

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12297 of 2021

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Ajit Kumar Choudhary Son of Sri Ganesh Choudhary Resident of Village-
Salempur Suturkhana, P.S.-Muffasil, P.O.-Bank, District-Munger.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Home Department, Government of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Additional Director General of Police, Bihar Military Police, Patna.
4. The Inspector General of Police, Bihar Military Police (North), Patna.
5. The Deputy Inspector General of Police, Bihar Military Police, North Ranger, Muzaffarpur.
6. The Commandant, Bihar Military Police-9, Jamalpur, District-Munger.
7. The Superintendent of Police, District-Jamui.
8. The Additional Superintendent of Police, Headquarters, District-Jamui.
9. The Commander, C-Company, Bihar Military Police-9, Camp-Sikandara P.S., District-Jamui.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ashok Kumar Choudhary, Sr. Adv. Mr. Akshansh Ankit, Adv. Mr. Raj Kumar Choudhary, Adv.
For the Respondent/s	:	Mr. Shailesh Kumar, AC to GP-5

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT

Date : 17-07-2026

Heard Mr. Ashok Kumar Choudhary, learned Senior Advocate duly assisted by Mr. Akshansh Ankit, learned Advocate for the petitioner and Mr. Shailesh Kumar, learned AC to GP-5.

2. The petitioner has invoked the extraordinary prerogative writ jurisdiction of this Court for the following reliefs:-



“a) To quash appellate order issued by Appellant Authority (Respondent No. 5) vide Memo No. 347 dated 21.03.2020 as contained in Memo No. 891 dated 07.05.2020 [Annexure P7] whereby and whereunder appeal of the Petitioner was rejected and order of dismissal passed in the Disciplinary Proceeding was upheld in a most mechanical and arbitrary manner without following the procedure prescribed under the relevant Rules or complying with the principles of natural justice.

b) To quash order of punishment as contained in Order No. 963/2019 dated 18.09.2019 [Annexure P5] passed by the Respondent No. 6 whereby and whereunder Petitioner was dismissed from service in a most mechanical and arbitrary manner without following the procedure prescribed under the relevant Rules or complying with the principles of natural justice.

c) For a direction upon the Respondents reinstate the Petitioner and grant all consequential benefits including payment of salary, other benefits and continuity in service.

d) To pass any other order/orders in shape of a consequential relief to which the Petitioner may be found to be legally entitled to in the facts and circumstances of the instant case at hand.”

3. The brief facts of the case as culled out from the materials available on record are that the petitioner was initially appointed on 17.12.1993 on the post of Constable. Subsequently, he was transferred to Bihar Military Police in



1997 and was later posted as Constable Driver in the year 2002. The petitioner was further promoted to the post of Driver Hawaldar in 2010, and lastly, while he was working as Driver Hawaldar in Bihar Military Police-9 at C-Company, Camp-Sikandara P.S., District-Jamui, on account of certain allegations based on a video clip which went viral on social media, the petitioner along with others were placed under suspension vide Memo No. 3085 dated 06.10.2018. It is alleged that on 02.10.2018, the petitioner and one Naresh Kumar (Hawaldar) was seen extorting money from truck drivers in connivance with other members of patrolling party.

4. A preliminary inquiry was conducted at the behest of the Deputy Superintendent of Police (Headquarters), Jamui, and upon being found *prima facie* substance in the allegation of extorting money, duly corroborated with the video footage, a formal departmental proceeding was initiated against the petitioner. A memo of charge dated 16.11.2018 was served upon the petitioner containing imputation that the petitioner was indulged in collecting illegal money while being posted in C-Company under Sikandara P.S. as Driver Hawaldar.

5. The Deputy Superintendent of Police, Bihar Military Police, Jamalpur, was appointed as Enquiry Officer,



and the Sub-Inspector of Police has been appointed as the Presenting Officer. On receipt of the memo of charge, the petitioner entered his appearance and submitted his written defense to the Enquiry Officer, refuting all the allegations. During the departmental enquiry, oral evidence of several witnesses were taken in support of the allegation, and finally, upon completion of the enquiry, an enquiry report has been submitted on 17.08.2019, whereby the charges were said to be proved. The disciplinary authority thereupon issued a second show-cause notice dated 29.08.2019; on receipt thereof, the petitioner submitted a detailed reply to the second show-cause. The disciplinary authority, on being found dissatisfied with the second show-cause explanation, vide Order No. 963/2019 dated 18.09.2019, dismissed the petitioner from service and further held that for the period of suspension, only subsistence allowance shall be paid to the petitioner.

