

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18295 of 2018

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Bishnudeo Prasad Singh Son of Sri Sita Ram Prasad Singh Resident of
Supasang, P.S. Wena, District- Nalanda.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The District Magistrate Saran at Chapra.
3. The Deputy Collector, Establishment, Saran at Chapra.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Majid Mahboob Khan, Advocate
		Mr. Arun Kumar Bhagat, Advocate
For the Respondent/s	:	Md. Nadeem Seraj- GP-5

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CORAM: HONOURABLE MR. JUSTICE RITESH KUMAR
ORAL ORDER

2 22-06-2026 Heard the learned counsel for the parties.

2. The present writ petition has been filed for the
following relief(s):-

*“1. That petitioner seeks indulgence of this
Hon'ble court for quashing the office order
no. 34/2018 contained in memo no. 125
dated 29.1.2018 issued under the signature
of District Magistrate Chapra by which
punishment of withholding of increment
with non cumulative effect has been passed
just two days before superannuation and
after eleven years of submission of enquiry
report and after about five months from
acquittal in criminal case And further for
issuance of a writ in the nature of
mandamus commanding the respondent to*



pay and provide all the consequential benefits and further for issuance of a writ/writs command/ commands , directions /directions, order / orders as your lordship may deem fit and proper in the facts and circumstances of the case.”

Brief Facts of the Case

3. The brief fact which are necessary for adjudication of the present case are that while the petitioner was posted as Account-cum-in-charge clerk in Revil Ganj Block office in the District of Saran at Chapra, a complaint case bearing Complaint Case No. 31 of 2001 was filed before the Special Court (Vigilance) North Bihar, Muzaffarpur, with an allegation that the then Block Development Officer, in collusion with other employees of the block, committed illegality in allotment of Indra Awas Yojana and embezzled government fund. After preliminary enquiry, vigilance case bearing Vigilance P.S. Case No.01 of 2002 was instituted against the petitioner and others, wherein charge-sheet was submitted vide charge-sheet no. 247 of 2007 and thereafter cognizance was taken on 14.07.2010 for the same set of charges. A departmental proceeding was also initiated against the petitioner and memo of charge was issued to him, vide Memo No. 256 dated 10.02.2006. Certain charges were leveled against the petitioner. Prior to that vide memo no.



563 dated 28.05.2001, issued under the signature of the District Magistrate, Saran at Chapra, the petitioner and two other persons were put under suspension in view of lodging of Vigilance P.S. Case No. 01 of 2001. Subsequently, vide memo no. 213 dated 9.2.2002, issued under the signature of the District Collector Establishment, Saran at Chapra, the suspension of the petitioner was revoked and it was further directed that the departmental proceeding against the petitioner will continue and the decision on payment of salary for the period under suspension, will be taken after finalization of the criminal case lodged against him. A show cause notice was issued to the petitioner and the petitioner in compliance thereof, submitted his reply to the show-cause notice on 22.05.2006, wherein he specifically denied all the charges leveled against him and requested for exonerating him from the charges. The Enquiry Officer and the Presiding Officer were appointed and the proceeding against the petitioner was started on 9.5.2006. In the departmental proceeding, the Presenting Officer presented the case of the department, while the petitioner appeared and pleaded his innocence before the Enquiry Officer. The Enquiry Officer after conducting enquiry submitted his report before the disciplinary authority on 18.10.2006, wherein he found the



