

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4553 of 2023

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Ram Sumer Sharma Son of Late Bhuweneshwar Singh, Resident of 286A,
Nehru Nagar, Patliputra Colony, Patna.

... .. 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 Accountant General, Bihar, Patna.
4. The Divisional Commissioner, Purnea Division, Purnea.
5. The Inspector General, Home Department (Prison), Govt. of Bihar, Patna.
6. The Joint Secretary cum Director (Adm.), Home Department, Directorate of Prison, Govt. of Bihar, Patna.
7. The District Magistrate, Madhubani.
8. The Superintendent, District Jail, Madhubani.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rakesh Kumar Sharma, Advocate
	:	Mr. Amresh Kumar, Advocate
For the State	:	Mr. Ajay Kumar, AC to GP-4
For the A.G.	:	Mrs. Nivedita Nirvikar, Sr. Advocate
	:	Mr. Aditya Raj, Advocate

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CORAM: HONOURABLE MR. JUSTICE RITESH KUMAR
ORAL JUDGMENT

Date : 19-02-2026

Heard the parties.

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

*(i). For issuance of writ in the nature of
Certiorari for quashing the
Resolution vide Gyapank No. 13880
dated 22.12.2022 issued under the
signature of Joint Secretary cum
Director (Adm.) as well as the*



resolution vide Gyapank No. 10600 dated 14.10.2022 issued by the Joint Secretary cum Director (Adm.) whereby and whereunder the Revision/ Memorial has been rejected and order of punishment dated 14.10.2022 has been confirmed for deduction of 20% from the pension of the petitioner for five years.

(ii). For a direction to the respondent authorities to stay the order dated 22.12.2022 as well as order dated 14.10.2022 till final decision in the present writ petition.

3. The learned counsel for the petitioner submits that the petitioner was appointed on the post of Assistant Jailor on 30.11.1983 through a competitive exam conducted by the Bihar Public Service Commission. The petitioner was promoted to the post of Jailor on 14.02.2008 and to the post of Jail Superintendent on 23.08.2017. He superannuated from service on 31.01.2019.

4. The learned counsel for the petitioner submits that the while the petitioner was posted as a Jailor in the District Jail, Madhubani, on 11.09.2012 he went to the office of the District Magistrate, Madhubani for some jail related work, but



in the meantime, one prisoner, namely, Md. Sabir became traceless, for which a first information report was also lodged. However, after a few hours, the said person was found hiding in a bush in the jail premises itself. A departmental proceeding was initiated against the petitioner vide Memo No. 2404 dated 08.05.2013 issued under the signature of the I.G. (Jail), Bihar wherein certain charges were levelled against the petitioner. The disciplinary authority vide Memo No. 4941 issued under the signature of the I.G. (Jail), Bihar proceeded to award punishment of censure and stoppage of two increments with cumulative effect. It was further directed that during the period under suspension, the petitioner will not get anything, apart from whatever has been paid to him, however, the said period will be counted for payment of pension to the petitioner. Being aggrieved with the order passed by the disciplinary authority, the petitioner preferred service appeal before the Principal Secretary, Department of Home, Government of Bihar, Patna and finally the appeal preferred by the petitioner was rejected vide Memo No. 6724 dated 29.12.2014 issued under the signature of the Principal Secretary, Department of Home, Government of Bihar, Patna.

5. The learned counsel for the petitioner further



submits that the petitioner filed a writ petition bearing C.W.J.C. No. 922 of 2015 whereby he challenged the entire departmental proceeding i.e. from communication of the charge memo dated 01.02.2013. The writ petition preferred by the petitioner was allowed vide judgment dated 07.05.2018 passed by a Co-ordinate Bench of this Court whereby the Co-ordinate Bench of this Court proceeded to quash the punishment order contained in Memo No. 4794 dated 03.09.2014, the appellate order contained in Memo No. 6724 dated 29.12.2014 and a direction was issued that since the issue has been decided on the basis of charge memo being incompetent and without jurisdiction, it would be open to the respondent authorities to proceed afresh after a conscious decision of the competent authority/disciplinary authority in respect of the charge to be framed by the competent authority. In compliance of the order dated 07.05.2018 passed in C.W.J.C. No. 922 of 2015, vide Memo No. 5339 dated 27.07.2018 issued under the signature of the I.G. (Jail), Patna again charge memo was issued, whereby certain charges were levelled against the petitioner.