6. The petitioner being aggrieved by the aforesaid order of dismissal dated 18.09.2019, preferred an appeal before the respondent No. 5, bringing to his notice the error which has crept into the disciplinary proceeding as well as his detailed defense. However, the same came to be rejected vide Memo No. 891 dated 07.05.2020.



7. Learned Senior Advocate Mr. Ashok Kumar Choudhary, while assailing the impugned order, primarily submitted that in the entire service period, the petitioner has received as many as Forty (40) rewards for his sincere discharge of duty and has not received any major punishment, till the impugned order came to be passed. The preliminary enquiry, besides, it was conducted behind the back of the petitioner without giving him any intimation of any such enquiry. The very initiation of the departmental proceeding is based upon a video made by an unknown person on 02.10.2018. But neither the video clip/footage was made the part of documentary evidence, nor the person who shot the video has been named in the list of witnesses, by which and by whom, the articles of charges are proposed to be sustained.

8. It is further contended by the learned Senior Advocate that the proper procedure as enumerated in Rule 17 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as, "Rules, 2005) was not followed while issuing the memo of charge which clearly mandates that the substance or the imputations of misconduct or misbehaviour as a definite and distinct article of charges must be provided to the delinquent. The Enquiry Officer



also failed to follow the rules of disciplinary proceedings and violated the principles of natural justice. Though the Enquiry Officer examined several witnesses, however, the petitioner has not been allowed an opportunity to cross-examine them. The entire departmental proceeding was based upon the unverified video, the authenticity of which had never been tested either scientifically or by any agency/person.

9. The Enquiry Officers submitted a report *ipsi dixit* in a perverse and perfunctory manner. None of the witnesses have stated that they had actually seen the occurrence. Rather, they have stated that from the video clip, it appeared that the petitioner along with one Naresh Kumar were found talking to the truck drivers. The truck driver, who was the star witness, he has also not been examined. Besides, the department has failed to consider that with respect to such incidents, neither any complaint has been made nor any recovery was made from the petitioner.

10. The disciplinary authority has also completely abdicated the legal role which needs to be mandatorily performed in conducting such quasi-judicial enquiry and in fact performed an empty formality by approving the entire enquiry report without discussing the defense of the petitioner nor



assigned any reasons for the rejection of the defense raised on behalf of the petitioner. The appellate authority also failed in discharge of its duty, as no reason has been disclosed, as to why the grounds of appeal did not find favour. Besides, it is complete non-speaking and mechanical, not showing any application of mind.

11. To strengthen his submissions, reliance has also been placed on the decisions rendered by a co-ordinate Bench of this Court in *Bharat Prasad Yadav Vs. State of Bihar & Ors.*, (2021) 3 PLJR 473 as also in case of *Sonu Kumar Vs. State of Bihar & Ors.*, (2021) 4 PLJR 485.

12. Per contra, learned Advocate for the State refuting the afore-referred contention has submitted that during departmental proceeding, altogether eleven witnesses were examined in presence of the petitioner and moreover, as per his convenience, cross-examination was also done. Most of the witnesses identified the petitioner in video clip and supported the charges. After recording the deposition of the witnesses, the petitioner was extended sufficient opportunity to produce witness in support of his claim. But the petitioner did not produce any witness. Hence, the Conducting Officers submitted the enquiry report giving specific finding that the petitioner was



involved in extorting money from the truck driver. Bare reading of the enquiry report, it is apparent that the Presenting Officer succeeded in proving the allegation. The disciplinary authority being agreed with the opinion of the Conducting Officer inflicted the punishment of dismissal by order dated 18.09.2019. Moreover, there is no error in the impugned order of punishment. The appeal preferred by the petitioner before the Deputy Inspector General of Police, Muzaffarpur, upheld the order of dismissal.

13. Learned Advocate for the State further urged that the viral video was duly verified by the Deputy Superintendent of Police and the witnesses during the course of enquiry, identified the petitioner and furthermore, the petitioner admitted the factum that in the viral video, he is present showing his own money. Thus, the fact that in viral video, the petitioner is present has not been denied. Hence, the correctness of the video clip stood verified. The petitioner has never asked for the copy of video clip in course of enquiry and in absence thereof, no prejudice has been caused to him. On these grounds, prayer has been made that the present writ petition is fit to be rejected.

