-causes earlier in this judgment. Sub-clauses (2) and (3) of Rule 14 contemplates independent approval of the Disciplinary Authority at both stages – for initiation of enquiry and also for drawing up or to cause to be drawn up the charge memorandum. In the event the requirement of sub-clause (2) is complied with, not having the approval at the time of issue of charge memorandum under sub-clause (3) would render the charge memorandum fundamentally defective, not capable of being validated retrospectively. What is non-existent in the eye of the law cannot be revived retrospectively. Life cannot be breathed into the stillborn charge memorandum. In our opinion, the approval for initiating disciplinary proceeding and approval to a charge memorandum are two divisible acts, each one requiring independent application of mind on the part of the Disciplinary Authority. If there is any default in the process of application of mind independently at the time of issue of charge memorandum by the Disciplinary Authority, the same would not get cured by the fact that such approval was there at the initial stage. This was the argument on behalf of the authorities in the case of B V Gopinath (supra), as would be evident from paragraph 8 of the report which we reproduce below:-

> ***"8. Ms Jaising has elaborately explained the entire procedure that is followed in each and every case before the matter is put up before the Finance Minister for seeking approval for initiation of the disciplinary proceedings. According to the learned Additional Solicitor General, the procedure followed ensures that entire material is placed before the Finance Minister before a decision is taken to initiate the departmental proceedings. She submits that approval for initiation of the departmental proceedings would also amount to approval of the charge memo. According to the learned Additional Solicitor General, CAT as well as the High Court had committed a grave error in quashing the departmental proceedings against the respondents, as the procedure for taking approval of the disciplinary authority to initiate penalty proceeding is comprehensive and involved decision making at every level of the hierarchy."***

10 Per contra, the learned counsel for the State submits that since the petitioner was found cheating in the departmental examination, therefore, memo of charge was issued and the petitioner was directed to submit his reply and thereafter the same was examined and thereafter, having gone through the gravity of the case, decision was taken to initiate departmental proceeding against the petitioner to find out the veracity of the case. The Conducting Officer submitted enquiry report by which the charges levelled against the petitioner were found to have been proved and the petitioner was directed to file his reply. The petitioner submitted his written statement and after considering the Memo of

Charge, the enquiry report of the conducting officer and the written statement filed by the petitioner and after examining the same meticulously, the Disciplinary Authority came to the conclusion that the petitioner was found indulging in unfair means/misconduct in the departmental examination, therefore, the punishment was awarded against him. A letter was sent to the BPSC for its consent on the proposed punishment, upon which the BPSC opined that the proposed punishment is not proportionate to the charges, but the BPSC failed to state the reasons regarding the said consent that why the proposed punishment is not proportionate and thereafter, the entire document/evidence available on record was examined and it was found that the misconduct committed by the petitioner is grave in nature and the same has also been proved, therefore, decision was taken to award punishment to the petitioner.

11 The learned State Counsel further submits, with regard to grant of lesser punishment to one Ehsan Ahmad, that the person is responsible for his own act, therefore, it cannot be compared with any other else. The learned State Counsel further submits that as per the provisions contained in Rule 17 (3) of the Bihar CCA Rules, no infirmity can be said to have been committed by the Disciplinary Authority in issuing the Memo of Charge or in conduct of the entire departmental proceeding. The relevant provisions of the Bihar CCA Rules 2005 is quoted hereinbelow:

"17. Proceeding for imposing major penalties.-(1) … … …

(2) … … …

(3) Where it is proposed to hold an inquiry against a government servant under this Rule, the disciplinary authority shall draw up or cause to be drawn up-

(i) the substance of the imputations of misconduct or misbehaviour as a definite and distinct article of charge;

(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain;

(a) a statement of all relevant facts including any admission or confession made by the Government Servant;

(b) a list of such document by which, and a list of such witnesses by whom, the articles of charge are proposed to be sustained."