6. The learned counsel for the petitioner further submits that the memo of charge contained two charges, however in violation of the provisions contained in Rule 17(3)



& (4) of the Bihar Government Servants (CCA) Rules, 2005, the list of witnesses was not given with the charge memo, however, the documents to be relied upon by the department was mentioned there. The Enquiry Officer and the Presenting Officer were appointed and the Enquiry Officer after conducting a detailed enquiry, submitted his enquiry report, before the Disciplinary Authority on 20.09.2019, wherein he found the charges to be proved against the petitioner.

7. The learned counsel for the petitioner further submits that vide Memo No. 4934 dated 22.07.2020 issued under the signature of the Joint Secretary-Cum-Director (Administration), Department of Home, Government of Bihar, Patna, addressed to the Commissioner, Purnea Division, Purnea a request was made that in view of Rule 18(1) of the Bihar Government Servants (CCA) Rules, 2005, evidences of two persons named in the letter dated 22.07.2020 is necessary for coming to the conclusion in the departmental enquiry. A request was made to get the evidences of those two persons taken and to conduct the enquiry further. In compliance thereof, the Commissioner-Cum-Conducting Officer, Purnea Division, Purnea vide his Letter No. 156 dated 20.01.2022 submitted his fresh enquiry report before the Joint Secretary-Cum-Director



(Administration), Department of Home (Jail), Patna. The Enquiry Officer, on the basis of the reply submitted by the petitioner, the documents relied by the Presenting Officer and after going through the evidences of the witnesses found the charges to be partially proved against the petitioner. Immediately thereafter, vide Memo No. 2529 dated 16.03.2022 issued under the signature of the Joint Secretary-Cum-Director (Administration), Government of Bihar, Patna, the petitioner was issued second show cause notice and was directed to submit his explanation within ten days. In compliance thereof, the petitioner filed his reply on 29.03.2022 wherein he denied all the charges levelled against him and explained the circumstances leading to initiation of the departmental proceeding.

8. The learned counsel for the petitioner submits that vide Memo No. 10600 dated 14.10.2022, issued under the signature of the Joint Secretary-Cum-Director (Administration), Department of Home (Jail), Bihar, Patna, the petitioner was inflicted with punishment of deduction of 20% of pension for five years. The petitioner preferred statutory appeal before the Additional Chief Secretary, Department of Home (Jail), Bihar, Patna, wherein he denied all the charges and he explained in



detail the situation wherein one person was said to have fled from the prison/jail and explained that the said person did not flee from the jail, but was hiding in the jail premises itself and after a few hours, was nabbed. However, the Appellate Authority by his order contained in Memo No. 13880 dated 22.12.2022 proceeded to reject the appeal preferred by the petitioner.

9. The learned counsel for the petitioner submits that the entire departmental proceeding has been conducted in complete violations of the provisions contained in Rule 17(4) of the Bihar Government Servants (CCA) Rules, 2005, which clearly stipulates that the disciplinary authority shall deliver or cause to be delivered to the Government servant a copy of the articles of charge, such statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the Government Servant to submit, within such time as may be specified, a written statement of his defence and to State whether he desires to be heard in person or not.

10. The learned counsel for the petitioner further submits with memo of charge no list of witnesses was given to



the petitioner, however subsequently, the said error committed by the authorities was rectified by the department vide Memo No. 4934 dated 22.07.2020, whereby a request was made to examine two of the witnesses and the same is impermissible in law. He further submits that the Enquiry Officer, after the matter was against remitted back to him for taking evidences of two witnesses, did not give any opportunity to the petitioner to cross examine the witnesses, which is in violation of provisions contained in Rule 17(3) & (4) of the Bihar Government Servants (CCA) Rules, 2005. This fact will be evident from the second enquiry report also wherein the Enquiry Officer has not mentioned about the evidences of witnesses and only proceeded to record his findings, wherein he found the charges to be partially proved.