14. This Court has carefully heard the learned Senior Advocate/Advocates for the respective parties and meticulously



perused the materials available on record. It is pertinent to note that charge of corruption in a disciplinary proceeding requires to be proved to the hilt as it brings civil as well as criminal consequences upon the employee concerned. He would be liable to be prosecuted and would also be liable to suffer severest penalty awardable in such cases. Therefore, such a grave charge of quasi-criminal nature was required to be proved beyond any shadow of doubt and to the hilt. In a case of such nature, there cannot be any other punishment than dismissal. The amount misappropriated may be small or large; it is the act of misappropriation that is relevant. [Vide ***Union of India & Ors. Vs. Gyan Chand Chattar, (2009) 12 SCC 78; U.P. State Road Transport Corporation Vs. Vinod Kumar, (2008) 1 SCC 115.***]

15. This Court is also conscious of the settled position and has no doubt that the High Court under Article 226 of the Constitution of India would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the Enquiry Officer as a matter of course. The Court further cannot sit in appeal over those findings and assume the role of the appellate authority. But it has rightly been held by the Hon'ble Supreme Court in ***Kuldeep Singh Vs. Commissioner of Police & Ors., (1999) 2 SCC 10*** that it does not mean that in no



circumstance can the Court interfere. The power of judicial review available to the High Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein, if there was no reason to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictates of the superior authority.

16. The proposition of law that a delinquent facing a departmental enquiry is entitled to have all the relevant statements, documents and other materials to enable him to have a reasonable opportunity to defend himself in the departmental enquiry against the charges has been reinforced by the Hon'ble Supreme Court in *State of Punjab Vs. Bhagat Ram, (1975) 1 SCC 155* wherein the Court has ruled that it is unjust and unfair to deny the government servant copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges levelled against the government servant. Unless the statements are given to the government servant, he will not be able to have an effective and useful cross-examination.

17. The exclusive and specific charge levelled against



the petitioner is based upon a video clip. Now, in such circumstances, the question would arise that as to whether non-furnishing of the video clip, which forms part of the material relied upon in the departmental proceedings to the delinquent employee constitutes a gross violation of natural justice and Rule 17(3) and (4) of the Rules, 2005. To answer the issue aforementioned, this court deems it worth benefiting to refer a decision rendered by the Hon'ble Apex Court in the case of ***Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal & Ors., (2020) 7 SCC 1***, especially paragraph numbers 60, 61, and 84, which are noted hereinbelow:-

“60. It may also be seen that the person who gives this certificate can be anyone out of several persons who occupy a “responsible official position” in relation to the operation of the relevant device, as also the person who may otherwise be in the “management of relevant activities” spoken of in sub-section (4) of Section 65-B. Considering that such certificate may also be given long after the electronic record has actually been produced by the computer, Section 65-B(4) makes it clear that it is sufficient that such person gives the requisite certificate to the “best of his knowledge and belief”. [Obviously, the word “and” between knowledge and belief in Section 65-B(4) must be read as “or”, as a person cannot testify to the best of his knowledge and belief at the same time.]



61. We may reiterate, therefore, that the certificate required under Section 65-B(4) is a condition precedent to the admissibility of evidence by way of electronic record, as correctly held in *Anvar P.V.* [*Anvar P.V. v. P.K. Basheer*, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] , and incorrectly “clarified” in *Shafhi Mohammad* [*Shafhi Mohammad v. State of H.P.*, (2018) 2 SCC 801 : (2018) 2 SCC 807 : (2018) 2 SCC (Civ) 346 : (2018) 2 SCC (Civ) 351 : (2018) 1 SCC (Cri) 860 : (2018) 1 SCC (Cri) 865] . Oral evidence in the place of such certificate cannot possibly suffice as Section 65-B(4) is a mandatory requirement of the law. Indeed, the hallowed principle in *Taylor v. Taylor* [*Taylor v. Taylor*, (1875) LR 1 Ch D 426] , which has been followed in a number of the judgments of this Court, can also be applied. Section 65-B(4) of the Evidence Act clearly states that secondary evidence is admissible only if led in the manner stated and not otherwise. To hold otherwise would render Section 65-B(4) otiose.

84. But Section 65-B(1) starts with a non obstante clause excluding the application of the other provisions and it makes the certification, a precondition for admissibility. While doing so, it does not talk about relevancy. In a way, Sections 65-A and 65-B, if read together, mix up both proof and admissibility, but not talk about relevancy. Section 65-A refers to the procedure prescribed in Section 65-B, for the purpose of proving the contents of electronic records, but Section 65-B speaks entirely about the preconditions for admissibility. As a result, Section 65-B



places admissibility as the first or the outermost checkpoint, capable of turning away even at the border; any electronic evidence, without any enquiry, if the conditions stipulated therein are not fulfilled.”

18. The memo of charge admittedly does not contain the video clip based upon which the department initiated to prove the charges, nor the person who had shot the video, has been produced as a witness. Besides, no one has made a complaint against the petitioner with regard to extorting money or accepting bribe from truck drivers.

