

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20275 of 2013

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Ram Lal Sah Son Of Late Prabhu Sah Resident Of Village and P.O- Sirsa
Biran, P.S.- Lalganj, District- Vaishali, Bihar

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Secretary, Department Of Agriculture, Government Of Bihar
3. The Joint Agriculture Director, Tirhut Division, Muzaffarpur, Bihar
4. The Sub- Divisional Agriculture Officer, Hajipur Vaishali, Bihar

... .. Respondent/s

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Appearance :

For the Petitioner	:	Mr. Omkar Kumar, Advocate Mr. Kaushal Kishor, Advocate Ms. Jyoti Kumari, Advocate
For the State	:	Mr. Vivek Prasad, G.P.7 Mrs. Manisha Singh, A.C. to G.P.7 Ms. Mita Kumari, A.C. to G.P.7

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CORAM: HONOURABLE MR. JUSTICE RITESH KUMAR
ORAL JUDGMENT
Date : 23-06-2026

Heard the learned counsel for the parties.

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

“a. For the issuance of the writ in the nature of Certiorari to quash the **Office Order No. - 165 / Muzaffarpur dated 31.07.2013** issued under the signature of **Respondent No.-3 [contained in Annexure – 7 to the petition]**.

b. For directing the respondents concerned to reinstate the petitioner to the post held by him just prior to the impugned order, as contained in the previous paragraph. Further, the respondents be directed to pay the petitioner all financial benefits accruing to him while in service.



c. For issuing the writ of Mandamus thereby directing the Respondents concerned to provide all the retiral benefits with interest, as early as possible, to the petitioner, in the event of his retirement on 30.11.2013.

d. For any other relief / reliefs, order / orders, direction / directions as may be deemed fit and proper.”

FACTS OF THE CASE

3. The brief facts, giving rise to the present writ petition, are that the petitioner was a Jeep Driver in the office of the Sub-Divisional Agriculture Office (General), Hajipur at Vaishali. A criminal case bearing Lalganj P.S. Case No.48 of 1996, dated 03.05.1996 was registered against the petitioner and others under Sections 364 and 34 of the Indian Penal Code. The petitioner surrendered before the court of the learned Chief Judicial Magistrate, Hajipur on 18.04.2001 and was put under suspension on the same day vide Office Order No.27 contained in Memo No.365 dated 24.05.2001 issued under the signature of the Joint Director of Agriculture, Tirhut Division, Muzaffarpur. The petitioner was enlarged on bail and his suspension was revoked w.e.f. 23.05.2001 i.e. the date of his release on bail vide Memo No.911, dated 09.10.2001, issued under the signature of the Joint Director of Agriculture, Tirhut Division, Muzaffarpur. Subsequently, the petitioner was again taken into custody on



23.07.2007 in connection with Sessions Trial No.294 of 2003, arising out of Lalganj P.S. Case No.48 of 1996. Immediately thereafter, vide Memo No.1303 dated 23.10.2007, issued under the signature of the Joint Director of Agriculture, Tirhut Division, Muzaffarpur, the petitioner was removed from service under the provisions contained in Article 311(2)(b) of the Constitution of India w.e.f. 23.07.2007 i.e. the date on which the petitioner was taken into custody on account of his conviction. The petitioner preferred criminal appeal before this Hon'ble Court, which was numbered as Criminal Appeal (SJ) No.810 of 2007 and vide order dated 29.11.2007, passed in Criminal Appeal (SJ) No.810 of 2007, the petitioner was granted bail. Pursuant thereto, vide Memo No.216 dated 21.02.2008, issued under the signature of the Joint Director of Agriculture, Tirhut Division, Muzaffarpur, the petitioner was reinstated in service w.e.f. 29.11.2007 and it was directed that after final decision in Criminal Appeal (SJ) No.810 of 2007, decision will be taken with regard to the period the petitioner spent in jail i.e. 23.10.2007 to 28.11.2007. Since the petitioner was to retire on 30.11.2013, therefore the respondent no.4 i.e. the Sub-Divisional Agriculture Officer, Hajipur at Vaishali vide his Letter No.294 dated 11.07.2013 addressed to the Joint Director,