charges leveled against the petitioner, to be proved. Second show cause notice was issued to the petitioner by the disciplinary authority vide memo no.139 dated 18.01.2007. The petitioner immediately thereafter submitted his reply before the disciplinary authority on 9.2.2007, wherein he denied all the charges, which were leveled against him and requested the disciplinary authority to exonerate him from all the charges, which were leveled against him. Subsequently, the petitioner surrendered before the competent court on 8.5.2013 and was subsequently released on bail on 3.7.2013. After his release from jail, the petitioner gave his joining on 5.7.2013. The petitioner was again put under suspension vide office order no. 230 of 2013 contained in memo no. 910, dated 15.7.2013, retrospectively w.e.f. 8.5.2013 i.e. the date on which the petitioner surrendered before the competent court. Vide memo no. 1565 dated 22.11.2013 issued under the signature of the District Magistrate, Saran at Chhapra, while taking note of the earlier suspension order dated 15.7.2013, whereby the petitioner was retrospectively put under suspension w.e.f. 8.5.2013 and the fact that the petitioner, after his release from jail gave his joining on 5.7.2013, was again put under suspension with immediate effect and it was directed that during period of suspension, he



will be given subsistence allowance and his headquarter, during period of suspension was fixed at Mashrakh Block. It was further recorded that the departmental proceeding against the petitioner be concluded at the earliest. No action was taken by the disciplinary authority on the Enquiry Report submitted by the Enquiry Officer on 18.10.2006 for almost 11 years and all of a sudden by the impugned order contained in memo no.125 dated 29.1.2018 i.e. after almost 11 years of the submission of the Enquiry Report, the disciplinary authority, only two days prior to the retirement of the petitioner, proceeded to pass the order of punishment, whereby minor punishment of withholding of one increment with non-cumulative effect was passed against the petitioner. Simultaneously, the order of suspension of the petitioner was also revoked by the said impugned order dated 29.1.2018 and he was posted at Sadar Sub-division, Chapra and was directed to give his joining at the earliest.

Submission on Behalf of the Petitioner

4. The learned counsel for the petitioner submits that on the basis of the allegations leveled and the petitioner and some others, a departmental proceeding was initiated by issuance of memo of charge on 10.02.2006, however alongwith the memo of charge, no list of witnesses or imputations were



given to the petitioner, which is in complete violation of the provisions contained in Rule 17(3) & (4) of the Bihar CCA Rules, 2005.

5. He further submits that even the Enquiry Officer during course of enquiry, without following the due process of law, found the charges leveled against the petitioner to be proved, only on the basis of the submission of the Presenting Officer and on the basis of the accusations made against the petitioner in the Criminal Case bearing Vigilance P.S. Case No. 01 of 2001. He submits that no witnesses were adduced on behalf of the Presenting Officer and the documents, which have been mentioned in the Enquiry Report, were never proved by their respective authors and even the petitioner was not given any opportunity to adduce any evidence/witness in his behalf. He submits that the entire departmental proceeding proceeded without following the due process of law and the present case is a case of no evidence.

6. The learned counsel for the petitioner further submits that the entire departmental proceeding vitiated on the ground that the provisions contained under Rule 17 of the Bihar CCA Rules, were never followed. He further submits that although, the First Information Report was lodged against the



petitioner in 2001, and charge sheet was submitted in 2007, however, the departmental proceedings was initiated against the petitioner on the same allegation, on which the criminal case was lodged. He submits that the petitioner was acquitted in the criminal case, which was lodged against him bearing Vigilance P.S. Case No. 01 of 2001 which gave rise to Special Case No. 55 of 2002. The learned Trial Court i.e. the Special Judge (Vigilance), North Bihar, Muzaffarpur by a detailed judgment dated 25.8.2017 passed in Special Case No. 55 of 2002 proceed to record that the accused persons are held not to be guilty for commission of offence under Sections 409, 420, 467, 471, 477 (A) and 120(B) of the Indian Penal Code and Section 13(1) (d) read with Section 13(2) of the Prevention of Corruption Act, due to lack of evidence.

7. The Learned counsel for the petitioner submits that the basis of initiation of departmental proceeding was the lodging of the criminal case, in which the petitioner has been acquitted on 25.8.2017 and the entire departmental proceeding was conducted on the basis of the said complaint, which was lodged by complainant which gave rise to Vigilance P.S. Case No.01 of 2001. He submits that the even during course of departmental enquiry, the Enquiry Officer relied upon the



charges which were leveled against the petitioner in Vigilance Case and relied upon the first information report of the said Vigilance Case.

