

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17862 of 2014

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Sujit Kumar S/o Late Krishna Kumar Ambastha R/o Azad Nagar Ganj
Simribakhtiyarpur and Post Office and P.S. - Simribakhtiyarpur, District-
Saharsa.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Commissioner Koshi Division Saharsa, cum Appellate Authority.
3. Sub - Divisional Magistrate, Birpur.
4. Circle Officer Chhatapur.

... .. Respondent/s

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Appearance :

For the Petitioner	:	Mr. Diwakar Prasad Singh, Advocate
For the State	:	Mr. Sanjeet Kumar Singh, A.C. to A.A.G.6

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CORAM: HONOURABLE MR. JUSTICE RITESH KUMAR
ORAL JUDGMENT

Date : 05-05-2026

Heard the learned counsel for the parties.

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

“(i) For a declaration that the entire
departmental proceeding is vitiated on account of
procedural ultra virus, infirmity, violation of
principle of natural justice as such unsustainable.

(ii) For issuance of an appropriate
writ, order, direction or writ in the nature of
certiorari, quashing the order inflicting punishment
of removal from service passed by the respondent
No-1 by order Memo No. 544-2 Dated 23.03.12
(Annexure-14).

(iii) For issuance of an appropriate
writ, order, direction or writ in the nature of
certiorari, quashing the order dated 23.02.13 passed



by Appellate Authority cum Commissioner Koshi Division Saharsa by which the order passed by Disciplinary Authority Cum District Magistrate Supaul was confirmed (Annexure-15).

(iv) For a consequential relief in the nature of appropriate direction Order or writ of mandamus, commanding the respondents to re-instate the petitioner & grant all the consequential benefits treating him in continuous & regular service in the department.”

3. The brief facts, giving rise to the present writ petition, are that the petitioner was appointed and at the relevant time was working as Revenue Karamchari (Rajasva Karamchari) at Chhatapur Block. Vide Letter No.308-2, dated 28.06.2009, a large number of Rajasva Karamchari were transferred from one place to another, including the petitioner, who was transferred from Chhatapur to Raghapur. All the transferred persons were directed to join the new place of posting by 30.06.2009, and in compliance thereof, the petitioner joined at Raghapur Block on 08.07.2009. While the petitioner was working as a Revenue Karamchari (Rajasva Karamchari) under Chhatapur Block, illegal distribution of flood relief work was undertaken and therefore, the petitioner was shifted to Raghapur Block by the order of the competent authority. A three men enquiry committee was constituted under the Chairmanship of Additional Collector to enquire into the



distribution of relief materials during the flood in 2008. The committee, after its enquiry, submitted its report, however it is the case of the petitioner that nothing specific was found against the petitioner. Subsequently, a high level committee was constituted of senior I.A.S. officials. The committee found serious lapses on the part of the Circle Officer, the Circle Inspector, the Anchal Nazir and the Head Assistant, however nothing was found against the petitioner. The committee submitted its report vide Letter No.224, dated 19.01.2010, before the Principal Secretary, Department of Disaster Management, Government of Bihar, Patna. Pursuant thereto, vide Memo No.41-2, dated 18.01.2010, issued under the signature of the District Magistrate, Supaul, the petitioner along with one Ram Jee Prasad Mandal was put under suspension and his Headquarter was fixed at Circle Office, Marona. Subsequently, vide Letter No.481, dated 16.03.2011, issued under the signature of the Sub-divisional Officer, Triveniganj, Supaul, memo of charge was issued against the petitioner, wherein certain charges were levelled against the petitioner. The enquiry officer and the presenting officer were appointed and the enquiry officer vide his Memo No.870-2, dated 31.07.2011, directed the petitioner to appear on 16.08.2011 along with his