Agriculture, Tirhut Division, Muzaffarpur, by giving reference to the case of the petitioner, requested him to give guidelines with regard to grant of post retirement benefits to the petitioner, who is going to retire on 30.11.2013. Immediately thereafter, by the impugned order contained in Memo No.1357 dated 31.07.2013, issued under the signature of the Joint Director, Agriculture, Tirhut Division, Muzaffarpur, it was notified that after proper consideration, the petitioner is being removed from services and decision with regard to payment of post retirement benefits of the petitioner will be taken after decision in Criminal Appeal (SJ) No.810 of 2007, which has been filed by the petitioner before this Hon'ble Court. Being aggrieved with the order contained in Memo No.1357, dated 31.07.2013, the petitioner preferred the present writ petition.

SUBMISSIONS ON BEHALF OF THE PETITIONER

4. The learned counsel appearing on behalf of the petitioner submits that the impugned order of punishment dated 31.07.2013 has been passed by the respondent authorities in gross violation of the provisions contained in Article 311(b) of the Constitution of India and Rule 20 of the Bihar C.C.A. Rules, 2005. He submits that even if the authorities took recourse to the provisions contained in Article 311(b) of the Constitution of



India, it was incumbent upon the authorities to record reason for not holding or the reasons in writing that it is not reasonably practicable to hold inquiry in the matter. He further submits that in terms of the provisions contained in Rule 20 of the Bihar C.C.A. Rules, 2005, it was incumbent upon the respondent authorities to at least provide an opportunity to the petitioner of making representation on the penalty proposed to be imposed, before any order is passed in terms of Clause (i) of Rule 20 of the Bihar C.C.A. Rules, 2005. He submits that in the present case, no such procedure has been adopted and the authorities concerned without even issuing any notice to the petitioner or without even conducting enquiry, have proceeded to terminate the services of the petitioner on the basis of his conviction in a criminal case. The learned counsel appearing on behalf of the petitioner submits that the respondents were not authorized to remove the petitioner from service in the manner, in which the impugned order of punishment dated 31.07.2013 has been passed. He further submits that the removal of the petitioner, four months prior to his date of retirement, without any notice or show cause, was passed only with a view to deny his post retirement benefits and the impugned order dated 31.07.2013 was passed in complete violation of the principles of natural



justice.

5. The learned counsel appearing on behalf of the petitioner refers to and relies on a recent judgment of the Hon'ble Supreme Court of India in the case of Manohar Lal vs. Commissioner of Police & Ors., arising out of Civil Appeal No.13860 of 2024, reported in 2026 INSC 234, wherein the Hon'ble Supreme Court of India, while considering the celebrated judgment of the Hon'ble Supreme Court of India in the case of Tulsiram Patel & Ors., reported in (1985) 3 SCC 398 and relying upon paragraph nos.101, 133 and 138 of the judgment of the Hon'ble Supreme Court of India in the case of Tulsiram Patel (supra) in paragraph nos.16, 36, 37, 38, 39 and 40 has held as follows:

“16. It is trite law that the decision of the appointing authority on the issue of recording reasons in writing on its satisfaction as to why holding an inquiry is not reasonably practicable may be subject to judicial review under Article 226 by High Court or under Article 32 by the Supreme Court. This Court in the Constitution Bench judgment rendered in the case of Tulsiram Patel (Supra) reiterated the legal positions and explained the same. The High Court in the impugned judgment has relied upon paragraph 101 of the said judgment. Learned senior counsel for the appellant contended before us that subsequent paragraphs, in particular, paragraphs 130, 133 and 138, which enunciates the law while interpreting Article 311(2) of the



Constitution of India, have not been considered. Therefore, for ready reference, we reproduce all the aforesaid paragraphs as thus:

