

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2726 of 2022

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Satish Kumar S/o Ram Chandra Prasad Singh, Resident of J-89 P.C. Colony,
Kankarbagh, P.S. - Kankarbagh, District – Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Bihar, Patna.
2. The Joint Secretary, Water Resources Department, Bihar, Patna.
3. The Principal Secretary, General Administration Department, Government of Bihar.
4. The Engineer in Chief, Water Resources Department, Govt. of Bihar, Patna.
5. The Chief Engineer, Flood Control and Water Drainage, Water Resources Department, Muzaffarpur.
6. The Superintending Engineer, Flood Control Planning and Monitoring Circle, Water Resources Department, Bihar, Patna.
7. Secretary, Bihar Public Service Commission, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sourav Suman, Advocate
For the Respondent/s	:	Mr. Sumant Kumar Singh, AC to GA-2
For the BPSC	:	Mr. Sanjay Pandey, Advocate
	:	Mr. Nishant Kumar Jha, Advocate
	:	Mr. Prabhakar Pahepuri, Advocate

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CORAM: HONOURABLE MR. JUSTICE RITESH KUMAR
CAV JUDGMENT

Date : 25-03-2026

Heard the parties.

2. The present writ petition has been filed for setting aside the order dated 25.06.2019, wherein the petitioner has been inflicted with the punishment of permanent reduction to three pay stage in time scale of pay and further it has been directed that the petitioner shall not be paid any increments in



future. Further prayer is for quashing the order dated 21.07.2020 passed by the respondent authorities, where-under the appeal was rejected without considering the facts which is bad in law and is arbitrary, illegal, perverse and opposed to law and therefore, the same ought to be struck down. Further prayer in the writ petition is for quashing the enquiry report issued vide Inquiry Officer's letter no. 98 dated 22.05.2018 wherein charge nos.1 & 7 have been found to be proved and the charge nos. 2, 4 & 6 have been found to be partially proved against the petitioner without considering the reply filed by the petitioner and the documents available on record. Further prayer in the writ petition is for payment of all consequential benefits to the petitioner due to the order passed in the departmental proceeding as contained in Memo No. 1258 dated 25.06.2019 and Memo No. 1608 dated 14.09.2017. Further prayer in the writ petition is for commanding the respondent authorities to pay all consequential benefits to the petitioner, including arrears of salary after taking into consideration all the promotions, increments and pay revisions applicable to the petitioner along with interest thereupon.

3. Vide order dated 24.09.2024, additional prayers have been incorporated pursuant to the relief sought for in the



Interlocutory Application No.1 of 2024, which are as follows:-

“For quashing of the entire departmental proceeding initiated against the petitioner, as none of the statutory and mandatory procedures were followed and the departmental proceeding was initiated and proceeded as against the petitioner and punishment order was issued as against the petitioner, no any show cause was ever asked from the petitioner prior to initiation of Prapatra ‘KA’ (memo of charge) as against the petitioner and moreover, along with memo of charge no any list of witnesses were annexed. Further prayer is for holding the entire departmental proceeding conducted against the petitioner is bad in law and for quashing the entire departmental proceeding initiated against the petitioner for the vague charges for which he is not at all responsible as he has followed the instructions and directions/orders of his senior authorities and being biased as against the petitioner with ulterior motive, no any witness were examined or cross examined. Further prayer in the writ petition is for quashing the second show cause notice as contained in letter No. 1197 dated 29.05.2018, as the enquiry was not conducted by the enquiry officer in accordance with law, since no any witnesses were examined or cross examined and moreover the second



show cause notice does not contain any proposal of punishment as against the petitioner, the petitioner was never confronted with the proposed punishment as against him, which is in violation of principles of natural justice. Further prayer is for grant of permission to implead the Secretary Bihar Public Service Commission as respondent no.7 in the writ application. Further prayer in the writ petition is for quashing of notification as contained in Memo No. 1360 dated 08.06.2022 issued under the signature of the Deputy Secretary to the Government whereby and whereunder it has erroneously been ordered that except subsistence allowance for the period of suspension i.e. from 14.09.2017 to 24.09.2018, nothing will be paid. For prayer in the writ petition is for commanding the respondent authorities to pay entire amount of salary and allowances for the period under which the petitioner was put under suspension.”

