

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5303 of 2017

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Kaushal Kumar Prasad son of late Anjani Kumar Prasad resident of Sheo Shankar Complex, near Shashi Complex, Exhibition Road, Police Station - Kotwali, District - Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar through Principal Secretary, Social Welfare Department, Patna, Bihar.
2. The Divisional Commissioner, Patna Division, Patna.
3. The Director, I.C.D.S. , Patna.
4. The Joint Secretary, Social Welfare Department, Patna.
5. The Deputy Secretary, Social Welfare Department, Patna.
6. The Joint Director, Social Welfare Department, Patna.
7. The I.T. Manager, Social Welfare Department, Patna.
8. The District Magistrate, Gaya.
9. The Accountant General, Bihar Veer Chand Patel Marg, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajendra Nath Sinha, Advocate
For the State	:	Mr. Gyan Prakash Ojha, GA-7
		Mr. Abhinav Ashok, AC to GA-7
For the Accountant General :		Mr. Arun Kumar Arun, Advocate

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
C.A.V JUDGMENT

Date : 14-05-2026

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

2. The petitioner has filed the instant application challenging the order of punishment dated 15.3.2012 passed under the signature of the Joint Director, Headquarter, Social Welfare Department, whereby the petitioner was imposed with a punishment of (i) downgrading of pay by one Grade-pay and



reverting the same to basic pay; (ii) the petitioner would not get any enhancement of salary for the next five (5) years and; (iii) the petitioner would not be paid any amount for the period of suspension besides the subsistence allowance.

3. The petitioner has also prayed for setting aside the modified order of punishment dated 27.7.2012 whereby the petitioner was imposed with the following punishment (i) downgrading of the salary of the petitioner by one Grade-pay to the basic pay; (ii) stoppage of one increment payable from November, 2012 with cumulative effect and; (iii) No amount would be payable besides the subsistence allowance for the period of suspension.

4. The petitioner has also challenged the order dated 21.2.2017 passed by the Principal Secretary, Social Welfare Department, Bihar whereby the appeal preferred by the petitioner was rejected.

5. The case of the petitioner in brief is that while posted as the District Programme Officer in Gaya, he was served with the memo of charge in *Prapatra-ka* on 13.6.2009 which related to different irregularities found in three *Anganwadi* Centres. The petitioner filed his reply on 23.5.2011 and the enquiry proceeded which ended in the



Conducting Officer submitting his enquiry report dated 31.10.2011. In his report, while the first charge was found to be partly proved, the second charge was found to be proved.

6. The petitioner was served with a second show cause on 11.1.2012 along with a copy of the enquiry report to which the petitioner filed his reply on 22.1.2012. The respondents came out with an order of punishment dated 15.3.2012 as stated above.

7. In the meantime, the petitioner retired in November, 2012.

8. After retirement of the petitioner, the order of punishment was modified by order dated 27.7.2012 passed by the Joint Secretary.

9. The appeal preferred by the petitioner was rejected by the Principal Secretary by his order dated 21.2.2017.

10. It is the order of punishment dated 15.3.2012, the modified order of punishment dated 27.7.2012 and the order dated 21.2.2017 rejecting the appeal preferred by the petitioner which are under challenge in the instant writ application.

11. Learned counsel for the petitioner submits that it



was the Deputy Secretary, Social Welfare Department, who had issued the second show cause notice on 11.1.2012 to the petitioner. The rank of the Deputy Secretary being same as the petitioner who is the District Programme Officer, it is clearly in violation of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the C.C.A Rules'). It is further submitted that the order of punishment has been passed by the Joint Director whereas the appointing authority of the petitioner is the Principal Secretary. Further the modified order of punishment would show that it was at the instance of the Conducting Officer that the order of punishment was modified. Learned counsel submits that all these are in violation of the C.C.A. Rules as also not sustainable in view of the judgment of this Court dated 28.7.2021 passed in CWJC no.7027 of 2018 (Bhushan Kumar Singh vs. the State of Bihar & Ors.).

12. In response, learned counsel for the respondents submits that the proceeding against the petitioner has been carried out strictly in accordance with the provisions of the C.C.A. Rules. So far as the contention with respect to the order of the punishment having been passed by the Joint Director is concerned, which as per the petitioner is below the



rank of the petitioner, learned counsel submits that a perusal of the order of punishment would show that the same has been passed on the orders of the Governor. This was in accordance with Article 166(2) of the Constitution. Learned counsel submits that the petitioner has not been able to point out any illegalities in any of the orders impugned nor in the procedure in conduct of the departmental proceeding. As such the writ application be dismissed.