12 The learned counsel for the State relies on a judgment of the Division Bench of this Court in the case of ***Rajiv Sinha -Versus- Union of India & Others (reported in 2017 (4) PLJR 271)*** specially paragraphs No 3 and 4 of the said judgment, which are quoted herein below:

"3. Still further, in B V Gopinath's case (supra), an Original Application under Section 19 of the Administrative Tribunal Act, 1985 was filed against the initiation of the

departmental proceedings. But present is the case, after the conclusion of the disciplinary proceedings, the final order of punishment has been approved by the Finance Minister. Since the final order has the approval of the Finance Minister, even if it is assumed that the charge sheet was not approved by the Finance Minister at an earlier stage, will not confer any cause to the petitioner to dispute the order of punishment as with the approval of the final order, the entire proceedings are deemed to be approved. Still further, what is the prejudice suffered by the petitioner has not been disclosed.

4. It may be stated that the petitioner has not raised such an argument before the Tribunal. Therefore, we find that initiation of enquiry proceedings cannot be permitted to be disputed by the petitioner after culmination of the proceedings with the order of the Finance Minister."

13 The learned Senior Counsel for the petitioner, in reply, submits that for the almost identical set of charges, one Shri Sheo Shankar Paswan, who was also found cheating in the same examination on the same day, has been awarded minor penalty of withholding of promotion for two years from the due date vide Resolution dated 14.06.2016, whereas on the same set of charges, the petitioner has been awarded major penalty. Further, one Shri Ashok Kumar Giri, who was also expelled from the same examination and on the same day for the same misconduct, challenged the order of punishment before this Court by filing CWJC No 6173 of 2017 and a coordinate Bench of this Court vide order dated 03.05.2018 proceeded to quash the order of punishment and directed that the said petitioner would be entitled to all consequential benefits upon quashing of the order of punishment. Lastly, the learned Senior Counsel for the petitioner submits that the punishment awarded to the petitioner is not in consonance with the charges and discriminatory treatment has been meted out to the petitioner, since on the one hand for the same charges, petitioner has been awarded major punishment while similarly situated employees, who were also found to be indulged in cheating on the same date in the same examination, have been given minor punishment/penalty.

14 Having heard the rival submissions and after going through the materials on record, it is an admitted fact that the Memo of Charge, which was served upon the petitioner, has not been signed/issued under the signature of the competent authority which is in violation of the mandate of the provisions contained in Section 17 (3) and (4) of the Bihar CCA Rules. However, the Division Bench of this Court in the case of ***Rajiv Sinha (supra)***, after considering the judgment passed by the Hon'ble Supreme Court in the case of ***B V Gopinath (supra)***, in paragraphs No 3 and 4, has observed that even if it is assumed that the Charge Memo/Sheet was not approved by the competent authority at an earlier stage, will not confer any cause to the petitioner to dispute the order of punishment, as with the approval of the final order, the entire proceeding are deemed to be approved.

15 It has been informed at the Bar that Civil Appeal (s) No 5393-5394 of 2019 are pending before the Hon'ble Supreme Court against the orders/judgment passed by the Division Bench of this Court in the case of ***Rajiv Sinha (supra)*** and, therefore, it would not be appropriate to pass any order on the arguments advanced by the learned Senior Counsel for the petitioner, therefore, the question raised by the learned Senior Counsel for the petitioner is left open to be decided in appropriate proceeding.

16 So far the contention of the learned Senior Counsel for the petitioner with regard to parity in reward of punishment is concerned, since for the same set of charges, the Department has awarded lesser punishment to similarly situated employees, who have been named above, in my considered opinion, the petitioner is also entitled to be considered for equal treatment/relief.

17 Accordingly, the order impugned, contained in Memo No 6187 dated 22.04.2022 issued under the signature of the Under Secretary to the Government, General Administration Department, Government of Bihar, Patna and Memo No 12113 dated 10.09.2018 issued under the signature of the Under Secretary to the Government, General Administration Department, Government of Bihar, Patna are hereby set aside.

18 The matter is remitted back to the Disciplinary Authority to take a fresh decision in accordance with law after taking into account the orders of punishment passed in the cases of Ehsan Ahmad and Sheo Shankar Paswan.

19 The decision must be taken by the Disciplinary Authority within a period of six weeks from the date of receipt/production of a copy of this order.

20 With the above mentioned observation/direction, this writ petition is disposed of.

(Ritesh Kumar, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.02.2026
Transmission Date	NA