4. The brief facts giving rise to the present writ petition are that the petitioner was posted as Executive Engineer in the Bagmati Division, Runnisaipur vide departmental notification contained in Memo No. 2027 dated 23.06.2017. Certain allegations were levelled against the petitioner and he was put under suspension, in contemplation of



departmental proceeding. The petitioner was put under suspension vide Memo No. 1608 dated 14.09.2017 issued under the signature of the Joint Secretary to the Government, Water Resources Department, Government of Bihar, Patna, for the alleged act of negligence and in not performing his duties on 14.08.2017, due to which the left embankment of River Bagmati was breached, which resulted in damage/loss of life. A decision was taken to initiate departmental proceeding against the petitioner, for his alleged act of negligence and dereliction of duty. Accordingly, vide Memo No. 1691 dated 20.09.2017 issued under the signature of the Joint Secretary, Water Resources Department, Government of Bihar, Patna a decision was taken to initiate departmental proceeding against the petitioner and the enquiry officer as well as the presenting officer were appointed and it was directed that the petitioner will submit his show cause, with the permission of the enquiry officer and to appear before him in person. Memo of charge was also provided to the petitioner along with the letter dated 20.09.2017 wherein 10 charges were levelled against the petitioner. Along with the memo of charge, no documents were provided to the petitioner and even along with memo of charge (Prapatra-KA) no list of witnesses or documents were



mentioned, except the letter no. 01(C) dated 15.08.2017 of the Chief Engineer, Flood Control and Water Resource, Muzaffarpur, which is the letter by which the Chief Engineer recommended to the Principal Secretary of the Department for taking action.

5. The learned counsel for the petitioner submits that the petitioner submitted a representation by his letter dated 26.09.2017, addressed to the Principal Secretary, Water Resources Department, Government of Bihar, Patna wherein he requested for adhering to certain provisions contained under the Rule for initiating departmental proceeding. When no action was taken on the request made by the petitioner before the Principal Secretary, Water Resources Department, Government of Bihar, Patna, the petitioner was constrained to file his show cause reply on 09.10.2017, before the Joint Secretary-Cum-Conducting Officer, wherein he denied all the charges levelled against him and requested the enquiry officer to exonerate him from the charges levelled against him.

6. The learned counsel for the petitioner further submits that immediately thereafter vide letter no. 03/Patna dated 18.10.2017 the petitioner requested the enquiry officer to direct the presenting officer to provide him the relevant



documents on the basis of which, the departmental proceeding has been initiated and on the basis of which, the charges against the petitioner are proposed to be proved. In the said letter, the petitioner also informed the enquiry officer that on the date fixed in the enquiry proceeding i.e. 09.10.2017, the petitioner had orally informed the enquiry officer for providing the said documents, but till date, the same has not been provided, so that he can file his detail reply in the departmental proceeding. Subsequently, vide Letter No. 1921 dated 01.11.2017 issued under the signature of the Joint Secretary to the Government, Water Resources Department, Government of Bihar, Patna, addressed to the enquiry officer, it was directed that the letter of the Chief Engineer, Flood Control and Water Resource, Muzaffarpur has also been annexed with the memo of charge and those documents are being asked for by the delinquent, which has got no relation to the charges levelled against him and no documents can be asked for by a delinquent, which has got no concern with the charge and directed the enquiry officer to proceed against the petitioner and certain other delinquent. Left with no option, the petitioner vide his Letter No. 07/Patna dated 20.11.2017 submitted his show cause reply before the enquiry officer, wherein he again denied all the charges levelled



against him, by giving reply to each and every charge, along with certain documents in support thereof.

7. The learned counsel for the petitioner further submits that the petitioner was against constrained to submit representation before the enquiry officer vide his letter no. 06/Patna dated 09.11.2017, wherein he again requested the enquiry officer to provide him the requisite/required documents and by referring to and enclosing the different letters and circulars of the State Government, with regard to conducting the departmental proceeding, requested the enquiry officer to adhere to the said directions, since the enquiry officer was not taking signature of the petitioner on the order-sheets to suggest that the petitioner was appearing on each and every date, to cooperate in the enquiry proceeding. Again vide letter no. 08/Patna dated 27.11.2017 addressed to the enquiry officer, the petitioner submitted his explanation in the departmental proceeding, wherein he again denied all the charges levelled against him and requested the enquiry officer to exonerate the petitioner from the charges levelled against him.

