

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14148 of 2016

=====

Baban Kumar Tiwari Son of Late Rajeshwar Tiwari, Resident of Village-
Fanda, P.O.- Gorigama Dih, P.S.- Karja, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Commissioner, Tirhut Division, Muzaffarpur.
3. The District Magistrate, Muzaffarpur.
4. The Enquiry Officer cum Additional Collector, District Collectorate,
Muzaffarpur. null null
5. The Block Development Officer, Katra, Muzaffarpur.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Ravish Mishra, Advocate
	:	Mr. Rakesh Kumar Tiwari, Advocate
For the Respondent/s	:	Mr. Sunil Kumar Mandal, SC-3
	:	Ms. Bittu Kumari, AC to SC-3

=====

CORAM: HONOURABLE MR. JUSTICE RITESH KUMAR
ORAL JUDGMENT

Date : 28-04-2026

Heard the parties.

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

*“ That this is an application for issuance of a
Writ in the nature of Certiorari to quash the
Order of Punishment contained in Memo No.
689 dated 24/11/2015 issued under the
signature of the District Magistrate,
Muzaffarpur, whereby and where under the
petitioner has been punished with stoppage of
three increments with cumulative effect under
the provisions of Bihar Government Servant
(Classification, Control and Appeal) Rule
2005. And further it has been ordered that the*



petitioner will be paid only Subsistence allowance during the period of Suspension. And also to quash the Order passed in Appeal No. 237/2015 dated 05/4/2016 by the Commissioner, Tirhut Division, Muzaffarpur whereby and where under the appeal filed by the petitioner has been rejected.

And for issuance of a consequential Writ in the nature of mandamus Commanding and directing the respondents authorities to pay the entire incremental benefits as well as the salary during the period of suspension as the Charges framed against the petitioner could not be proved and as such the punishment imposed against the petitioner is not only excessive but also disproportionate and against the Bihar Government Servant (Classification, Control and Appeal) Rules-2005.

And/or issue any other appropriate Writ/Writs. order/orders, direction/directions which may be found entitle to in the facts and circumstances stated hereunder.”

3. The brief facts giving rise to the present writ petition are that the the petitioner was appointed as a Class-IV employee on casual basis. Later on, his service was regularised in the year 2003 on a Class-IV post of Peon. While the petitioner was working on Class IV post, in the office of the Block Development Officer, Katra, he was put under suspension in contemplation of a departmental proceeding for certain charges. Memo of charge was issued against the petitioner for certain charges and vide letter no.



215 dated 03.09.2014, issued under the signature of the Additional Collector, Muzaffarpur, the petitioner was directed to file his reply/show cause to the charges levelled against him and to appear before the enquiry officer on 23.09.2014. In the departmental proceeding, the Additional Collector, Muzaffarpur was appointed as the Enquiry Officer and the Block Development Officer, Katra was nominated as Presenting Officer. The petitioner submitted his reply on 08.10.2014, wherein he denied all the charges levelled against him and he also appeared before the enquiry officer on the date fixed. Subsequently, the presenting officer also appeared before the enquiry officer and submitted his written submission on 11.11.2014, wherein he gave his reply to charge nos. 1 to 4 in detail and submitted names of 9 persons, who were posted at the time, when the occurrence is alleged to have taken place and further submitted that since he was not posted at the time of occurrence, he is not aware about the occurrence in question. He further submitted that after he joined on the post, he has not found any fault with the conduct of the petitioner. Pursuant to the reply submitted by the presenting officer, the enquiry officer vide his letter no. 293 dated 20.11.2014 informed all the 9 persons to appear as witness in the departmental proceeding for their examination/evidence on 05.12.2014. All the witnesses appeared



before the enquiry officer and submitted their written statement before the enquiry officer, wherein they stated that the occurrence had not taken place in their presence and they were busy in their respective works. The enquiry officer, after completion of the departmental enquiry, submitted his report before the disciplinary authority i.e. the District Magistrate, Muzaffarpur on 21.03.2015, wherein he found the charge nos. 2, 3, 4 and 5 to be proved against the petitioner. Pursuant thereto, second show cause notice was issued to the petitioner vide Memo No. 384 dated 25.05.2015. Along with same, the enquiry report was also provided to the petitioner. The petitioner submitted his reply to the second show cause notice on 10.06.2015, wherein he denied all the charges levelled against him and further requested the disciplinary authority to exonerate him from the charges levelled against him. The disciplinary authority vide his order contained in Memo No. 689 dated 24.11.2015 proceeded to award punishment of stoppage of three increments with cumulative effect and further directed that the petitioner will not be entitled for any amount, except the subsistence allowance, which has already been paid during the period under suspension.