“101. Not only, therefore, can the principles of natural justice be modified but in exceptional cases they can even be excluded. There are well-defined exceptions to the *nemo judex in causa sua* rule as also to the *audi alteram partem* rule. The *nemo judex in causa sua* rule is subject to the doctrine of necessity and yields to it as pointed out by this Court in *J. Mohapatra & Co. v. State of Orissa* [(1984) 4 SCC 103 : (1985) 1 SCR 322, 334-5] . So far as the *audi alteram partem* rule is concerned, both in England and in India, it is well established that where a right to a prior notice and an opportunity to be heard before an order is passed would obstruct the taking of prompt action, such a right can be excluded. This right can also be excluded where the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provisions warrant its exclusion; nor can the *audi alteram partem* rule be invoked if importing it would have the effect of paralysing the administrative process or where the need for promptitude or the urgency of taking action so demands, as pointed out in *Maneka Gandhi case* [(1978) 1 SCC 248 : (1978) 2 SCR 621, 676] at p. 681. If legislation and the necessities of a situation can exclude the principles of natural justice including the *audi alteram partem* rule, a fortiori so can a provision of the



Constitution, for a constitutional provision has a far greater and all-pervading sanctity than a statutory provision. In the present case, clause (2) of Article 311 is expressly excluded by the opening words of the second proviso and particularly its keywords “this clause shall not apply”. As pointed out above, clause (2) of Article 311 embodies in express words the audi alteram partem rule. This principle of natural justice having been expressly excluded by a constitutional provision, namely, the second proviso to clause (2) of Article 311, there is no scope for reintroducing it by a side-door to provide once again the same inquiry which the constitutional provision has expressly prohibited. Where a clause of the second proviso is applied on an extraneous ground or a ground having no relation to the situation envisaged in that clause, the action in so applying it would be mala fide, and, therefore, void. In such a case the invalidating factor may be referable to Article 14. This is, however, the only scope which Article 14 can have in relation to the second proviso, but to hold that once the second proviso is properly applied and clause (2) of Article 311 excluded. Article 14 will step in to take the place of clause (2) would be to nullify the effect of the opening words of the second proviso and thus frustrate the intention of the makers of the Constitution. The second proviso is based on public policy and is in public interest and for public good and the Constitution-makers who inserted it



in Article 311(2) were the best persons to decide whether such an exclusionary provision should be there and the situations in which this provision should apply.

130. The condition precedent for the application of clause (b) is the satisfaction of the disciplinary authority that “it is not reasonably practicable to hold” the inquiry contemplated by clause (2) of Article 311. What is pertinent to note is that the words used are “not reasonably practicable” and not “impracticable”. According to the Oxford English Dictionary “practicable” means “Capable of being put into practice, carried out in action, effected, accomplished, or done; feasible”. Webster's Third New International Dictionary defines the word “practicable” inter alia as meaning “possible to practice or perform: capable of being put into practice, done or accomplished: feasible”. Further, the words used are not “not practicable” but “not reasonably practicable”. Webster's Third New International Dictionary defines the word “reasonably” as “in a reasonable manner: to a fairly sufficient extent”. Thus, whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required by clause (b). What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. It is not possible to



enumerate the cases in which it would not be reasonably practicable to hold the inquiry, but some instances by way of illustration may, however, be given. It would not be reasonably practicable to hold an inquiry where the government servant, particularly through or together with his associates, so terrorizes, threatens or intimidates witnesses who are going to give evidence against him with fear of reprisal as to prevent them from doing so or where the government servant by himself or together with or through others threatens, intimidates and terrorizes the officer who is the disciplinary authority or members of his family so that he is afraid to hold the inquiry or direct it to be held. It would also not be reasonably practicable to hold the inquiry where an atmosphere of violence or of general indiscipline and insubordination prevails, and it is immaterial whether the concerned government servant is or is not a party to bringing about such an atmosphere. In this connection, we must bear in mind that numbers coerce and terrify while an individual may not. The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority. Such authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of this that clause (3) of Article 311 makes the decision of the disciplinary authority on this question final. A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or



arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the government servant is weak and must fail. The finality given to the decision of the disciplinary authority by Article 311(3) is not binding upon the court so far as its power of judicial review is concerned and in such a case the court will strike down the order dispensing with the inquiry as also the order imposing penalty. The case of Arjun Chaubey v. Union of India [(1984) 2 SCC 578 : 1984 SCC (L&S) 290 : (1984) 3 SCR 302] is an instance in point. In that case, the appellant was working as a senior clerk in the office of the Chief Commercial Superintendent, Northern Railway, Varanasi. The Senior Commercial Officer wrote a letter to the appellant calling upon him to submit his explanation with regard to twelve charges of gross indiscipline mostly relating to the Deputy Chief Commercial Superintendent. The appellant submitted his explanation and on the very next day the Deputy Chief Commercial Superintendent served a second notice on the appellant saying that his explanation was not convincing and that another chance was being given to him to offer his explanation with respect to those charges. The appellant submitted his further explanation but on the very next day the Deputy Chief Commercial Superintendent passed an order dismissing him on the ground that he was not fit to be retained in service. This Court struck down



the order holding that seven out of twelve charges related to the conduct of the appellant with the Deputy Chief Commercial Superintendent who was the disciplinary authority and that if an inquiry were to be held, the principal witness for the Department would have been the Deputy Chief Commercial Superintendent himself, resulting in the same person being the main accuser, the chief witness and also the judge of the matter.

138. Where a government servant is dismissed, removed or reduced in rank by applying clause (b) or an analogous provision of the service rules and he approaches either the High Court under Article 226 or this Court under Article 32, the court will interfere on grounds well established in law for the exercise of power of judicial review in matters where administrative discretion is exercised. It will consider whether clause (b) or an analogous provision in the service rules was properly applied or not. The finality given by clause (3) of Article 311 to the disciplinary authority's decision that it was not reasonably practicable to hold the inquiry is not binding upon the court. The court will also examine the charge of mala fides, if any, made in the writ petition. In examining the relevancy of the reasons, the court will consider the situation which according to the disciplinary authority made it come to the conclusion that it was not reasonably practicable to hold the inquiry. If the court



finds that the reasons are irrelevant, then the recording of its satisfaction by the disciplinary authority would be an abuse of power conferred upon it by clause (b) and would take the case out of the purview of that clause and the impugned order of penalty would stand invalidated. In considering the relevancy of the reasons given by the disciplinary authority the court will not, however, sit in judgment over them like a court of first appeal. In order to decide whether the reasons are germane to clause (b), the court must put itself in the place of the disciplinary authority and consider what in the then prevailing situation a reasonable man acting in a reasonable way would have done. The matter will have to be judged in the light of the then prevailing situation and not as if the disciplinary authority was deciding the question whether the inquiry should be dispensed with or not in the cool and detached atmosphere of a court-room, removed in time from the situation in question. Where two views are possible, the court will decline to interfere.”

36. It is relevant to note that applying the judgment of **Tulsiram Patel** (Supra), various cases have been decided by this Court indicating what may be a sufficient reason and how and in what circumstances holding a departmental enquiry is not reasonably practicable, and the scope of judicial review in such cases. In the judgement of this Court in **Ex. Constable Chhote Lal** (Supra) the Court held as thus:

“4. Having examined the rival



contentions of the parties and bearing in mind the law laid down by this Court indicating the circumstances under which the inquiry under Article 311(2), second proviso, clause (b) of the Constitution can be dispensed with and applying the same to the facts and circumstances and the reasons advanced by the authorities in arriving at the decision, we have no hesitation to come to the conclusion that the order dispensing with the departmental inquiry is not in accordance with law and necessarily the order of dismissal cannot be sustained. We accordingly set aside the order of dismissal passed against the appellant and permit the departmental authority to hold an inquiry if so desired, in accordance with law and come to the conclusion in the said proceeding.