8. The learned Counsel for the petitioner in support of his contention refers to and relies upon a judgment of the Hon'ble Supreme Court of India in the case of **(Punjab National Bank and Others Vs Roop Singh Negi & Ors.)** reported in 2009 (2) SCC 570, wherein in paragraph nos. 14 & 23, the Hon'ble Supreme Court 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.”

9. The learned counsel appearing on behalf of the



petitioner further refers to and relies upon a judgment of the Hon'ble Supreme Court of India in the case of **(State of Uttar Pradesh Vs Saroj Kumar Sinha)**, reported in 2010 (2) SCC 772 wherein in paragraph nos. 27, 28 and 30, it has been held as follows:-

“27. A bare perusal of the aforesaid sub-rule shows that when the respondent had failed to submit the explanation to the charge-sheet it was incumbent upon the inquiry officer to fix a date for his appearance in the inquiry. It is only in a case when the government servant despite notice of the date fixed failed to appear that the inquiry officer can proceed with the inquiry ex parte. Even in such circumstances it is incumbent on the inquiry officer to record the statement of witnesses mentioned in the charge-sheet. Since the government servant is absent, he would clearly lose the benefit of cross-examination of the witnesses. But nonetheless in order to establish the charges the Department is required to produce the necessary evidence before the inquiry officer. This is so as to avoid the charge that the inquiry officer has acted as a prosecutor as well as a judge.”

“28. An inquiry officer acting in a quasijudicial authority is in the position of



an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the un rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.”

“30. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.”

10. The learned counsel for the petitioner further



refers to and relies upon a judgment dated 20.01.2025 passed by the Hon'ble Supreme Court of India in Civil Appeal No.183 of 2025, **(Bhupinderpal Singh Gill Vs State of Punjab and Others)** whereby in paragraph nos. 12 and 33, the Hon'ble Supreme Court of India has held as follows.

“12. Mr. Patwalia also submitted that the appellant having been in public service in excess of three decades without blemish, the governmental action of initiating disciplinary proceedings a few days prior to his retirement and imposing on him the unwarranted penalty of ordering of a cut in pension, which is the source of his sustenance in the winter years of his life, is absolutely arbitrary apart from smacking of mala fide, which the High Court failed to take note of. He, thus, prayed that the orders of the Disciplinary Authority, the Single Judge and the Division Bench be set aside and all benefits be restored in favour of the appellant to which he was legitimately entitled.”

33. Certain generic principles governing interference with orders of punishment that are passed following inquiry proceedings have evolved over a period of time. Law is well settled that an administrative order punishing a delinquent employee is not



ordinarily subject to correction in judicial review because the disciplinary authority is the sole judge of facts. If there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the high court in a writ petition filed under Article 226 of the Constitution. However, should on consideration of the materials on record, the court be satisfied that there has been a violation of the principles of natural justice, or that the inquiry proceedings have been conducted contrary to statutory regulations prescribing the mode of such inquiry, or that the ultimate decision of the disciplinary authority is vitiated by considerations extraneous to the evidence and merits of the case, or that the conclusion of the disciplinary authority is ex facie arbitrary or capricious, so much so that no reasonable person could have arrived at such conclusion, or there is any other ground very similar to the above, the high court may in the exercise of its discretion interfere to set things right. After all, public servants to whom Article 311 of the Constitution apply do enjoy certain procedural safeguards, enforcement of which by the high court can legitimately be



urged by such servants depending upon the extent of breach that is manifestly demonstrated.”