4. Being aggrieved with the impugned order of punishment dated 24.11.2015, the petitioner preferred statutory



appeal before the Commissioner, Tirhut Division, Muzaffarpur. The appeal preferred by the petitioner was numbered as Appeal No. 237 of 2015, however the Commissioner, Tirhut Division, Muzaffarpur i.e. the Appellate Authority, without even considering the points taken by the petitioner in his memo of appeal, proceeded to reject the appeal filed by the petitioner. It is the case of the petitioner that a first information report was also lodged against the petitioner on 11.02.2009, for the same occurrence bearing Katra P.S. Case No. 24 of 2009 under different sections of the Indian Penal Code.

5. The learned counsel for the petitioner submits that although, the charge of drinking liquor was not established and all the witnesses, who gave their written submission before the enquiry officer, during course of enquiry, did not support the case of the prosecution/department and even the presenting officer did not support the case of the prosecution/department, even then the enquiry officer on his own presumption, proceeded to hold the petitioner guilty of charge nos. 2, 3, 4 & 5. The disciplinary authority without giving any reason to reject the reply to the second show cause notice, filed by the petitioner, proceeded to award punishment against the petitioner, which is wholly without jurisdiction. Even the appellate authority, who was supposed to



take into consideration the entire facts mentioned in the memo of appeal, preferred by the petitioner, without considering any of the grounds taken by the petitioner, proceeded to reject the appeal of the petitioner in a mechanical manner. He further submits that the first information report bearing Katra P.S. Case No. 24 of 2009 gave rise to G.R. No. 398 of 2009 (T.R. No. 18 of 2025) wherein the learned Trial Court vide his judgment dated 03.11.2025, after considering the entire materials, proceeded to hold that on the basis of merit, the prosecution has failed to prove the charges beyond reasonable doubts and accordingly, he acquitted the petitioner of the charges punishable under Sections 353 and 504 of the Indian Penal Code and discharged the petitioner from the liability of his bail bonds and sureties.

6. The learned counsel for the petitioner further submits that the enquiry officer, without any evidence and without any document, proceeded to prove the charges against the petitioner. He further submits that the entire departmental proceeding vitiates only on the ground that no document was produced during course of enquiry and the petitioner was denied an opportunity of cross examine the witnesses, who gave their written submission before the enquiry officer. Even, no opportunity was granted to the petitioner by the enquiry officer to adduce evidence in his defence



to rebut the charges levelled against him. He submits that even the witnesses, who gave their written evidence/submission before the enquiry officer, did not support the case of the prosecution, but the enquiry officer found the charges to be proved against the petitioner on his own.

7. The learned counsel for the petitioner refers to and relies on a judgment of the Hon'ble Supreme Court of India in a case reported in **(2009) 2 SCC 570 (Roop Singh Negi versus Punjab National Bank & Ors.)** in paragraph nos. 14 and 23 has held as follows:-

“14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof.



Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.

- 23.** *Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.”*



8. Per contra, the learned counsel for the respondent-State submits that on a report with regard to conduct of consuming liquor, the petitioner was put under suspension vide Memo No. 43 dated 24.02.2009 and his headquarter was fixed at Block Office, Sahebganj. Certain charges were levelled against the petitioner for which, departmental proceeding was initiated. The conducting officer, after completion of the enquiry, found four charges to be proved against the petitioner and found the petitioner guilty of said allegations. After submission of the enquiry report and upon reviewing the same, the competent authority proceeded to revoke the suspension of the petitioner vide Memo No. 386 dated 25.05.2014. The disciplinary authority after considering the enquiry report submitted by the conducting officer and after perusing the materials available on record, came to the conclusion that the petitioner has misbehaved and committed misconduct with the officers and employees of the block, which is against the Bihar Government Servant Conduct Rule, 1976, asked for second show cause notice from the petitioner. After carefully considering the reply submitted by the petitioner, the disciplinary authority proceeded to award the punishment against the petitioner vide Memo No. 689 dated 24.11.2015. The appeal preferred by the



petitioner was also dismissed by the Commissioner vide order dated 05.04.2016. He further submits that the petitioner was given due opportunity by the enquiry officer, during course of enquiry and after considering the reply submitted by the petitioner and based on the evidences of the witnesses, who gave their written submission, the petitioner has been found guilty of the charges, and therefore, the enquiry officer proceeded to found charge nos. 2 to 5 to be proved against the petitioner.