11. The learned counsel for the petitioner further submits that after submission of the enquiry report, the disciplinary authority has an option, either to accept the same or to reject the finding of the disciplinary authority and in the event he disagrees with the enquiry report, the disciplinary authority may proceed to issue second show cause to the delinquent and after appraisal of the same, he can proceed to pass the final order. He further submits that the Enquiry Authority cannot fill



up the gap which was not taken care in the first enquiry by directing for *de novo* enquiry and remitting the matter for fresh evidence by examining witnesses. The departmental proceeding was initiated prior to retirement of the petitioner and after his superannuation on 31.01.2019, the same was converted under proceeding Rule 43(B) of the Bihar Pension Rules.

12. The Learned counsel for petitioner in support of his submission refers to and relies on a **judgment dated 19.01.2023 passed in L.P.A. No. 1653 of 2016 (The State of Bihar & ors. Versus Md. Shamim Akhtar & anr.)** by a Hon'ble Division Bench of this court, wherein in paragraph no. 2 it has been held as follows:-

“02. Perusal of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005, it is evident that disciplinary authority has no power to amend the charge at the stage of consideration of inquiring officer's report/finding. The disciplinary authority had option of either accepting or rejecting the finding of the Inquiring Officer's report or in the event of disagreeing with the inquiring officer report or finding. In that event disciplinary authority



Government *Servant*
(Classification, Control and Appeal) Rules, 2005 do not provide for such procedure. In fact, the petitioner in para 25 and 56 of the writ petition has specifically contended that ordering fresh inquiry is bad in law.”

13. The Learned counsel for petitioner refers to and relies on a judgment dated **25.02.2025** passed in **C.W.J.C. No. 12121 of 2023 Praduman Kumar Prasad versus The State of Bihar & Ors.** passed by a Coordinate bench of this court,



wherein paragraph nos. 8,9,10 & 12 it has been held as follows:-

*“8 Perusal of the order dated 25.04.2022 passed by a Division Bench of this Court in **CWJC No 21841 of 2019** clearly shows that it was found that the charge memo was not accompanied by the list of statement of imputation, list of documents and list of witnesses. It was found that there was non-compliance of sub-rule (4) of Rule 17 of the 2005 Rules. Therefore, the petition was allowed by this Court. However, liberty was given to the disciplinary authority to commence the enquiry from the defective stage. The relevant part of the observation made by this Court in the above mentioned case is reproduced herein below:*

"The Disciplinary Authority imposed the penalty of compulsory retirement on 16.04.2019 and it was confirmed by the Appellate Authority on 19.09.2019. Perusal of charge



memo at Annexure '8', it is crystal clear that it is not accompanied by list of statement of imputation, list of documents and list of witnesses which are mandatory requirements in terms of sub-rule (4) of Rule 17 of 2005 Rules. Further it is to be noted that the petitioner has specifically taken the contention against the second show cause notice dated 19.02.2015 in his explanation dated 11.03.2015 contended that the copy of the documents and list of witnesses have not been furnished. Further it is also stated that the petitioner was not permitted to inspect the records. The aforesaid contentions have not been countered by the State Counsel Mr S K Mandal with reference to records. Therefore, perusal of the records, it is evident that there is a non-compliance to sub-rule (4) of Rule 17 of 2005 Rules. On this legal issue, the Disciplinary and Appellate Authority have not apprised the petitioner's



contention in their orders dated 16.04.2019 and 19.09.2019. Thus, the petitioner has made out a prima facie case so as to interfere with the impugned order contained in Memo No 1081 dated 16.04.2019 (Annexure 26) and the order contained to Memo No 141 dated 19.09.2019. Accordingly they are set aside.

Reserving liberty to the Disciplinary Authority to commence the enquiry from the defective stage and proceed to complete the enquiry proceedings within a period of 6 months from the date of receipt of this order."