Submission on Behalf of the Respondent-State

11. Per Contra, the learned counsel appearing on behalf of the respondents-State submits that the petitioner, along with two others was made an accused in Vigilance P.S. Case No. 01 of 2001, which gave rise to Special Case No.55 of 2002. Based on the said accusation of the petitioner in the criminal case, a decision was taken to initiate departmental proceedings against him by the department and accordingly memo of charge was issued to him on 10.02.2006. The Enquiry Officer and the Presenting Officer were appointed. The petitioner was given due opportunity to participate in the departmental proceeding and after a detailed enquiry, the Enquiry Officer proceeded to submit his report before the disciplinary authority on 18.10.2006. The petitioner was put under suspension twice on account of lodging of criminal case against him and on account of him being put behind bars. Finally, the impugned order of punishment was passed against him by the disciplinary authority on 29.01.2018, whereby the disciplinary authority proceeded to award punishment of withholding of one increment with non-cumulative effect against the petitioner. He submits that against



the order dated 29.1.2018, the petitioner has got an alternative remedy of filling an appeal before the Commissioner, Saran Division, however, the petitioner without availing the said alternative remedy, approached this Hon'ble Court by filling the present writ petition. He finally submits that the order passed by the disciplinary authority does not requires any interference by this Hon'ble Court, since the order passed by the disciplinary authority is in terms of the provisions contained in the Bihar CCA Rules, 2005.

CONSIDERATION

12. Having considered the rival submissions and after going through the records, it appears that a complaint was filed against the petitioner, which gave rise to Vigilance P.S. Case No. 01 of 2001. After enquiry, charge sheet was submitted against the petitioner vide charge sheet no. 247 of 2007 and thereafter cognizance was taken against him on 14.07.2010. A decision was taken at the level of department for initiation of departmental proceeding against the petitioner and subsequent thereto memo of charge was served upon the petitioner on 10.02.2006, for the charges mentioned therein, however, the memo of charge does not contain the list of witness or the imputation of charge, in terms of provisions contained in Rules



17 (3) and (4) of the Bihar CCA Rules, 2005. Further, during course of enquiry, the Enquiry Officer only on the basis of the submissions and by relying upon the accusation made against the petitioner in the vigilance case and certain documents, which were provided/presented by the Presenting Officer, found the petitioner to be guilty of the charges leveled against him and he found the charge against the petitioner to be proved. In the entire departmental proceeding, no witnesses were examined on behalf of the Presenting Officer/the Department and since no witness was examined, there is no question of the documents being proved by their respective authors. Further, the petitioner was not given any opportunity in terms of Rule 17(14) of the Bihar CCA Rules, 2005 to cross-examination or to adduce the witness on his behalf and the entire departmental proceeding was conducted against the petitioner in complete violation of the provision contained in Rule 17(3), (4) and (14) of the Bihar CCA Rules, 2005. Further, the Enquiry Officer on the basis of allegation leveled against the petitioner in the vigilance case, proceeded to hold him guilty of the charges leveled against him. The entire departmental proceeding is of no evidence. The law in this regard is very much settled that this court under Article 226 can interfere in cases, even if alternative remedy are



available and when the entire departmental proceeding was conducted in complete violation of the provisions contained under law and the case is of no evidence. The present case is a glaring example of the said provision, since in the entire departmental proceeding, no witnesses were adduced and the Enquiry Officer only on the basis of the allegations against the petitioner in the vigilance case proceeded to found the charges to be proved against the petitioner. This Court is conscious of the fact that the petitioner has not availed the alternative remedy.

13. In a recent judgment of the Hon'ble Supreme Court of India in the case of **(Jai Prakash Saini Vs. Managing Director U.P. Cooperative Federation Ltd. And Ors.)** reported in 2026 (3) PLJR 125 SC, wherein in paragraph nos. 17 and 18, it has been held as follows:-

“17. From the decisions of this Court in Sur Enamel (supra): (AIR 1963 SC 1914) and Kharak Singh (supra): (2008 AIR SCW 7507), followed in Chamoli District Cooperative (supra): (AIR 2016 SC 2510), which deals with similar service rules as are applicable here, it is now settled that unless the charged employee accepts his guilt in clear terms, an enquiry on the charges drawn against him would have to be held. In the enquiry, the employer/department would



have to take steps first to lead evidence against the workmen/delinquent charged and give an opportunity to him to cross examine those witnesses. Only thereafter, the workmen /delinquent shall be asked whether he wants to lead any evidence and/or submit an explanation about the evidence led against him. Even in a case based solely on documentary evidence, unless the relied upon documents are admitted by the charged employee, a witness would have to be examined to prove those documents and when so examined, the witness would have to be tendered for cross-examination.”

