

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1325 of 2022

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Bhola Prasad Choudhary @ Bhola Choudhary Son of Late Chhotan Choudhary, Resident of Village- Bhadauni, P.S. and District - Nawada.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Additional Chief Secretary, Home Department, Govt. of Bihar, Patna.
3. The Disciplinary Authority cum Inspector General of Police, Mithila Region, Darbhanga.
4. The Inquiry Officer-cum-City S.P., Darbhanga.
5. The Presenting Officer cum Dy. S.P. (Traffic), Darbhanga.
6. The S.P., Samastipur.
7. The then Dy. S.P., Dalsingsarai-cum-Chairman, Inquiry Committee, Dalsingsarai, District - Samastipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Abhay Shankar Singh, Advocate Mr. Amit Kumar Mishra, Advocate Mr. Barun Kumar Singh, Advocate
For the State	:	Mr. Md. N.H. Khan (SC-1) Mr. Fazle Karim (AC to SC-1)

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 27-01-2026

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

2. The present writ petition has been filed for setting aside the order contained in Memo No. 2352 dated 27.10.2021 issued from the office of the Disciplinary Authority cum Inspector General of Police, Mithila Region, Darbhanga (Respondent no.3) by which a belated and time barred Samastipur District Departmental Inquiry No. 42 of 2021 has been initiated against the petitioner and *Prapatra-Ka* has been issued under Rule 43(b) of the Bihar Pension Rules, 1950 on the



basis of ex-parte inquiry conducted by the Dy. S.P., Dalsingsarai.

3. Learned counsel for the petitioner submits that the charge memo (Annexure-1) is itself is the defence of the petitioner. He submits that in para 1 of the said charge memo, it is indicated that the petitioner was posted as Branch Incharge from 25.05.2010 to 10.10.2014 and thereafter, retired on 31.01.2015. Counsel further submits that the register which was subject to enquiry was relating to distribution between July 2015 to May 2017 and during that period, the irregularities and discrepancies have been found. Counsel further submits that he has two points for his defence. Firstly, he was posted in the said Branch from 25.05.2010 to 10.10.2014 and the wrong was alleged to be done between July 2015 to May 2017. Therefore, he submits that the alleged wrong was not during his period of posting, rather, he was already retired on 31.01.2015 itself. The next point which is legal according to him is that after six years of the petitioner's retirement and more than seven years of his posting at Samastipur police line, the departmental proceeding has been initiated which is in complete violation of Rule 43(b) proviso (a) (i) and (ii) of the Bihar Pension Rules, 1950 of Chapter III. He submits that in the light of the submissions made



on both the points i.e. on law and on facts, the present charge memo is not sustainable in the eye of law and therefore, the same be set aside.

4. Learned counsel for the State on the other hand submits that a short time may be granted to file the counter affidavit in this case.

5. Upon perusal of the record, it transpires that the present writ petition has been filed in the year 2022, but no counter affidavit has been filed. It further transpires to this Court that *vide* order no.3 dated 16.12.2025, learned counsel for the State was directed to file a counter affidavit in this case within four weeks. But till date, no counter affidavit has been filed.

6. After appreciation of the facts and law, it transpires that the State has no defence at all. In light of the present facts and circumstances, as well as the law which is very clear, namely Rule 43(b) proviso (a)(i) (ii) & (iii) of the Bihar Pension Rules, 1950, the same is quoted hereinbelow as under:-

“43(b) The Appointment authority of the post held at the time of retirement further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery



from a pension of the whole or part of any pecuniary loss caused to Government if the pensioner is found in departmental or judicial proceeding to have been guilty of grave misconduct; or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement:

Provided that-

(a) such departmental proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment:

(i) shall not be instituted save with the sanction of the State Government;

(ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and

(iii) shall be conducted by such authority and at such place or places as the State Government may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made;”



7. Upon bare perusal of the provision as well as the factual matrix that the enquiry was made for the period between July 2015 to May 2017, whereas, the petitioner was already retired on January 2015, this Court is of the firm view that the charge memo is not sustainable in the eye of law. Hence, the Memo No. 2352 dated 27.10.2021 (Annexure-1) issued from the office of the Disciplinary Authority cum Inspector General of Police, Mithila Region, Darbhanga (Respondent no.3) is hereby set aside, with respect to the petitioner. The concerned respondent authority is directed to pay all the benefits relating to the petitioner, if any, which have not been paid to him due to the issuance of the charge memo.

8. Accordingly, with the aforesaid direction, this writ petition stands allowed.

(Dr. Anshuman, J)

Divyansh/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	29/01/2026
Transmission Date	NA

