

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6480 of 2022

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Suresh Prasad Son of Jagu Prasad Resident of Village- Meskaur, P.S.-
Meskaur, District- Nawada.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, General Administration Department, Patna.
2. The Additional Secretary, General Administration Department, Patna.
3. The Deputy Secretary, General Administration Department, Patna.
4. The Under Secretary, General Administration Department, Patna.
5. The Divisional Commissioner, Bhagalpur Division, Bhagalpur-cum-Enquiry Officer.
6. The District Magistrate, Jamui-cum Presenting Officer.
7. The Secretary, Bihar Public Service Commission, Bailey Road, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Indu Bhushan, Advocate
For the Respondent/s	:	Dr. Mankeshwar Tiwari, AC to AAG-3
For the BPSC	:	Mr. Sanjay Pandey, Advocate
		Mr. Nishant Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 29-01-2026

Heard learned Counsel for the petitioner, learned
Counsel for the Bihar Public Service Commission and learned
Counsel for the State.

2. The present writ petition has been filed for
quashing the impugned order of penalty issued vide Memo
No.15068 dated 15.12.2021 as contained in Annexure-16 with
subsequent prayer to quash the review order contained in Memo



No.3980 dated 15.03.2022 (Annexure-18). The further prayer has been made to quash the enquiry report issued vide letter No.262 dated 09.09.2021 as contained in Annexure-14.

3. Learned Counsel for the petitioner submits that the report of the Enquiry Officer dated 09.09.2021, the order passed by the Disciplinary Authority dated 15.12.2021 and order passed by Review Authority dated 15.03.2022 are bad-in-law due to the reason that it was the specific direction in the resolution contained in Memo No.9673 dated 13.10.2020 that for the purpose of departmental proceeding the Presenting Officer shall be appointed by the District Magistrate. Counsel submits that in this regard the enquiry report which is Annexure-14, the disciplinary order (Annexure-16) and the reviewing order (Annexure-18). It is not clear that who is the Presenting Officer in the present departmental proceeding. Counsel submits that any departmental proceeding conducted in absence of Presenting Officer is bad-in-law as in this regard the Hon'ble Division Bench of Patna High Court in the case of **Upendra Pandit Vs. the State of Bihar and Others** vide order dated 05.09.2023 passed in L.P.A. No.507 of 2017 observe that any punishment without appointment of Presenting Officer was a clear and serious lapse of the provision of Rule 17 of the Bihar



Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as the 'CCA Rules, 2005'). Therefore, Counsel for the petitioner submits that the present departmental proceeding has been conducted in absence of the Presenting Officer and, hence, it is absolutely bad and fit to be set aside.

4. Learned Counsel for the State, on the other hand, submits that there is no substance in the argument of learned Counsel for the petitioner. He submits that charge memo has been issued completely in accordance with the CCA Rules, 2005 as well as in the light of Regulation of 2017. He further submits that the Enquiry Officer has well discussed the charges and found all four charges well proved against him. Learned Counsel for the State further submits that the second show-cause has been issued after receiving the enquiry report of the Enquiry Officer, Disciplinary Authority held punishment against the petitioner of Censure for the year 2017-18 and withholding of two increments of pay without cumulative effect. He further submits that the said punishment is a minor punishment and in the review petition his punishment has been affirmed. He submits that the judgment on which the petitioner relied **Upendra Pandit** (supra) shall not help the petitioner in



any manner due to the reason that from the document (Annexure-17) there was an appointment of Presenting Officer whereas the said judgment says that if any proceeding conducted without appointment of Presenting Officer then only the proceeding shall vitiate. He submits that here in the present case, the presenting officer has been appointed, therefore, the judgment shall not help in any manner.

5. After hearing the parties and going through the document available on record, this Court has put specific question to the Counsel for the State that if there is a Presenting Officer appointed in the departmental proceeding then whether the said Presenting Officer had participated in the said proceeding. Counsel for the State has fairly submits that from the document it transpires that the Presenting Officer has been appointed but there is no whisper about the Presenting Officer's role either in the enquiry proceeding or in the departmental proceeding or before the Reviewing Authority. This Court after hearing this answer, reached on the conclusion that yes appointment of the Presenting Officer is there, but the said Presenting Officer has not participated in the departmental proceeding meaning thereby the present proceeding has run in the absence of the Presenting Officer and in this view of the



matter, the Court is of the firm view that the the ratio laid down in **Upendra Pandit** (supra) shall absolutely apply in this case. The ratio of the said Division Bench judgment in paragraph-11 reads as under:

“11. In the opinion of the Court, Rule 17 (3) and (4) of the Rules of 2005 are very clear when they provide that where it is proposed to hold an inquiry against the government servant under the said Rules, the disciplinary authority shall draw up or cause to be drawn up the substance of the imputation of misconduct or misbehaviour in support of each article of charge, the same shall contain a statement of relevant facts, list of documents and list of witnesses by which the articles of charges are proposed to be sustained. Thus, non supply of the list of documents and the list of witnesses to the appellant in the instant case on which the disciplinary authority proposed to sustain the charges levelled against the appellant in the disciplinary proceeding as also the proceeding being conducted without appointment of a Presenting Officer was a clear and serious lapse of the provisions of Rule 17 of the Act of 2005. The requirement of Rule 17 (3) and (4) not having been fulfilled, the order of punishment of



dismissal from service of the appellant cannot be sustained. Both the orders of dismissal dated 29.12.2005 and the order dated 30.04.2008 rejecting the Patna High Court L.P.A No.507 of 2017 dt.05-09-2023 7/8 appeal preferred by the appellant are both set aside. The order of the learned Single Judge also cannot be sustained and is hereby set aside.”

6. In this background, this Court reached on the conclusion that enquiry report, the disciplinary order and the review order all are bad-in-law and, hence, all orders issued vide Memo No.15068 dated 15.12.2021 (Annexure-16), Memo No.3980 dated 15.03.2022 (Annexure-18) and letter No.262 dated 09.09.2021 (Annexure-14) are hereby set aside.

7. Accordingly, the present writ petition stands allowed.

(Dr. Anshuman, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.01.2026
Transmission Date	