reply to the show-cause. It is the case of the petitioner that, although memo of charge was issued on 16.03.2011, but the same was not served upon the petitioner. The same was ultimately served upon the petitioner on 16.08.2011, after initiation of the departmental proceeding when, he made a complaint before the enquiry officer, with regard to non-supply of the memo of charge. Upon the directions given by the enquiry officer to the Circle Officer, Chhatapur-cum-Presenting Officer, the same was finally served. The petitioner submitted his reply to the charge memo on 22.08.2011, in absence of the supporting documents upon which the charge was said to have been issued. During course of the enquiry before the enquiry officer, the presenting officer submitted Memo No.822-2, dated 29.11.2011, wherein he stated that he is satisfied with the explanation/reply submitted by the petitioner and some others and he forwarded the explanation/reply submitted by the petitioner and others, to the enquiry officer. The enquiry officer, after conducting the enquiry, submitted his report before the disciplinary authority, whereby he found the charges levelled against the petitioner to be proved. The disciplinary authority vide his letter contained in Memo No.183-2, dated 10.02.2012, directed the petitioner to file his second show-cause reply,



however it is the case of the petitioner that the enquiry report was not served to the petitioner, either by the enquiry officer or along with the second show-cause notice. He obtained the said enquiry report through his Advocate, at the time of filing his statutory appeal. The petitioner immediately thereafter filed his reply to the second show-cause notice issued to him, wherein he denied all the charges levelled against him and also requested for exonerating the petitioner from the charged levelled against him. The disciplinary authority, i.e., the Collector-cum-District Magistrate, Supaul vide his order contained in Memo No.544-2, dated 23.03.2012, proceeded to dismiss the petitioner from service from the date of issuance of the order and further directed the Circle Officer, Chhatapur to take steps for recovery of the amount defalcated by the petitioner. The petitioner, being aggrieved with the order dated 23.03.2012, passed by the disciplinary authority, proceeded to file statutory appeal before the appellate authority, however the appellate authority, i.e., the Commissioner, Koshi Division, Saharsa by his impugned order dated 23.02.2013, rejected the appeal of the petitioner stating therein that, since the matter is sub-judice before the Vigilance, therefore, it would not be appropriate to take any action in the matter and he did not find any error with the report of the



Collector-cum-District Magistrate, Supaul.

4. The learned counsel for the petitioner submits that the entire departmental proceeding was conducted in complete violation of the provisions contained in Rule 17(3) & (4) of the Bihar C.C.A. Rules, 2005, since along with the memo of charge, no list of documents and witnesses were provided to the petitioner, whom the department intended to rely during course of the departmental proceeding. He further submits that the enquiry report was never served upon the petitioner, rather the same was obtained by the petitioner through his Advocate at the time of filing the statutory appeal. He further submits that, although the presenting officer did not find any fault with the action of the petitioner and some other persons, for which he filed his reply, stating therein that he is satisfied with the explanation submitted by the petitioner and others, even then the enquiry officer in a most mechanical manner without any evidence found the charges to be proved against the petitioner. He submits that the enquiry officer himself assumed the role of the presenting officer and proved the charges on his own.

5. The learned counsel for the petitioner further submits that no opportunity was granted to the petitioner to adduce defence in his favour and even the presenting officer did



not present himself for his examination. He further submits that the enquiry officer relied on the enquiry report of the three men committee and the high level committee, however none of the members of the enquiry committee were produced before the enquiry officer for their oral evidence and no opportunity was granted to the petitioner to cross-examine them. He submits that in absence thereof, the documents, which were relied by the enquiry officer, were not proved by the respective authors. He further submits that similarly situated Head Assistant Mahadev Ram facing similar charges has been given lesser punishment, while the petitioner was terminated from service.

6. The learned counsel for the petitioner further submits that the disciplinary authority in a most mechanical manner, without even considering the reply to the second show-cause notice, submitted by the petitioner and without even appreciating the fact that no witnesses were produced by the presenting officer, to prove the charges levelled against him, passed the impugned order of punishment, whereby the petitioner has been terminated from service. He further submits that even the appellate authority did not consider any of the points raised by the petitioner in his memo of appeal and rejected the appeal filed by the petitioner without any



consideration on the ground that since the matter is sub-judice before the Vigilance, he did not intend to pass any order.

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

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

23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to



why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.”

8. The learned counsel for the petitioner further refers to and relies upon a recent judgment of the Hon’ble Supreme Court of India, reported in **(2010) 2 SCC 772 (State of Uttar Pradesh vs. Saroj Kumar Sinha)**, wherein in paragraph no. 28, the Hon’ble Supreme Court of India has held as follows:

“28. An inquiry officer acting in a quasi-judicial 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.”