“18. In the instant case, we find that the department had not produced any witness in the enquiry even though the charges levelled upon the appellant were denied by him. Therefore, in our view, the enquiry stood vitiated. Once the enquiry stood vitiated, the consequential order of punishment/recovery cannot be sustained. We therefore allow this appeal. The impugned judgment and order of the High Court is set aside. The writ petition of the appellant stands allowed to the extent indicated below. The order of dismissal and consequential recovery is set aside. The Federation is, however, at liberty to hold a de novo enquiry, if it so desires, within a period of six months from the date



of this order. If the Federation does not hold de novo enquiry as permitted above, the appellant shall be entitled to reinstatement with benefit of continuity in service including arrears of salary after adjusting suspension allowance, if any, paid already. In case the Federation chooses to hold an enquiry, it shall reinstate the appellant and place him under suspension till completion of the enquiry and during this period pay suspension allowance as may be payable in accordance with law. In case de novo enquiry is held, other service benefits including arrears of salary as well as benefits of continuity in service shall depend on the outcome of the enquiry.”

14. From the above decision of the Hon'ble Supreme Court, it transpires that even if the charges are leveled against delinquent and he did not participate in the proceeding and the proceeding had conducted *ex-parte*, even then the documents which are relied upon by the department, needs to be proved at the level of the department and in absence thereof the charges cannot be said to be proved. In the present case, since none of the witnesses have been examined and the Enquiry Officer, only on the basis of the document adduced on behalf of the department and the accusations leveled in the Vigilance case has



proceeded to prove the charges against petitioner, therefore, it cannot be said that the departmental proceedings was conducted in accordance with law.

15. Considering the above mentioned facts, this Court is of considered opinion that the entire departmental enquiry conducted against the petitioner is farce and is of no evidence. Accordingly, the impugned order of punishment contained in memo no.125 dated 29.01.2018, issued under the signature of the District Magistrate, Saran at Chhapra is set aside. Since the petitioner has retired on 31.01.2018 and the punishment order was passed on 29.01.2018, this Court is not remitting the matter back to the respondent authorities for proceeding afresh. This Court is conscious of the fact that the departmental proceeding against the petitioner was initiated in 2006, based on the complaint filed by the complainant in 2001 and now after 20 years, there is no justification in remitting the matter back to the respondent authorities for proceeding afresh in accordance with law.

16. The High Court under Article 226/227 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 of the the negligence 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.

17. The petitioner is held entitled for grant of all the increments, for which he was entitled, prior to passing of the



impugned order of punishment dated 29.01.2018. Respondent authorities are directed to re-work the entitlement of the petitioner, for which he was entitled, prior to passing of the impugned order dated 29.01.2018, within a period of three months from the date of receipt/production of a copy of the order. The consequential benefits arising out of the same must be paid to the petitioner within a further period of one month, thereafter. It has been informed by the learned counsel for the petitioner that till date, the petitioner is receiving 90 % of the pension, therefore the respondent authorities are further directed to restore the pension of the petitioner to his full entitlement of 100% and to make payment of the arrears thereupon within the above mentioned period of three months. The respondent authorities are further directed to take decision with regard to payment of salary to the petitioner for the period during which he remained under suspension, after deducting the subsistence allowance, if any, paid to the petitioner during the period of suspension within the aforementioned period of three months, since no decision has been taken on the said aspect in the impugned order dated 29.01.2018.

18. With the aforementioned directions, writ petition is allowed.



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

(Ritesh Kumar, J)

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