9. *In the light of the order passed by this Court, the same charge sheet dated 02.03.2013 was again served on the petitioner which transpires from perusal of Annexure P/11. The enquiry officer submitted his report (Annexure P/14). Therefore, second show cause notice was issued against the petitioner through Annexure P/15. On the*



*basis of the objection raised by the petitioner in his reply to the second show cause notice, the impugned order dated 28.06.2023 has been passed by the disciplinary authority. From perusal of the order dated 28.06.2023, it transpires that the disciplinary authority again appointed an enquiry officer as well as the presenting officer. Fresh charge memo along with list of statement of imputation, list of documents and list of witnesses were also enclosed (Annexure P/18) which has not been denied by the respondents in their counter affidavit. Thus, it is quite clear that despite the order of this Court, the disciplinary authority took a decision for conducting a fresh enquiry (de novo enquiry). What would be the power of the disciplinary authority on submission of enquiry report has been dealt with by the Division Bench of this Court in the case of **The State of Bihar***



& Others -Versus- Md Shamim Akhtar & Another
vide judgment dated 19.01.2023 passed in LPA No 1653 of 2016 and it has been held in paragraph 2 of the judgment as follows:

02. *Perusal of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005, it is evident that the disciplinary authority has no power to amend the charge at the stage of consideration of inquiring officer's report/finding, The disciplinary authority had option of either accepting or rejecting the finding of the Inquiring Officer's report or in the event of disagreeing with the inquiring officer report or finding. In that event disciplinary authority has option of issuing of show cause notice to the concerned, person to the extent of disagreeing with the inquiring officer's report or finding and he had option of remanding the matter*



to the inquiring authority to commence the inquiry from the defective stage and complete the process of inquiry or he/she can complete the inquiry. On the other hand, in the present case disciplinary authority proceeded to amend the charge and ordering fresh inquiry. Such procedure is not in consonance to the law for the reason that Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 do not provide for such procedure. In fact, the petitioner in para 25 and 56 of the writ petition has specifically contended that ordering fresh inquiry is bad in law."

10. *In the case of **Ashok Kumar -Versus- State of Bihar & Ors, 2021 (2) BLJ 117**, it has been held at paragraph 9 as under:*

"9. No provision under the Rules contemplates a second departmental inquiry. In case, a Disciplinary Authority notices any serious defect



having crept into the inquiry or some important witnesses could not be examined because of their nonavailability, he could have remitted the matter back to the Enquiring Authority for further inquiry as contemplated under sub-rule (1) of Rule 18 of the Rules."

12 *Thus, law is well settled that after submission of the enquiry report by the enquiry officer, the disciplinary authority has no power or right to start a fresh enquiry. However, vide impugned order 28.06.2023, the disciplinary authority started a fresh enquiry by issuing a fresh charge memo which is impermissible in law."*

14. The Learned counsel for petitioner refers to and relies on a judgment reported in **AIR 1979 SC 1022 (The Union of India versus J. Ahmed)**, wherein the Hon'ble Supreme Court of India observed that *"it is difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would ipso facto constitute misconduct. There may be negligence in performance*



of duty and a lapse in performance of duty or error of judgment in evaluation the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence.”

15. The Learned counsel for petitioner finally refers to and relies on a judgment passed by the Hon’ble Supreme Court of India in **Civil Appeal No. 5128 of 2013 S.P. Malhotra Versus Punjab National Bank & Ors.**, wherein in paragraph no. 8, the Hon’ble Supreme Court of India has held as follows:-

“8. **Kunj Behari Misra** (*supra*) itself was the case where the Disciplinary Authority disagreed with the findings recorded by the Enquiry Officer on 12.12.1983 and passed the order on 15.12.1983 imposing the punishment, and immediately thereafter, the delinquent officers therein stood superannuated on 31.12.1983. In **Kunj Behari Misra** (*supra*), this court held as under:

"19. The result of the aforesaid discussion would be that the



principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

(Emphasis added)

The Court further held as under:

"21. Both the respondents superannuated on 31-12-1983. During the



pendency of these appeals, Misra died on 6-1-1995 and his legal representatives were brought on record. More than 14 years have elapsed since the delinquent officers had superannuated. It will, therefore, not be in the interest of justice that at this stage the cases should be remanded to the disciplinary authority for the start of another innings."