13. Heard learned counsel for the parties and perused the material on record.

14. The relevant facts in brief are that the petitioner who at the relevant time was the District Programme Officer, was proceeded against in a departmental proceeding by serving a memo of charge on 13.6.2009. The charge related to irregularities found in three *Anganwadi* centres in Kutch Block in the surprise inspection conducted by the Sub-Divisional Officer, Tekari.

15. An enquiry was conducted by the Conducting Officer who submitted his enquiry report finding charge no.1 to be partially proved and charge no.2 to be proved.

16. A copy of the enquiry report was served on the petitioner who filed his reply to the same.



17. The respondents came out with the order of punishment dated 15.3.2012, as stated above. Subsequently, on the objection raised by the Accountant General, Bihar, as to how the punishment would be imposed, as the petitioner was scheduled to retire on 30.11.2012, a modified order of punishment was passed on 27.7.2012.

18. The appeal preferred by the petitioner was rejected by order dated 21.2.2017 passed by the Principal Secretary, Social Welfare Department, Government of Bihar.

19. With respect to the contention of learned counsel for the petitioner that the second show cause notice on 11.1.2012 was issued by the Deputy Secretary, a person of the rank similar to that of the petitioner who was the District Programme Officer and that the order of punishment was passed by the Joint Director whereas the appointing authority of the petitioner is the Principal Secretary, it would be relevant to refer to a few judgments of the Hon'ble Supreme Court on the subject.

20. In the case of **State of U.P. & Anr. vs. Chandrapal Singh & Anr.; (2003) 4 SCC 670**, the Hon'ble Supreme Court held as follows :

“5. This Court in State of M.P. v. Shardul Singh [(1970) 1 SCC 108] has held



that Article 311(1) provides that no person who is a member of the civil service of the Union or State shall be dismissed or removed by an authority subordinate to that by which he was appointed. However, that article does not in terms require that the authority empowered under that provision to dismiss or remove an official should itself initiate or conduct enquiry proceeding.

8. Thus, looking to the terms and content of Article 311(1) of the Constitution, it does not follow that even initiation or conduct of inquiry proceedings should be by that authority itself, which is empowered to dismiss or remove an official under the said article, unless there is an express rule governing the official requiring it to be so.”

21. In the case of **Union of India & Ors. vs. Hasmukhbhai Hirabhai Rana; (2006) 12 SCC 373**, the Hon’ble Supreme Court held as follows :

“7. There is no dispute that the departmental proceeding can be initiated by a person lower in rank than the appointing authority. But the final order can be passed only by the appointing authority or an authority higher than it. The law relating to initiation (sic of disciplinary proceeding) by a person lower in rank than the authority



competent to pass final order has been the subject-matter of adjudication in many cases. (See State of M.P. v. Shardul Singh [(1970) 1 SCC 108] and State of U.P. v. Chandrapal Singh [(2003) 4 SCC 670 : 2003 SCC (L&S) 556] .)”

22. In the case of **Secretary, Ministry of Defence & Ors. vs. Prabhash Chandra Mirdha; (2012) 11 SCC 565**, the Hon’ble Supreme Court held as follows :

“4. The legal proposition has been laid down by this Court while interpreting the provisions of Article 311 of the Constitution of India that the removal and dismissal of a delinquent on misconduct must be by the authority not below the appointing authority. However, it does not mean that disciplinary proceedings may not be initiated against the delinquent by the authority lower than the appointing authority.”

23. Coming to the facts of the instant case, the order of punishment dated 15.3.2012 (Annexure-7) though issued under the signature of the Joint Director, but the same clearly states that the same has been issued on the order of the Governor, Bihar. In view of the law laid down by the Hon’ble Supreme Court in the judgments, relevant portion of which



has been cited herein above together with the order of punishment having been passed on the orders of the Governor, Bihar, the Court finds no substance in the contentions raised on behalf of the petitioner nor any merit in the instant writ application.

24. The writ application is dismissed.

(Partha Sarthy, J)

Shiv/-

AFR/NAFR	NAFR
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