5. Normally, an order of dismissal on being set aside, the employee can claim back wages, but in this case we are not inclined to grant back wages to the employee concerned, more so, in view of the nature of charges against him.”

37. In the case of **Tarsem Singh** (Supra) this Court has observed that the power of dispensing with the constitutional remedy of a delinquent, should not be exercised lightly or arbitrarily, or out of ulterior motive with the intent to avoid holding an enquiry. In the said case in paras 10 and 14, this Court observed as thus:

“10. It is now a well-settled principle of law that a constitutional right conferred upon a delinquent cannot be dispensed with lightly or arbitrarily or out of



ulterior motive or merely in order to avoid the holding of an enquiry. The learned counsel appearing on behalf of the appellant has taken us through certain documents for the purpose of showing that ultimately the police on investigation did not find any case against the appellant in respect of the purported FIR lodged against him under Section 377 IPC. However, it may not be necessary for us to go into the said question.

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14. In view of the fact that no material had been placed by the respondents herein to satisfy the Court that it was necessary to dispense with a formal enquiry in terms of proviso (b) appended to Clause (2) of Article 311 of the Constitution of India, we are of the opinion that the impugned orders cannot be sustained and they are set aside accordingly. The appellant is directed to be reinstated in service. However, in view of our aforementioned findings, it would be open to the respondents to initiate a departmental enquiry against the appellant if they so desire. Payment of back wages shall abide by the result of such enquiry. Such an enquiry, if any, must be initiated as expeditiously as possible and not later than two months from the date of communication of this order.”

38. This Court in the case of **Risal Singh** (Supra), emphasised that while assigning the reason in writing it is imperative that such reason must be plausible and based on definite material. In the said case, the Court relied upon on para 130 on



the judgment of **Tulsiram Patel** (Supra) and referring the same concluded in paras 9 and 10 as thus:

“9. Tested on the touchstone of the aforesaid authorities, the irresistible conclusion is that the order passed by the Superintendent of Police dispensing with the inquiry is totally unsustainable and is hereby annulled. As the foundation founders, the order of the High Court giving the stamp of approval to the ultimate order without addressing the lis from a proper perspective is also indefensible and resultantly, the order of dismissal passed by the disciplinary authority has to pave the path of extinction.

10. Consequently, we allow the appeal and set aside the order passed by the High Court and that of the disciplinary authority. The appellant shall be deemed to be in service till the date of superannuation. As he has attained the age of superannuation in the meantime, he shall be entitled to all consequential benefits. The arrears shall be computed and paid to the appellant within a period of three months hence. Needless to say, the respondents are not precluded from initiating any disciplinary proceedings, if advised in law. As the lis has been pending before the Court, the period that has been spent in Court shall be excluded for the purpose of limitation for initiating the disciplinary proceedings as per rules. However, we may hasten to clarify that our observations herein should not be construed as a mandate to the authorities to initiate the



proceeding against the appellant. We may further proceed to add that the State Government shall conduct itself as a model employer and act with the objectivity which is expected from it. There shall be no order as to costs.”

39. In the case of **Reena Rani** (Supra) this Court has again applied the law laid down in the judgment of **Tulsiram Patel** (Supra) and **Jaswant Singh** (Supra) and held that the order of dismissal did not disclose the reasons explaining why it was not reasonably practicable to hold a regular departmental enquiry and applicability of the proviso in such a case is not justified. The Court in para 7 in the said judgment observed as under: -

“7. In the order of dismissal, the Superintendent of Police has not disclosed any reason as to why it was not reasonably practicable to hold regular departmental enquiry. The learned Additional Advocate General fairly stated that the order of dismissal does not contain the reasons as to why it was not reasonably practicable to hold regular departmental enquiry against the appellant. He also admitted that no other record has been made available to him which would have revealed that the Superintendent of Police had recorded reasons for forming an opinion that it was not reasonably practicable to hold regular departmental enquiry for proving the particular charge(s) against the appellant.”