19. This Court has also carefully examined the statement of the witnesses. The witness, Sri Lalbabu Yadav, Deputy Superintendent of Police, Jamui, merely supported his report dated 02.10.2018 and asserted that Cook Shankar Chaudhary and Rajendra Paswan identified that the person in the video clip is the member of C Company. The witness, Sri Jai Shankar Mishra, deposed that the Deputy Superintendent of Police, Jamui, enquired the matter in his presence. Witness Sri Pramod Kumar has asserted that he saw the video and identified the petitioner and one Naresh Prasad, who was in civil dress. Similarly, Sri Suman Jha supported his statement and admitted the presence of the petitioner at the time of occurrence. Likewise, Sri Naresh Prasad and Sri Rajesh Kumar, Sri Aman



Kumar, Sri Sujeet Kumar and Sri Shankar Chaudhary identified the petitioner in the video clip. So far Sri Rajendra Paswan is concerned, this witness accepted his signature over the Letter No. 588/C and, as such, he was formal in nature. Sri Munna Jha was also the witness. On the basis of whose statements, other letters were marked as exhibits.

20. Upon discussion of the statement of the witnesses, what is evident is, that none of the witnesses have said that he had seen the petitioner while accepting the bribe or extorting money. But stated only with regard to identification of the petitioner in video clip with co-delinquent Hawaldar Naresh Prasad.

21. In absence of the video clip, which is not the part of the memo of charge, when the witnesses have not supported the charge of extorting money from a truck driver, in the opinion of this Court, the link between the charge and the finding of guilt is completely missing. There is no confrontation with regard to the position of law that the yardstick which is adopted in the departmental proceeding to prove the charges is based upon preponderance of possibilities and not to be proved beyond its reasonable duty. But that does not absolve the Enquiry Officer to assign the reason, which certainly demonstrate as to



how he reached to the conclusion of guilt.

22. In the case of ***Bharat Prasad Yadav*** (supra) on which reliance has been placed by learned Senior Advocate for the petitioner, a video clip has become viral on WhatsApp, in which the petitioner was seen drinking liquor leading to institution of the FIR as well as departmental proceeding, that finally culminated into punishment of dismissal. The learned co-ordinate Bench while finding serious lapse in the proceeding categorically observed that the enquiry report only speaks about the viral video on WhatsApp and nothing more and as far as the CD is concerned, the same has not been proved during the course of the enquiry by resorting to the procedure established by law, as such is inadmissible by way of evidence, as per the Evidence Act, 1892. The Court further observed that neither the maker of the video clip, has been examined by the prosecution as a witness nor his mobile has been recovered, much less exhibited and moreover, no eyewitness to the alleged incident has been examined by the prosecution in the aforesaid departmental inquiry, resulting in the entire inquiry proceedings having been rendered nugatory on account of no evidence being available on record to substantiate the allegations leveled against the petitioner, besides the entire inquiry proceeding is resorted



upon surmises and conjectures.

23. Similarly, in the case of **Sonu Kumar** (supra), wherein the delinquent was also seen as consuming alcohol in a video clip, which had become viral leading to institution of FIR as well as initiation of a departmental proceeding against him, and that also ended in the penalty of his dismissal. The Court after considering the submissions held that it is the case of no evidence to substantiate the allegation against the petitioner of consumption of alcohol and placing reliance upon the decision of **Bharat Prasad Yadav** (supra) held in paragraph numbers 15, 16 and 17 as follows:-

“15. I have carefully perused the materials on record and I have also considered the rival submissions made on behalf of the parties. This is not in dispute that a video clip which had become viral in which the petitioner was seen consuming adequate akin to alcohol was the basis for initiation of enquiry and subsequent action against the petitioner. From the First Information Report, it appears that the Sub Inspector of Police-cum-Station House Officer, Supaul, had required one Deonanandan Das to enquire into the allegation arising out of video clip getting viral. The said Deonanandan Das, during that enquiry, had allegedly found the petitioner drinking alcohol in a glass with a bottle filled with alcohol present in front of him. The said Deonanandan Das appears to be the only person who had allegedly seen the



petitioner consuming something in the glass. Deonanandan Das was not examined as witness for the department to prove the allegation. No evidence was led before the Inquiring Authority that there was alcohol in the said bottle and what the petitioner was drinking was alcohol. It is an admitted position that no breath analyzer test was conducted nor blood sample of the petitioner was taken for chemical examination to substantiate the allegation that the petitioner had consumed alcohol.