8. The learned counsel for the petitioner further submits that vide Memo No. 132 dated 20.10.2017 issued under the signature of the Enquiry Officer, addressed to the Joint



Secretary (Vigilance), Water Resources Department, Patna, a request was made to immediately provide the documents asked for by different persons, including the petitioner, against whom departmental proceeding was going on, so that the departmental proceeding can be concluded within specified time. Again vide Memo No. 2217 dated 14.12.2017 issued under the signature of the Joint Secretary to the Government, Water Resources Department, Government of Bihar, Patna addressed to the Chief Engineer, Flood Control and Water Resources, Water Resources Department, Muzaffarpur it was directed/requested to give his opinion with regard to the show cause reply submitted by the petitioner, since the departmental proceeding was initiated against the petitioner, on the basis of the complaint made by the said Chief Engineer.

9. The learned counsel for the petitioner further submits that the Chief Engineer showed his inability to provide his comments on the reply submitted by the petitioner, since at the relevant time the said Chief Engineer was not posted in Bagmati Division. Thereafter, vide Memo No. 199 dated 20.02.2018 issued under the signature of the Joint Secretary to the Government, Water Resources Department, Government of Bihar, Patna addressed to the Superintending Engineer, Flood



Control and Monitoring Circle, Water Resources Department, Bihar, Patna a request was made to give para-wise comment on the reply/show cause reply submitted by the different engineers, including the petitioner, against whom departmental proceeding is continuing. Vide Memo No. 777 dated 21.03.2018 issued under the signature of the Joint Secretary, Water Resources Department, Government of Bihar, Patna addressed to the Enquiry Officer, it was informed that the comments have been received from the office of the Superintending Engineer, Flood Control and Monitoring Circle, Patna, which is being annexed with the said letter and a request was made to the enquiry officer to proceed with the departmental enquiry. Finally, vide Letter No. 98 dated 22.05.2018 issued under the signature of the Enquiry Officer, addressed to the Joint Secretary to the Government, Water Resources Department, Government of Bihar, Patna, the enquiry report was submitted, wherein the enquiry officer found the charge nos.1 & 7 to be proved, while charge nos. 2, 4 & 6 were found to be partially proved and the charge nos. 3, 5, 8, 9 & 10 were found to be not proved. After submission of the enquiry report, vide letter no. 1197 dated 29.05.2018 issued under the signature of the Joint Secretary to the Government, Water Resources Department, Government of



Bihar, Patna, the petitioner was directed to file his second show cause reply and in compliance thereof, vide Letter No. 25/Patna dated 12.06.2018, the petitioner submitted his reply to the 2nd show cause notice issued to him, wherein he again denied all the charges levelled against him and in support of the same he submitted/provided the relevant documents with his reply.

10. The learned counsel for the petitioner further submits that vide Letter No. 2141 dated 25.09.2018 issued under the signature of the Joint Secretary to the Government, Water Resources Department, Government of Bihar, Patna the suspension of the petitioner was revoked and it was decided to impose punishment against the petitioner. Finally vide order contained in Memo No. 1258 dated 25.06.2019 issued under the signature of the Additional Secretary to the Government, Water Resources Department, Government of Bihar, Patna the petitioner was inflicted with punishment of permanent reduction of 3 pay stages in the time scale of pay and it was further directed that no further increments will be payable to the petitioner. In the punishment order it was further mentioned that opinion of the Bihar Public Service Commission was also taken on the proposed punishment and the BPSC has given its concurrence vide Letter No. 520 dated 07.06.2019 on the



proposed punishment against the petitioner. The petitioner immediately thereafter vide Letter No. 813 dated 07.08.2019 filed a review petition before the Additional Chief Secretary, Water Resources Department, Patna against the punishment imposed on him by the disciplinary authority. Along with the review petition, the petitioner annexed all the relevant documents again, by preparing a complete chart of the documents, for the perusal of the Additional Chief Secretary and requested him to take appropriate decision in view of the facts mentioned in the review petition.