40. On overall analysis of the intent of Article 311(2), it is vivid that an employee holding a post in Union or State ought not to be dismissed or



removed by an authority subordinate to the one by which he was appointed. It is further specified that a person shall be dismissed or removed or reduced in rank after an inquiry supplying the charges if any against him and giving a reasonable opportunity of being heard in respect of those charges. The applicability of the said clause is restricted in a situation wherein his conduct led to his conviction of criminal charges or where the authority empowered who dismissed, removed or reduced in rank records reason in writing upon satisfaction that it is not 'reasonably practicable' to hold an enquiry against him. In addition, where such power has been exercised by the President or the Governor it may be in the interest of security of the State or if not expedient to hold such an enquiry, then exceptional power under clause (c) of second proviso to Article 311 ought to be exercised.

SUBMISSIONS ON BEHALF OF THE RESPONDENT STATE

6. *Per contra*, the learned counsel appearing on behalf of the Respondent-State, while referring to the counter affidavit filed on behalf of the respondents, submits that since the petitioner was made an accused in Sessions Trial No.294 of 2003, arising out of Lalganj P.S. Case No.48 of 1996, he was put under suspension and later on after his conviction for 10 years in the said case, he was terminated from service. Subsequently, when he was granted bail during pendency of the criminal appeal, which the petitioner has filed before this Hon'ble Court, the petitioner was reinstated in service. It is



further submitted that the petitioner was again terminated from service by the impugned order dated 31.07.2013 and the order impugned has been issued in terms of the prescribed rules/provisions. It is submitted that Clause-9 of the Letter No.10158, dated 23.08.1963, issued by the State Government, provides for dismissal/demotion of any government servant, without initiating departmental proceeding, if the government servant is held guilty in the criminal offence by a competent court. It is also submitted that, since in the present case, the petitioner has been convicted for 10 years by a competent court, therefore there is no infirmity in passing the impugned order, which has been passed by the Joint Director, Agriculture, Tirhut Division, Muzaffarpur after considering each and every aspect of the matter. It is further submitted that the admissible retiral dues of the petitioner, like, Group Insurance, Provident Fund and Leave Encashment etc. has been directed to be paid vide Letter No.2119, dated 27.11.2013. The learned counsel for the State further submits that in terms of Rule 43 of the Bihar Pension Rules, the State Government/competent authority has the right to withdraw any part of the pension or deduct the same, if the person is held to be guilty in a serious criminal offence. In the present case, the petitioner has been held guilty in a case for



kidnapping and has been punished with imprisonment of 10 years. The learned counsel for the State finally submits that the order impugned passed by the concerned authority is in accordance with law and there is no infirmity in the same.

CONCLUSION

7. Having considered the rival submissions and after going through the records, it appears that while the petitioner was discharging his duties, he was made an accused in Lalganj P.S. Case No.48 of 1996, which gave rise to Sessions Trial No.294 of 2003. After completion of trial, the competent court of the learned Additional District & Sessions Judge, Fast Track Court No.-III, Vaishali at Hajipur vide judgment dated 23.07.2007 convicted the petitioner and others by sentencing them to undergo rigorous imprisonment for 10 years along with a fine of Rs.10,000/- each for the offences under Section 364 read with 34 of the Indian Penal Code. The petitioner filed criminal appeal before this Hon'ble Court. The criminal appeal filed by the petitioner was numbered as Criminal Appeal (SJ) No. 810 of 2007 and vide order dated 29.11.2007 passed in the said criminal appeal, the petitioner was directed to be enlarged on bail. It appears that on account of lodging of the criminal case, the petitioner was put under suspension, which was later



