

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5989 of 2022

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Suresh Prasad Malakar Son of Late Guru Sahai Mali, Resident of Village- Rani Hatti, Post Office - Kadirganj, Police Station- Nawadah, District- - Nawadah, at present residing at Flat No. - C/5, Block - A, Shambhawi Enclave, Bhootnath Road, B.H.Colony, Police Station- Agamkuan, District- Patna - 800026.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Revenue and Land Reforms Department, Bihar, Patna.
2. The Additional Secretary, Revenue and Land Reforms Department, Bihar, Patna.
3. The Deputy Secretary, Revenue and Land Reforms Department, Bihar, Patna.
4. The Under Secretary to the Government, Bihar, Patna.
5. The Commisioner, Magadh Division, Gaya.
6. The District Magistrate, Gaya.
7. The Additional Collector, Departmental Enquiry-Cum-Conducting Officer, Gaya.
8. The Land Reforms Deputy Collector, Gaya.
9. The Appellate Authority and Revisional Tribunal-Cum-Hon'ble Minister, Revenue and Land Reforms Department, Government of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sanjeet Kumar, Advocate

For the Respondent/s : Mr.Raj Kishore Roy (GP 18)

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 28-01-2026

Heard learned counsel for the petitioner and learned
counsel for the State.

2. The present writ petition has been filed seeking



relief setting aside the order dated 05.01.2022 passed by the Appellate Authority and the Revisional Tribunal-cum-Hon'ble Minister, Revenue and Land Reforms Department, Government of Bihar, Patna (Annexure -P/1), whereby the review petition filed by the petitioner has been rejected. A further prayer has been made for setting aside the order of dismissal dated 07.09.2015, issued vide Memo No. 1041 (Annexure-P/2), by which the petitioner was dismissed from service under the provisions of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as the "*Rules of 2005*"). The petitioner has also prayed for quashing of the Memo of Charge contained in Memo No. 185 dated 25.04.2014 (Annexure- P/3), on the ground that the same was issued in gross violation of the Bihar Framing of Charge-Sheets against Government Servants Regulations, 2011 (hereinafter referred to as the "*Regulations of 2011*"). Further, the petitioner has prayed for reinstatement in service with all consequential benefits, including payment of arrears of salary and other admissible dues, to which the petitioner would be entitled upon setting aside of the aforesaid impugned orders.

3. Learned counsel for the petitioner submits that the petitioner was initially appointed to the post of Assistant



Consolidation Officer on the recommendation of the then Bihar Subordinate Services Selection Board, and subsequently, during the course of his service, he was promoted to the post of Circle Officer. While the petitioner was posted as Circle Officer, Manpur, Gaya, a criminal case, namely Vigilance P.S. Case No. 66 of 2013 dated 08.10.2013, was registered against him under Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, on the allegation of having accepted a bribe of Rs. 5,000/- from one Anup Lal Mehta. Learned counsel further submits that the petitioner was arrested in the said case and was placed under suspension vide order dated 05.12.2013, as contained in Memo No. 976, with effect from 08.10.2013. Thereafter, the petitioner was granted bail vide order dated 24.01.2014 passed in Criminal Miscellaneous No. 3324 of 2014. Upon his release from custody, the petitioner's suspension was revoked with effect from 29.01.2014. However, since the petitioner was allegedly caught red-handed while accepting a bribe of Rs. 5,000/-, he was again placed under suspension vide order dated 05.03.2014, as contained in Memo No. 94, issued by the Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna (Annexure-P/7 to the writ petition). Thereafter, the Under Secretary to the



Government issued a letter bearing Letter No. 185 dated 25.04.2014, along with Prapatra-‘K’, calling upon the petitioner to submit his show-cause reply within 15 days in respect of the three charges mentioned therein.

4. Learned counsel further submits that the said Prapatra-‘K’, which is in the nature of a Memo of Charge, is wholly defective and not in conformity with the Regulation of 2011. It is further submitted that the petitioner submitted his defence, categorically denying all the allegations levelled against him. The petitioner also appeared before the Enquiry Officer, who, upon conclusion of the enquiry, found the first and third charges partially proved, while the second charge was held to be fully proved.