11. The learned counsel for the petitioner further submits that the review petition filed by the petitioner was rejected by the competent authority and the same was communicated to the petitioner vide Memo No. 970 dated 21.07.2020 issued under the signature of the Additional Secretary to the Government, Water Resources Department, Government of Bihar, Patna. The authority concerned did not take into consideration the documents annexed by the petitioner, along with his review petition and proceeded to reject the claim of the petitioner only on the basis of the enquiry report and the order passed by the disciplinary authority.

12. The learned counsel for the petitioner further



submits that vide Letter No. 949 dated 27.08.2021 issued under the signature of the Additional Secretary to the Government, Water Resources Department, Government of Bihar, Patna, the petitioner was issued notice under Rule 11(5) of the Bihar Government Servants (CCA) Rules, 2005 that why the period under suspension i.e. 14.09.2017 to 24.09.2018 be treated to be not on duty and nothing shall be paid, apart from what has been paid to him as subsistence allowance. On receipt of the letter dated 27.08.2021, the petitioner by his Letter No. 04/Dehri dated 01.11.2021 submitted his detailed reply, but vide Letter No. 1360 dated 08.06.2021 issued under the signature of the Additional Secretary, Water Resources Department, Government of Bihar, Patna the punishment was imposed against the petitioner that for the period under suspension i.e. 14.09.2017 to 24.09.2018, the petitioner will not be entitled for any other payment, except the subsistence allowance and the period under suspension will be counted for the purpose of payment of pension.

13. The learned counsel for the petitioner submits that the Principal Secretary, Water Resources Department, Government of Bihar, Patna himself had filed a show cause in MJC No. 2270 of 2016 (arising out of CWJC No. 23124 of 2014



Shivesh Kumar versus The State of Bihar and Ors.) wherein in his show cause filed before this Court, he has categorically stated that he personally inspected the said embankment on 28.08.2017 and he found that the said breaches, for which the petitioner was charged was on account of natural calamity.

14. The learned counsel for the petitioner further submits that the entire departmental proceeding was conducted in complete violation of the provisions contained in Rule 17(3) (4) and (14) of the Bihar Government Servants (CCA) Rules, 2005, since along with memo of charge, no imputation of misconduct/documents or list of witnesses were provided to the petitioner, which caused great prejudice to the case of the petitioner. Even in the departmental proceeding, the petitioner was denied the opportunity to cross examine the witnesses, since no witnesses were produced by the department/prosecution, during course of enquiry, which resulted in denial of opportunity to the petitioner to cross examine the witnesses. Further the petitioner was also not provided an opportunity to produce defense witnesses , despite him making the request to produce witnesses in support of his defence. Further no document, except the letter of the Chief Engineer, which he had written for taking action against the petitioner, was produced by the department in



the entire departmental proceeding, however the enquiry officer on the basis of the said letter, on his own presumption took the role of presenting officer and proceeded to prove charge nos.1 and 7 against the petitioner and charge nos. 2, 4 and 6 to be partially proved and charge nos. 3, 5, 8, 9 & 10 to be not proved.

15. The learned counsel for the petitioner further submits that in gross violation of the provisions contained in Rule 17 of the Bihar Government Servants (CCA) Rules, 2005, the enquiry officer asked for opinion of the Department, on the show cause filed by the petitioner, since as per the provisions contained in Rule 17 of the Bihar CCA Rules, 2005, the enquiry officer is required to take independent view and he has to act as an independent adjudicator, but in the present case, he, with predetermined mind, asked for the opinion of the department and based on the said opinion, he proceeded to prove certain charges against the petitioner. The case against the petitioner is of no evidence and the entire departmental proceeding was conducted in violation of the principles of natural justice. The department did not examine any witness to prove its charges and even the Chief Engineer, whose letter was relied upon by the department, was not examined as a witnesses, although he was a material witness. The enquiry officer shifted the burden of proof



on the petitioner, rather than the department, although as per the procedure prescribed, the prosecution was bound to prove the charges, beyond all reasonable doubt.