on revoked, upon the release of the petitioner from custody. After his conviction in the criminal case, the petitioner was terminated from service vide Memo No.216 dated 21.02.2008, issued under the signature of the Joint Director, Agriculture, Tirhut Division, Muzaffarpur. Subsequently, when the petitioner was granted bail by the Appellate Court i.e. this Hon'ble Court in Criminal Appeal (SJ) No.810 of 2007, the termination order of the petitioner, which was issued on 23.10.2007 was subsequently recalled and the petitioner was reinstated in service w.e.f. 29.11.2007 vide order dated 21.02.2008. It further appears from the records that when the petitioner was going to superannuate, the drawing and disbursing officer, requested for guidelines from the higher authorities with regard to payment of the post retirement benefits to the petitioner. Pursuant to the letter by the drawing and disbursing officer, the petitioner was again dismissed from service by the impugned order dated 31.07.2013. It appears that prior to issuance of the order dated 23.10.2007 or 31.07.2013, no notice whatsoever was issued to the petitioner or the petitioner was not granted any opportunity of filing any show cause, that why he be not removed from service. The order dated 23.10.2007 was issued under the provisions of Article 311(2)(b) of the Constitution of India and



so far the impugned order dated 31.07.2013 is concerned, the authorities concerned did not indicate the provision of law, under which the order of termination has been passed. Even assuming that the order of termination was passed under Article 311(2)(b) of the Constitution of India, even then the authorities were required to give reason that why it was not practicable to hold enquiry in the matter or why no show-cause is required to be issued to the petitioner. Further, even in terms of Rule 20 of the Bihar C.C.A. Rules, 2005, which is a special procedure in certain cases, the government servant is required to be given an opportunity making representation on the penalty proposed to be imposed before any order is made in a case under Clause (i) of Rule 20 of the Bihar Service Code. Article 311, which deals with dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State is quoted hereinbelow:

311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.-(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

[(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except



after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges [***]:

[Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply--]

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.]

8. Similarly Rule 20 of the Bihar C.C.A. Rules, 2005

is also quoted hereinbelow:



20. Special procedure in certain cases.- Notwithstanding anything contained in Rules 17 to 19-

(i) where any penalty is imposed on a Government Servant on the ground of conduct which has led to his conviction on a criminal charge, or

(ii) where the disciplinary authority is satisfied for reasons to be recorded by him in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these Rules, or

(iii) where the Government is satisfied that in the interest of the State, it is not expedient to hold any inquiry in the manner provided in these Rules,

the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit :

Provided that the Government Servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case under clause (i) :

Provided further that the Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this Rule.

9. From plain reading of both the provisions, it would transpire that before issuance of the order imposing penalty, the authorities concerned are required to record reason for not conducting an enquiry and the reason/impediment in non-conduct of the enquiry. The authorities were required to issue notice to the petitioner before taking action against him, however in the present case, no such enquiry was done or notices were ever issued to the petitioner. Even the recent judgment of the Hon'ble Supreme Court of India in the case of



Manohar Lal (supra) after considering the judgment of Tulsiram Patel (supra) prescribes that in case such a decision invoking the extraordinary power is taken by the competent authority within the parameter as discussed, the scope of judicial review is available to the Constitutional Courts wherein the reasons as assigned for satisfaction of the authority must be reasonable, valid, justified and in writing. In the present case, no such exercise has been carried out by the respondent authorities, before termination of the petitioner from service vide Memo No.1357, dated 31.07.2013.

10. From the consideration made above, this Court has got no hesitation to hold that the impugned order contained in Memo No.1357, dated 31.07.2013 has been passed in complete violation of the principles of natural justice and therefore it deserves to be set aside and is accordingly set aside. It has been informed at the Bar that Criminal Appeal (SJ) No.810 of 2007 is still pending for adjudication before this Hon'ble Court and therefore being conscious of the fact that the petitioner has already superannuated on 30.11.2013, the matter is remitted back to the respondent authorities to proceed in the matter in accordance with law after giving due opportunity to the petitioner. The entire exercise must be completed within a



period of four months from the date of receipt/production of a copy of the order.

11. With the aforesaid observations and directions, the present writ petition is allowed.

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

(Ritesh Kumar, J.)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.06.2026
Transmission Date	NA