5. Learned counsel for the petitioner further submits that a second show-cause notice was issued to the petitioner, whereby he was called upon to submit his response with respect to the enquiry report. Thereafter, an order of punishment was imposed upon the petitioner. Learned counsel further submits that, being aggrieved by the said order of punishment, the petitioner approached this Hon’ble Court; however, the writ petition was disposed off with liberty to the petitioner to avail the remedy of review. Pursuant thereto, the petitioner preferred



a review application before the Appellate Authority -cum- Revisional Tribunal- cum- Hon'ble Minister, Revenue and Land Reforms Department, Government of Bihar, Patna. The review application was decided vide order dated 05.01.2022, whereby the order of punishment was affirmed. Thereafter, the petitioner has assailed the order of punishment dated 07.09.2015, the review order dated 05.01.2022, as well as the Memo of Charge dated 25.04.2014, in the present writ petition.

6. Learned counsel for the petitioner submits that the charge memo dated 25.04.2014 itself is bad in law and not in accordance with the then applicable Regulations of 2011. In support of his contention, learned counsel for the petitioner places reliance upon the judgment rendered in the case of ***Raj Kumar v. State of Bihar and Others***, reported in **2024 (2) BLJ 499**, and submits that in the said case, although the charge was found to be in violation of the Regulations of 2017 and not the Regulation of 2011 but Hon'ble Court categorically held that when the charge memo itself is defective, then any subsequent proceeding initiated on the basis of such defective charge memo would vitiate the entire departmental proceeding. He further submits that, in the present case, the charge memo is not in accordance with the Regulations of 2011 and, therefore, any



subsequent proceeding conducted on the basis thereof is liable to be set aside as the entire departmental proceeding stands vitiated.

7. Learned counsel for the petitioner further submits that he has annexed the entire order-sheet of the Enquiry Officer, which clearly demonstrates that not a single witness was examined during the course of the enquiry. It is further submitted that the Presenting Officer did not participate in the day-to-day proceedings and appeared only on the last date of the enquiry. According to learned counsel, since the Presenting Officer failed to discharge his statutory role, the enquiry stood vitiated on this ground alone and, consequently, the enquiry report ought not to have been relied upon. In support of the said contention, reliance has been placed upon the judgment rendered in *Md. Giaaul Hak v. State of Bihar and Others* in CWJC No. 25445 of 2019.

8. Learned counsel for the petitioner further submits that another aspect, which goes to the very root of the matter and is fatal to the departmental proceeding, is that at the time of issuance of the second show cause notice, the Disciplinary Authority did not record any disagreement or variation with the findings of the Enquiry Officer. It is submitted that although it is



well within the power of the Disciplinary Authority to differ from or vary the findings of the Enquiry Officer, such disagreement must be expressly recorded with reasons. According to learned counsel, in the present case, Charge Nos. 1 and 2 were only partially proved by the Enquiry Officer, whereas Charge No. 2 alone was proved. However, prior to passing the order of punishment, the Disciplinary Authority neither recorded any finding disagreeing with the Enquiry Officer nor assigned reasons for treating Charge Nos. 1 and 2 as proved in entirety, and yet proceeded to impose punishment. This action, according to him is wholly illegal and bad in law. In support of the aforesaid submissions, learned counsel for the petitioner has relied upon the judgments rendered by this Hon'ble Court in *Nageshwar Sharma v. State of Bihar and Others*, reported in 2024 (1) BLJ 486, and *Anil Kumar Lal v. State of Bihar and Others*, reported in 2025 (4) PLJR 213, and submits that where the charge memo does not contain a list of witnesses and where the charge memo as well as the enquiry report are prepared without leading any evidence, there is a gross violation of Rule 17(3) of the CCA Rules, 2005 rendering the entire disciplinary proceeding unsustainable in the eyes of law.



9. Learned counsel for the petitioner further emphasizes that a detailed reply to the second show cause notice was duly submitted; however, the same was neither considered by the Disciplinary Authority nor by the Reviewing Authority. In view of the aforesaid facts and circumstances, it is submitted that the entire departmental proceeding suffers from serious procedural infirmities and, therefore, stands vitiated and is liable to be set aside.