9. Having heard the learned counsel for the parties and after considering the materials available on record, it transpires that the memo of charge has not been annexed with the present writ petition, however from perusal of the enquiry report, it would transpire that during course of enquiry, the presenting officer submitted his written submission, wherein he submitted that at the time of consumption of liquor, no medical was conducted and he further submitted that since he was not posted at the relevant time, therefore, he is not in a position to say anything in the matter. He further named 9 persons as the relevant witnesses, who could prove the case of the prosecution. Further, all the 9 person, who were named by the presenting officer to be relevant witnesses, were called by the enquiry officer to appear and give their evidences. All the 9 persons appeared and gave their written



statement, wherein they categorically stated that they had not seen any occurrence, since at the relevant time, they were busy doing their respective works. It appears that the enquiry officer on his own without any evidence, since none of the witnesses supported the case of the prosecution, proceeded to hold the petitioner guilty for charge nos. 2 to 5, only on the basis of the allegations levelled by the complainant, who was the then Block Development Officer. It further appears that complainant was not examined by the enquiry officer, during course of enquiry, although he was the material witness to support the case of the prosecution. The disciplinary authority, who was supposed to take into consideration the reply submitted by the petitioner, failed in his duties and without any plausible reason, proceeded to award punishment against the petitioner. Similar was the case with the appellate authority, who without appraising the facts of the case, rejected the appeal filed by the petitioner in a mechanical manner. It further appears that the entire departmental proceeding was conducted in complete violations of the provisions contained in Rule 17 (3) (4) and (14) of the Bihar CCA Rules, 2005. It further appears that the disciplinary authority, while passing the order with regard to non payment of salary for the period under suspension, did not issue any show cause notice to the petitioner, which is



necessary to be issued in case an order of forfeiture of salary of an employee is being passed in terms of Rule 97 of the Bihar Service Code and Rule 11(5) of the Bihar CCA Rules, 2005.

10. Accordingly, from the considerations made above, this Court is of the considered opinion that order contained in Memo No. 689 dated 24.11.2015 passed by the District Magistrate, Muzaffarpur and the order dated 05.04.2016 passed by the Commissioner, Tirhut Division, Muzaffarpur in Appeal Case No. 237 of 2015 deserves to be set aside and are accordingly set aside.

11. Since, the petitioner has superannuated from service on 31.12.2009, the matter is not being remitted back to the respondent authorities. The High Court under Article 226/227 of the Constitution of India is entitled to interfere when the finding of fact is based on no evidence and if in every case where no valid evidence is laid at the enquiry proceeding, there is a remand made, it would be offering a premium to the negligence of the management/disciplinary authority and condoning the levity with which the departmental enquiry was conducted. It is the disciplinary authority, who appoints the Enquiry Officer and the Presenting Officer and it is expected that the Presenting Officer would be well versed in the procedures and also be informed in the manner in which evidence has to be laid before the Enquiry



Officer, to prove the misconduct, alleged against a delinquent employee. In a disciplinary enquiry proceeding, it is also the trite principle that the standard of proof is preponderance of probability as distinguished from proof beyond reasonable doubt, as would be required in a criminal prosecution. However, if there is no evidence laid at the enquiry, there is no question of any preponderance of probability being drawn to find the allegations proved nor can the delinquent be penalised on the basis of peremptory finding without any valid evidence. The disciplinary authority had an opportunity in a properly constituted enquiry proceeding and if in such a proceeding no evidence was laid, the punishment of dismissal has to be found to be imposed on no valid evidence.

12. Accordingly, the petitioner is entitled for grant of all the increments, which has been withheld by the impugned order dated 24.11.2015. Necessary corrective measures must be taken by the respondent authorities within a period of four months and the consequential benefits accruing thereupon shall also be paid within the aforementioned period of four months. The petitioner will further be entitled for payment of entire salary for the period he remained under suspension and the said benefit will also be



accorded to the petitioner within the aforementioned period of four months.

13. The writ petition is allowed in the aforementioned terms.

14. Pending application, if any, shall also stands disposed of.

(Ritesh Kumar, J)

AjayMishra/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	29.04.2026
Transmission Date	NA