9. *Per contra*, the learned counsel appearing on behalf of the Respondent-State submits that the petitioner, while posted as the Revenue Karamchari, committed gross irregularity in distribution of flood relief materials and he has defalcated a huge sum, which caused loss to the State Exchequer. He submits that all the due procedures were followed, while initiating the departmental proceeding and a three men committee was constituted to enquire into the matter. The committee submitted its report, wherein certain irregularities were found. Subsequently, a high level enquiry committee was constituted at the level of the government and the committee submitted its report, wherein certain irregularities were found and pursuant thereto, the petitioner was put under suspension and departmental proceeding was initiated against him. He submits that the departmental proceeding was conducted in accordance with Rule 17 of the Bihar C.C.A. Rules, 2005 and there is no violation of any provisions contained therein.

10. The learned counsel for the State further



submits that the petitioner was given due opportunity to participate in the departmental proceeding and he never raised any objection with regard to any procedure lapse in conducting the departmental proceeding. He never raised any objection with regard to non-production of any witnesses or has never requested the enquiry officer to adduce evidence in his favour. He submits that the enquiry officer, after conducting enquiry, based on the enquiry report submitted by the three men committee and the high level committee, found the charges to be proved against the petitioner and submitted his report before the disciplinary authority. Even the disciplinary authority by a reasoned and speaking order, after considering each and every aspect, including the second show-cause reply submitted by the petitioner, proceeded to dismiss the petitioner from service with immediate effect.

11. Having heard the learned counsel for the parties and after going through the records, it appears that certain charges were levelled against the petitioner for which a departmental proceeding was initiated. The presenting officer and the conducting officer were also appointed. Notices were issued to the petitioner to appear in the departmental proceeding and to submit his reply to the show-cause, which was duly



replied by the petitioner, wherein he denied all the charged levelled against him. It further appears that while issuing memo of charge, no statement of imputation of misconduct or misbehaviour in support of each article of charge was given. Further, no list of witnesses was provided with the memo of charge. During course of the departmental proceeding, the enquiry officer without adducing any evidence and only on the basis of the documents, which were supplied by the presenting officer/department, proceeded to prove the charges against the petitioner. The enquiry officer did not take any pain to verify the authenticity of the documents from their respective authors and not even a single witness turned up before the enquiry officer to support the case of the prosecution. Even the presenting officer by his written explanation/reply stated that he is satisfied with the explanation submitted by the petitioner and some others, however the enquiry officer on his own presumption found the charge to be proved against the petitioner. The petitioner was never provided with a copy of the enquiry report and this fact was not disputed by the Respondent-State. Further, the disciplinary authority, i.e., the Collector-cum-District Magistrate, Supaul without uttering a single word about the explanation submitted by the petitioner,



proceeded to pass the order of dismissal against the petitioner. The entire departmental proceeding was conducted in complete violation of the provisions contained in Rule 17(3), (4) and (14) of the Bihar C.C.A. Rules, 2005. The departmental proceeding itself is vitiated on the ground that none of the witnesses supported the case of the department. No witness turned up to support the case of the prosecution or the documents, the enquiry report was not supplied to the petitioner and even the presenting officer did not support the case of prosecution.

12. From the consideration made above, this Court is of the opinion that the impugned order contained in Memo No.544-2, dated 23.03.2012 and the order dated 23.02.2013, passed in Service Appeal No.155/2012, by the Collector-cum-District Magistrate, Supaul and the Commissioner, Koshi Division, Saharsa respectively deserves to be set aside and are accordingly, set aside. The matter is remitted back to the disciplinary authority to proceed afresh from the defective stage, i.e., from the issuance of memo of charge and to conclude the entire proceeding within a period of six months from the date of receipt/production of a copy of the order.

13. With the aforementioned observation and direction, the present writ petition is allowed. Pending



application(s), if any, shall also stand disposed of.

14. After the order was dictated in Court, it was informed at Bar that during pendency of the present writ petition, the petitioner has superannuated in the year 2023.

(Ritesh Kumar, J.)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.05.2026
Transmission Date	NA