10. Learned counsel for the State, on the other hand, submits that there is neither any procedural lacuna nor any violation of the principles of natural justice, nor is there any allegation of disproportionate or exorbitant punishment in the present case. He submits that the charge memo was issued strictly in accordance with the Regulations of 2011. It is further submitted that after receipt of the charge memo, the petitioner duly participated in the enquiry proceedings. Prior to commencement of the enquiry, the petitioner submitted his show cause reply, which was duly considered, and thereafter the final enquiry report was submitted by the Enquiry Officer in the presence of the Presenting Officer.

10.1 Learned counsel for the State further submits that upon due consideration of the charge memo, the enquiry



report, the second show cause notice, and the reply filed by the petitioner, the petitioner was found guilty of the charges levelled against him. Consequently, upon proof of the charges, the Disciplinary Authority decided to impose the punishment of dismissal from service, which was inflicted vide order dated 07.09.2015, as contained in Memo No. 1041, under Rules 14, 17 and 18 of the CCA Rules, 2005. It is further submitted that the petitioner preferred an appeal before the Appellate Authority; however, the Appellate Authority did not find any merit in the appeal/review and, accordingly, the same was dismissed.

11. In response to the submissions advanced by learned counsel for the respondent-State, learned counsel for the petitioner submits that a supplementary affidavit has been filed, wherein the judgment of acquittal dated 25.07.2024, passed in Special Case No. 68 of 2013 by the learned Special Judge, Vigilance, Patna, has been brought on record as Annexure-P/26. The said judgment arises out of Vigilance P.S. Case No. 66 of 2013, registered under Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, which constitutes the very genesis of the present departmental proceeding. He further submits that the petitioner has been acquitted in the said vigilance case after full contest and,



therefore, this crucial aspect also deserves due consideration by this Hon'ble Court.

12. After hearing the parties and upon scrutiny of the charge memo, this Court, in the context of the contention that the charge memo was not issued in accordance with Rule 17(3) read with the Regulations of 2011, finds that the allegations contained in a charge memo are required to be proved by evidence. Such evidence may be of two kinds, namely, oral and documentary. In certain cases, the charges may be proved by both oral and documentary evidence, while in some cases, the charges may be proved either by oral evidence alone or by documentary evidence alone, depending upon the nature of the allegations. The sufficiency, admissibility, and probative value of such evidence are matters to be tested during the course of the enquiry.

13. Merely because the State proposes to rely upon documentary evidence to prove the charges, without indicating oral evidence at the stage of issuance of the charge memo, it cannot be said that the charge memo is defective. Under the Regulations of 2011, there is no prescribed *pro forma* mandating a format similar to that provided under any subsequent regulations. Therefore, on this ground, this Court does not



accept the contention of the petitioner that the charge memo suffers from any inherent defect. Consequently, the prayer for quashing the charge memo is hereby rejected.

14. Proving of allegations by virtue of evidence either oral or documentary is a matter of judicial scrutiny about which the petitioner has raised his contentions in the second show-cause reply. It transpires from the record that neither the Disciplinary Authority nor the Appellate Authority has taken into consideration the reply submitted by the petitioner in response to the second show-cause notice. It further transpires that the Reviewing Authority has also failed to consider the second show-cause reply altogether. Therefore, on the limited ground of non consideration of the second show-cause reply, this Court hereby sets aside the order dated 07.09.2015, issued vide Memo No. 1041 (Annexure-P/2) passed by the Principal Secretary, Revenue and Land Reforms Department, Bihar, Patna (Annexure/ P/2) and order dated 05.01.2022 passed by the Appellate Authority-cum-Revisional Tribunal-cum-Hon'ble Minister, Revenue and Land Reforms Department, Government of Bihar, Patna (Annexure-P/1) and remands the matter to the Disciplinary Authority to consider the case afresh and to pass a reasoned and speaking order, after due consideration of all the



points raised in the second show-cause reply. In case the petitioner has been exonerated, the Disciplinary Authority shall also decide the entitlement of the petitioner i.e. payment of his arrear and other dues but in case the Disciplinary Authority passed order against the petitioner then in that case the petitioner shall be at liberty to challenged the same before the Appellate Authority/Revisional Authority. The petitioner shall be at liberty to raise all other permissible grounds, except the charge.

15. With the aforesaid observations and directions, the writ petition stands disposed of.

(Dr. Anshuman, J)

Ashwini/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	30/01/2026
Transmission Date	