16. The learned counsel for the petitioner refers to and relies on a judgment passed by the Hon'ble Supreme Court of India reported in **(2009) 2 SCC 570 Roop Singh Negi Versus Punjab National Bank & Ors.** wherein in paragraph nos. 7, 10, 11, 12 and 13 it has been held as follows:-

7. The appellate authority also did not apply his mind to the contentions raised by the appellant; no reason was assigned in support of his conclusion.

On what evidence, the appellant was found guilty was not stated.

10. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled 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. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the Enquiry Officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. Appellant being an employee of the bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the Enquiry Officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.

11. In Union of India vs. H.S. Goel [(1964) 4 SCR 718, it was held:

"....The two infirmities are separate and distinct though, conceivably, in some cases, both may be present. There may be cases of no evidence even where the Government is acting bona fide; the said infirmity may also exist where the Government is acting mala fide and in



that case, the conclusion of the Government not supported by any evidence may be the result of mala fides, but that does not mean that if it is proved that there is no evidence to support the conclusion of the Government, a writ of certiorari will not issued without further proof of mala fides. That is why we are not prepared to accept the learned Attorney-General's argument that sine no mala fides are alleged against the appellant in the present case, no writ of certiorari can be issued in favour of the respondent.

That takes us to the merits of the respondent's contention that the conclusion of the appellant that the third charged framed against the respondent has been proved, is based on no evidence. The learned Attorney-General has stressed before us that in dealing with this question, we ought to bear in mind the fact that the appellant is acting with the determination to root out corruption, and so, if it is shown that the view taken by he appellant is a reasonably possible view, this Court should not sit in appeal over that decision and seek to decide whether this Court would have taken the same view or not. This contention is no doubt absolutely sound. The only test which we can legitimately apply in dealing with



this part of the respondents case is, is there any evidence on which a finding can be made against the respondent that charge No. 3 was proved against him? In exercising its jurisdiction under Art. 226 on such a plea, the High Court cannot consider the question about the sufficiency or adequacy of evidence in support of a particular conclusion. That is a matter which is within the competence of the authority which dealt with the question; but the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charges in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not. Applying this test, we are inclined to hold that the respondent's grievance is well-founded because, in our opinion, the finding which is implicit in the appellant's order dismissing the respondent that charge number 3 is proved against him is based on no evidence.

12. In Moni Shankar v. Union of India and



Anr. [(2008) 3 SCC 484]. this Court held:

17. The departmental proceeding is a quasi judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The Court exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely preponderance of probability. If on such evidences, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of unreasonableness is giving way to the doctrine of proportionality."

13. In Narinder Mohan Arya vs. United India Insurance Co. Ltd. & ors. (supra), whereupon both the learned counsel relied



upon, this Court held:

"26. In our opinion the learned Single Judge and consequently the Division Bench of the High Court did not pose unto themselves the correct question. The matter can be viewed from two angles. Despite limited jurisdiction a civil court, it was entitled to interfere in a case where the report of the Enquiry Officer is based on no evidence. In a suit filed by a delinquent employee in a civil court as also a writ court, in the event the findings arrived at in the departmental proceedings are questioned before it should keep in mind the following: (1) the enquiry officer is not permitted to collect any material from outside sources during the conduct of the enquiry. [See State of Assam and Anr. v. Mahendra Kumar Das and Ors. [(1970) 1 SCC 709] (2) In a domestic enquiry fairness in the procedure is a part of the principles of natural justice [See Khem Chand v. Union of India and Ors. (1958 SCR 1080) and State of Uttar Pradesh v. Om Prakash Gupta (1969) 3 SCC 775]. (3) Exercise of discretionary power involve two elements (i) Objective and (ii) subjective and existence of the exercise of an objective element is a condition precedent for exercise of the subjective element. [See K.L Tripathi v. State of Bank of India and Ors. (1984) 1



SCC 43]. (4) It is not possible to lay down any rigid rules of the principles of natural justice which depends on the facts and circumstances of each case but the concept of fair play in action is the basis. [See Sawai Singh v. State of Rajasthan (1986) 3 SCC 454] (5) The enquiry officer is not permitted to travel beyond the charges and any punishment imposed on the basis of a finding which was not the subject matter of the charges is wholly illegal. [See Director (Inspection & quality Control) Export Inspection Council of India and Ors. v. Kalyan Kumar Mitra and Ors. 1987 (2) Cal. LJ 344. (6) Suspicion or presumption cannot take the place of proof even in a domestic enquiry. The writ court is entitled to interfere with the findings of the fact of any tribunal or authority in certain circumstances. [See Central Bank of India Ltd. v. Prakash Chand Jain (1969) 1 SCR 735. Kuldeep Singh v. Commissioner of Police and Ors. (1999) 2 SCC 10]."