16. In the aforesaid background, I find substance in the submission made on behalf of the petitioner that it is a case of no evidence to substantiate the allegation against the petitioner of consumption of alcohol. He has rightly placed reliance on a co-ordinate Bench decision rendered in the case of Bharat Prasad Yadav (supra) whereby and whereunder, taking note of cited Supreme Court's decision in case of Roop Singh Negi v. Punjab National Bank reported in (2009) 2 SCC 570 and Kuldeep Singh v. The Commission of Police reported in (1999) 2 SCC 10, order imposing punishment has been interfered with in similar circumstance.

17. The issue of evidentiary value of electronic evidence in the present matter does not arise as there was no such evidence led during the departmental enquiry in support of the charge framed against the petitioner. In such view of the matter, I am of the considered opinion that the department miserably failed to bring home the charge against the petitioner that he was consuming alcohol or was in possession of alcohol, in the absence of cogent



evidence adduced by the department during the departmental enquiry.”

24. It would also be worth benefiting to refer a decision passed by the Hon’ble Supreme Court in the case of ***Chandrama Tewari Vs. Union of India, 1987 Supp SCC 518***, where the Court while emphasizing the principle of natural justice reinforced that:-

“4.The procedure at the enquiry must be consistent with the principles of natural justice. Principles of natural justice require that the copy of the document if any relied upon against the party charged should be given to him and he should be afforded opportunity to cross-examine the witnesses and to produce his own witnesses in his defence. If findings are recorded against the government servant placing reliance on a document which may not have been disclosed to him or the copy whereof may not have been supplied to him during the enquiry when demanded, that would contravene principles of natural justice rendering the enquiry, and the consequential order of punishment illegal and void. These principles are well settled by a catena of decisions of this Court. We need not refer to them. However, it is not necessary that each and every document must be supplied to the delinquent government servant facing the charges, instead only material and relevant documents are necessary to be supplied to him. If a document even though mentioned in the memo of charges is not relevant to the charges or if it is not



referred to or relied upon by the enquiry officer or the punishing authority in holding the charges proved against the government servant, no exception can be taken to the validity of the proceedings or the order. If the document is not used against the party charged the ground of violation of principles of natural justice cannot successfully be raised. The violation of principles of natural justice arises only when a document, copy of which may not have been supplied to the party charged when demanded is used in recording finding of guilt against him.”

25. After going through the above referred decisions and upon careful examination of the memo of charge vis-a-vis enquiry report, this court is of the firm opinion that the very document/material, which form the basis of the charge is the relevant document/material and withholding of the same from the delinquent amounts not only to arbitrary action, but also colourable exercise of the power, vested in the prosecution. Non supply of such document/material is bound to cause serious prejudice to the delinquent. Further taking up the facts of this case that once the entire charge of extorting money is rested upon a video clip, the authenticity of the same must be verified scientifically and the copy of which must be produced to the delinquent and, as such, any inaction on the part of the respondent would certainly go to the root of fairness and failed to withstand the test of Article 14 of the Constitution of India.



26. Accordingly, this Court answers the issue that non-furnishing of video clip which forms the part of foundational material and having relied upon in the departmental proceeding to the delinquent employee, in absence of any witnesses to support the charge, *prima facie* constitutes a gross violation of natural justice and the provisions of Rule 17(3) and (4) of the Rules 2005.

27. Once this Court has come to the conclusion that the enquiry report suffers from perversity and lacking any evidence to reach the conclusion of guilt, the order of the disciplinary authority concurring finding of Enquiry Officer and inflicting the punishment of dismissal also hit by the vice of illegality and without application of mind, besides violative of principles of natural justice. Accordingly, the order of dismissal as contained in Letter No. 963/2019 dated 18.09.2019 as well as the appellate order issued under Memo No. 347 dated 21.03.2020, communicated vide Memo No. 891 dated 07.05.2020, also held to be unsustainable in law and are hereby set aside.

28. The writ petition stands allowed.

29. Since the impugned orders have already been set-aside, the petitioner shall be entitled to get all the consequential



benefits, keeping in mind the law laid down by the Hon’ble Apex Court in the case of *Deepali Gundu Surwase Vrs. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) & Ors., (2013) 10 SCC 324*, preferably within a period of eight weeks, from the date of receipt/production of a copy of this order.

30. There shall be no order as to cost.

31. The office is directed to ensure that the record of the departmental proceeding be handed over to the counsel for the State.

(Harish Kumar, J)

shivank/-

AFR/NAFR	NAFR
CAV DATE	07.07.2026
Uploading Date	18.07.2026
Transmission Date	NA