16. Per contra, the learned counsel for the state submits that there is no illegality in the direction contained in Memo no. 4934 dated 22.07.2020, since as per the provisions contained in Rule 18 (1) of the Bihar Government Servants (CCA) Rules, 2005, the disciplinary authority has got power to remit the case to the enquiry authority for further enquiry and report and the enquiring authority has been given liberty to proceed to hold the further enquiry according to the provisions contained in Rule 17 of the Bihar Government Servants (CCA) Rules, 2005.

17. The learned counsel for the State further submits that the Enquiry Officer after conducting a detailed enquiry and after examining the witnesses, found the charges to be partially proved against the petitioner and sent his enquiry report to the disciplinary authority and based on the said enquiry



report, the disciplinary authority has proceeded to award the punishment.

18. The learned counsel for the State further submits that there is no procedural irregularity and illegality in conducting the departmental proceeding and the enquiry report considered the entire evidence available on record. He finally submits that the re-appreciation of evidence is not within the ambit of the writ jurisdiction and the same cannot be done.

19. Having heard the learned counsel for the parties and after going through the records, this Court finds that admittedly while issuing the memo of charge, the list of witnesses was not provided along with the same which is in complete violations of the provisions contained in Rule 17(3) & (4) of the Bihar Government Servants (CCA) Rules, 2005, however as per the provisions contained in Rule 18(1) of the Bihar Government Servants (CCA) Rules, 2005, the same was tried to be rectified, but from the records it does not appears that whether the petitioner was given any opportunity to cross examine the witnesses produced on behalf of the department to substantiate the charges levelled against him. From the enquiry report also it appears that the enquiry officer found the charges to be partially proved against the petitioner.



20. The disciplinary authority while passing the impugned order contained in Memo No. 10600 dated 14.10.2022, without even considering the show cause reply submitted by the petitioner, found the same to be not acceptable and he proceeded to opine that there is dereliction of duty on the part of the petitioner and which is found to be proved and based on the same, he proceeded to award punishment of deduction of 20% of pension of the petitioner for five years under Rule 43(B) of the Bihar Pension Rules, 2005. From a plain reading of the Rule 43(B) of the Bihar Pension Rule it would transpire that:-

“The State Government 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.”

21. Thus it would transpire that the State Government has a right of withholding or withdrawing pension or any part of it whether permanently or for a specified period and the right of ordering the recovery from pension of the whole



or any part of any pecuniary loss caused to the 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 the Government by misconduct or negligence during his service, including service rendered on re-employment after retirement. In the present case, no such finding has been recorded by the Enquiry Officer or the Disciplinary Authority that the petitioner has been found to have committed grave misconduct or any of his action resulted in pecuniary loss to the Department/Government, even then the disciplinary authority proceeded to award the punishment under Rule 43 (B) of the Bihar Pension Rules. Even the Appellate Authority did not appreciate the defence taken by the petitioner in his memo of appeal and proceeded to reject the appeal preferred by the petitioner in a mechanical manner.

22. Accordingly, the impugned order contained in Memo No. 10600 dated 14.10.2022 and Memo No. 13880 dated 22.12.2022 deserves to set aside and are accordingly set aside.

23. Since, during the pendency of the departmental proceeding, the petitioner has already retired, therefore there is no justification in remitting the matter back to the disciplinary authority to proceed afresh in view of different judicial



pronouncements, including the judgment passed by the Hon’ble Supreme Court of India in *Punjab National Bank & Ors. versus Kunj Behari Misra* reported in *AIR 1998 SC 2713*.

24. The respondent authorities are directed to pay the petitioner the entire pension, for which he is entitled and to return the amount of pension which has been deducted by the respondent authorities in terms of order contained in Memo No. 10600 dated 14.10.2022.

25. The entire exercise must be completed within a period of three months from the date of receipt/production of a copy of the order.

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

27. Pending applications, if any, shall also stand disposed of.

(Ritesh Kumar, J)

AjayMishra/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	28.02.2026
Transmission Date	NA