The judgment and decree passed against the respondent therein had attained finality. In the said suit, the enquiry report in the disciplinary proceeding was considered, the same was held to have been based on no evidence. Appellant therein in the aforementioned situation filed a Writ Petition questioning the validity of the



disciplinary proceeding, the same was dismissed. This Court held that when a crucial finding like forgery was arrived at on an evidence which is non est in the eye of the law, the civil court would have jurisdiction to interfere in the matter. This Court emphasized that a finding can be arrived at by the Enquiry Officer if there is some evidence on record. It was furthermore found that the order of the appellate authority suffered from non application of mind. This Court referred to its earlier decision in Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. ((1999) 3 SCC 679] to opine:

"41. We may not be understood to have laid down a law that in all such circumstances the decision of the civil court or the criminal court would be binding on the disciplinary authorities as this Court in a large number of decisions points point that the same would depend upon other factors as well. See e.g. Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh and Anr. (2004) 8 SCC 200 and Manager, Reserve Bank of India Bangalore v. S. Mani and Ors. (2005) 5 SCC 100. Each case is, therefore, required to be considered on its own facts.

42. It is equally well settled that the power of judicial review would not be refused to be exercised by the High Court,



although despite it would be lawful to do so. In Manager, Reserve Bank of India Bangalore (supra) this Court observed:

39. The findings of the learned Tribunal, as noticed hereinbefore, are wholly perverse. It apparently posed unto itself wrong questions. It placed onus of proof wrongly upon the appellant. Its decision is based upon irrelevant factors not germane for the purpose of arriving at a correct finding of fact. It has also failed to take into consideration the relevant factors. A case for judicial review, thus, was made out."

17. The learned counsel for the petitioner further refers to and relies on a judgment passed by the Hon'ble Supreme Court of India reported in **(2010) 2 SCC 772 State of U.P. Versus Saroj Kumar Sinha**, wherein in paragraph 9, 10, 12, and 15 it has been held as follows:-

"9. Being unaware of the inquiry report dated 3-8-2001 the respondent made the representation dated 6-10-2001 to the new Inquiry Officer, G.S. Kahlon praying for supply of the relevant documents numbering 19 to enable him to prepare an appropriate reply to the charge-sheet and to prepare his defence. Since, no response was received from the inquiry officer the respondent sent a reminder dated 22-11-2001. The last



reminder submitted by the respondent is dated 3-3-2002.

10. The respondent later came to learn that the inquiry officer had addressed a communication to the Government dated 8-4-2002 stating that the inquiry report dated 3-8-2001 submitted by the former Inquiry Officer, Mr I.D. Singhal “seems to be correct” because the delinquent officer should be deemed to have accepted the charges levelled against him inasmuch as he had not submitted the reply/explanation to the charge-sheet. Based on the inquiry report dated 8-4-2002, which merely reiterated the findings in the inquiry report dated 3-8-2001, the respondent was served with a show-cause notice dated 29-4-2003.

12. The respondent furnished the certified copy of the aforesaid order to the appellant on 25-7-2003. In this communication the respondent also mentioned that he would soon submit a detailed representation/reply in response to the show-cause notice dated 29-4-2003. He accordingly submitted the representation on 6-8-2003 briefly touching upon the circumstances in which the aforesaid two inquiries were held. He pointed out that the aforesaid two inquiries had been held in patent violation of principles of natural justice, fairness and justice, as well as the basic



requirements of law relating to departmental enquiry. The respondent reiterated his utter helplessness in making an effective reply to the show-cause notice as he had not been supplied with the relevant documents in spite of numerous representations and reminders. He again made a plea for supply of documents.

15. It was not disputed before the High Court nor is it disputed before us that the documents were not supplied to the respondent. In fact, in the counter-affidavit filed before the High Court, in reply to the grievance made by the respondent in the writ petition, about non-supply of the documents, it has been stated as under:

“The petitioner has requested for supply of certain documents to the inquiry officer regarding which it is stated that the petitioner has been informed that the documents pertain to the division in which the petitioner has been posted as Executive Engineer. Therefore, it was not required to supply the same as the documents were in his custody and the petitioner has deliberately delayed the filing of reply. Therefore, inquiry officer has sent the enquiry report after the completion of enquiry to the Government on the basis of



documents on 3-8-2001.”

18. The learned counsel for the petitioner further refers to and relies on a judgment passed by the Hon’ble Division Bench of this Court on 21.08.2024 in **LPA No. 446 of 2024** State of Bihar & Ors. Versus Vikash Kumar, wherein in paragraph nos. 8, 9, 10, 12 & 13 it has been held as follows:-

8. *The decisions in **Union of India v. Mohd. Ramzan Khan**, (1991) 1 SCC 588 and **ECIL v. B. Karunakar**, (1993) 4 SCC 727; considered the issue of denial of reasonable opportunity, when the enquiry report was not supplied to the delinquent employee; after the 42nd amendment of the Constitution of India. Before the 42nd amendment of the Constitution, there was a requirement to issue notice to the delinquent employee to show-cause against the punishment proposed, for which a reasonable opportunity of making representation on the penalty proposed was a mandatory condition under Article 311 (2) of the Constitution of India. The 42nd amendment removed the above condition and it was the contention of the employers that there was no requirement to supply the enquiry report. It was categorically held that whenever the Enquiry Officer is someone other than the Disciplinary Authority and the report of the Enquiry Officer holds the employee guilty of all or any of the charges; with proposal for any*



punishment or not, the delinquent employee is entitled to a copy of the report to enable him to make a representation to the Disciplinary Authority against the findings in the report.

9. *The non-furnishing of the report, hence amounts to violation of principles of natural justice; in which context a remand is necessitated, to supply the enquiry report and afford a reasonable opportunity to the delinquent to represent against the prejudicial findings. The remand is to cure the technical defect, so as to avoid any prejudice being caused to the delinquent, by reason of denial of a reasonable opportunity, before being penalized and not to clear up the lacuna committed by the Management in the conduct of the enquiry; especially when the enquiry was carried out in a negligent manner without adducing any valid evidence.*
10. *ECIL (supra) by a larger Bench, on a reference made, reaffirmed the dictum in Mohd. Ramzan Khan (supra). These were cases in which the Hon'ble Supreme Court found that a reasonable opportunity, to defend the allegation of misconduct levelled and represent against the findings of the enquiry report, was not afforded to the delinquent employee; in which case alone there could be a remand made for the purpose of curing the defect and affording a reasonable opportunity to the delinquent*



employee.

12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;*
- (b) the enquiry is held according to the procedure prescribed in that behalf;*
- (c) there is violation of the principles of natural justice in conducting the proceedings;*
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*



(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.

13. *Under Articles 226/227 of the Constitution of India, the High Court shall not:*

(i) reappreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience.

19. Per contra, the learned counsel for the State submits that there was a breach in the left embankment of



Bagmati River and the petitioner, being the Executive Engineer at the relevant time, did not take care to repair the said breach immediately and his phone was found to be switched off, therefore the department took a decision to place him under suspension and to initiate departmental proceeding against him. In the departmental proceeding, all the provisions contained in Bihar Government Servants (CCA) Rules, 2005 were followed and the petitioner was given an opportunity to appear in the departmental proceeding and to place his defence. The enquiry officer after a detailed enquiry, wherein the petitioner participated, proceeded to found certain charges against the petitioner to be proved, while found some of the charges to be partially proved and the remaining charges to be not proved. The enquiry officer submitted the enquiry report, which was examined by the disciplinary authority and he by agreeing with the findings and conclusion of the enquiry officer, issued second show cause notice to the petitioner and after considering the show cause reply submitted by the petitioner, he proceeded to award punishment against the petitioner. Even the authority concerned who proceeded to reject the review petition filed by the petitioner, considered the points raised by the petitioner in his review petition. Therefore, there is no infirmity in the order



passed by the disciplinary authority or the authority concerned, who rejected the review petition of the petitioner.

20. The learned counsel for the State further submits that all the relevant documents, which the petitioner was asking for, were already in his possession and the petitioner was asking for the said documents, only with a view to delay the conclusion of the department proceeding. From perusal of the impugned order, it would transpire that the same is a reasoned and a speaking order. He submits that besides natural calamity, seepage and piping were also found to be reason for breach of embankment, which is clear from the inspection report of the Chief Engineer and the petitioner could have prevented the seepage and piping by making regular inspection and executing flood fighting work in time.

21. The learned counsel for the State finally submits that the order passed by the authorities concerned i.e. the disciplinary authority and the authority who had rejected the review petition of the petitioner, are based on reasoning and after examining the evidences brought before them, including the show cause reply submitted by the petitioner and the defence taken by him in the review petition, therefore there is no infirmity in the orders impugned.



22. Having heard the learned counsel for the parties and upon perusal of the documents available on record, this Court finds that before issuance of memo of charge, no opportunity was given to the petitioner to file his show cause reply, that why departmental proceeding be not initiated against him, since along with the decision to initiate departmental proceeding, the enquiry officer and the presenting officer were already appointed by the disciplinary authority. Further along with memo of charge (prapatra-Ka), no list of documents or witnesses were provided/given, upon which the departmental authorities intended to rely in the departmental proceeding, which is in complete violation of the provisions contained in Rule 17(3) and (4) of the Bihar Government Servants (CCA) Rules, 2005. Further, since no documents were produced/relied upon by the prosecution, during the entire departmental proceeding, the petitioner was denied an opportunity to rebut the charges levelled against him and to cross examine the witnesses, which is in complete violation of the provisions contained in Rule 17(14) of the Bihar Government Servants (CCA) Rules, 2005. Even the petitioner was denied an opportunity to bring defence witnesses in support of his case, which resulted in miscarriage of justice and caused prejudiced to the case of the



petitioner. Even during the departmental enquiry, the enquiry officer on his own proceeded to prove the charges against him, without the presenting officer bringing/relying on any document or evidence to support the case of the prosecution/department.

23. Further from the document it appears that the Additional Chief Secretary of the Department himself had filed a show cause before this Court in a contempt petition, wherein he has categorically averred that after spot inspection by him he found that due to excessive rain, the Bagmati river crossed its previous mark/record by reaching 72.60 meter i.e. 26 c.m. higher than the 2014 record, making it impossible to prevent the said breach with human effort alone and the said point was taken by the petitioner in his review petition and in his show cause reply, even then the same was not considered by the disciplinary authority or the authority concerned, who rejected the review petition of the petitioner.

24. From the judgments relied upon by the petitioner, it reflects that the Hon'ble Supreme Court of India and the Hon'ble Division Bench of this Court have deprecated the action of the enquiry officer in assuming the role of the presenting officer and without any evidence, proceed to submit the enquiry report by finding the charges to be proved. In the



present case, the same has been done, since without any evidence, the enquiry officer, proceeded to prove some of the charges to be proved and some to be partially proved.

25. Accordingly from the consideration made above, the order contained in Memo No. 1258 dated 25.06.2019, Memo No. 1608 dated 14.09.2017 and Memo No. 1360 dated 08.06.2022 deserves to be set aside and are accordingly set aside.

26. The petitioner shall be entitled for all the increments, which has been forfeited by the disciplinary authority by the impugned order of punishment dated 25.06.2019 as well as the pay scale which he was entitled, prior to passing of the impugned order of punishment and he will be entitled for payment of full salary for the period under which he was under suspension. No purpose would be served to remit the matter back to the authorities concerned for proceeding afresh, from the defective stage, since when the Additional Chief Secretary of the Department has himself admitted the fact in his show cause filed in M.J.C. No. 2270 of 2016, that the breach was on account of excessive rain and the Bagmati River crossed its highest level of 2014.

27. The writ petition is allowed in the



aforementioned terms.

28. Pending application(s), if any, shall also stands disposed of.

(Ritesh Kumar, J)

AjayMishra/-

AFR/NAFR	
CAV DATE	10.02.2026
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Transmission Date	NA

