IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8672 of 2020

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Ram Sukhit Roy, Son of Late Bhola Roy, Resident of Village- Mananpur Sadukha, P.S.- Khanpur, District- Samastipur.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Finance Department, Government of Bihar, Patna.
2. The Secretary Expenditure, Finance Department, Government of Bihar, Patna.
3. The Additional Secretary, Finance Department, Government of Bihar, Patna.
4. The Special Secretary-cum-Conducting Officer, Finance Department, Old Secretariat, Patna.
5. The Under Secretary, Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Dr. Ranjeet Kumar, Advocate Mr. Ankesh Kumar Sinha, Advocate Mr. Rajnish Prakash, Advocate Ms. Lakshmi Kumari, Advocate Mr. Kanishk Kaustubh, Advocate Mr. Rohan Sinha, Advocate
For the Respondent/s	:	Mr. Naman Nayak, AC to AAG-10

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
Date : 02-07-2026

This Court has heard Dr. Ranjeet Kumar, learned Advocate for the petitioner and Mr. Naman Nayak, learned Advocate for the State.

2. The challenge in the present writ petition is made to an order, as contained in Memo No. 3298 dated 19.06.2020, issued under the order of Hon’ble Governor and in the signature of Additional Secretary, Finance Department, Government of Bihar, Patna whereby the petitioner has been dismissed from

service. The petitioner has also challenged the equiry report dated 09.02.2018 whereby the enquiry officer has returned his finding of guilt and proved the charges. The order of the reviewing authority, as contained in letter no. 5056 dated 29.09.2020 has also been questioned by filing an interlocutory application, bearing I.A. No. 1 of 2025, whereby the review application preferred by the petitioner has been rejected, as the same has not been found fit for consideration.

3. The short facts of the case, which led to filing of the present writ petition are summarized hereinbelow:

(i) While the petitioner was serving as Senior Treasury Officer, Jehanabad has received a PPO No. 201314093403 dated 07.08.2015, issued by the Accountant General, Bihar, Patna with respect to payment of death-cum-retirement benefits and gratuity to one Alok Kumar Gupta, son of late Suresh Kumar Gupta. On receipt of the aforenoted PPO, the petitioner wrote letters dated 24.09.2015, 27.11.2015 and 29.12.2015 to said Alok Kumar Gupta with a request to provide details for sanction of PPO. In the meanwhile, since the validity of the PPO dated 07.08.2015 got expired, the petitioner returned the PPO to the Accountant General, Bihar, Patna on 08.11.2016 endorsing as non payable. The Accountant General, Bihar thereafter re-validated the PPO and resent to the office of the petitioner vide letter no. 1509 dated 19.01.2017.

(ii) The petitioner on receipt of the re-validated PPO sent further letters to said Alok Kumar Gupta on 28.02.2017 and 19.05.2017. Thereafter Alok Kumar Gupta appeared and stated that he had already provided the details. On 01.06.2017, the petitioner sent another letter and requested to Alok Kumar Gupta regarding providing his Bank details and accordingly, the same was provided on 15.06.2017, whereupon the payment of remaining gratuity amount to the tune of Rs.62,568/- has been credited in the account of Mr. Gupta.

(iii) It is to be noted that in the meantime, Mr. Gupta lodged a complaint against the petitioner, whereupon show-cause notice was issued under Memo No. 7079 dated 04.09.2017, which was duly replied. The department on being dissatisfied with the reply has taken a decision to initiate a departmental proceeding against the petitioner. In contemplation of departmental proceeding, the petitioner was put under suspension and a Memo of charge [Prapatra (Ka)] was framed and issued on 04.09.2017 (Aannexure-A/12). The petitioner submitted his written statement of defence; The report from the Presenting Officer was also called for. Upon completion of enquiry, the Conducting Officer submitted the enquiry report on 09.02.2018.

(iv) A second show-cause was issued to the petitioner vide Memo No.161 dated 28.02.2018, which was duly responded by the petitioner by filing a detailed explanation. It would also be relevant to mention here that the second show-cause notice issued upon the petitioner was also challenged by the petitioner in C.W.J.C. No. 5189 of 2018, however, the same was not interfered with and the writ petition came to be disposed of with a direction to the respondents to pass final order on the basis of the enquiry report. Finally, vide order, as contained in Memo No. 3298 dated 19.06.2020, the disciplinary authority passed the impugned order and the petitioner has been dismissed from service.

(v) Before inflicting the order of dismissal, the respondent authorities also obtained approval from the Bihar Public Service Commission. The petitioner preferred review application before the Principal Secretary, Finance Department, Government of Bihar, Patna, but the same has been rejected, as it has not been found fit for consideration.

4. Learned Advocate for the petitioner taking this Court through the relevant annexures primarily submitted that

the memo of charge is completely dehors to the provisions of the Rule 17(3) and (4) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005. There is no list of witnesses by whom the article of charges are proposed to be sustained. It is further contended that on perusal of the enquiry report, it would be evident that the enquiry officer has not acted as an independent quasi judicial authority, but as a representative of the department and it appears that he was bent upon to prove the charges by hook and crook without even considering the report of the Presenting Officer, who was in fact obliged to represent the department. To support the aforesaid contention, reliance has been placed on a judgment rendered by the Hon'ble Supreme Court in the case of ***State of UP Vs. Saroj Kumar Sinha : (2010) 2 SCC** 772*.

5. It is further contended that in absence of the witnesses, the contents of the document also could not be proved. To pursuade the Court, decision of the Hon'ble Supreme Court in the case of ***Roop Singh Negi Vs. Punjab National Bank & Ors***.: ***(2009) 2 SCC 570*** has been read over.

6. It is further urged that during the course of enquiry, the complainant should have been produced and examined and the petitioner may be given the opportunity of cross-

examination so that truth may come out, but the same has also not been done. The non-examination of the complainant would have certainly deprived the petitioner from cross-examination; reliance has been placed on a decision in the case of ***Brij Bihari Singh Vs. Bihar State Financial Corporation & Ors.: (2015) 17 SCC 541***.

7. Drawing the attention of this Court to the order of dismissal, it is further contended that the explanation of the petitioner has not been deliberated and the order of the disciplinary authority completely rests upon the past misconduct and consequential punishment order, which was not even the part of the memo of charge, hence the disciplinary authority was swayed away with the past orders, which ought not to be relied upon once it was not the charge and/or has ever been brought on record during the course of departmental proceeding. The present departmental proceeding is said to be a case of no evidence and moreover the order of dismissal is disproportionate to the charges levelled against the petitioner.

8. On the other hand, learned Advocate for the State while dispelling the aforesaid contention has submitted that since the entire charges are based upon the documentary evidence and, as such, in all the cases the production of

witnesses are not required as a matter of rule. Moreover, the enquiry officer has returned the finding that the petitioner was responsible for withholding of gratuity of the petitioner for a pretty long time of two years. The enquiry officer has considered all the explanations of the petitioner and found that the petitioner has suppressed relevant facts and placed incorrect statement with respect to receipt of some of the letters as well as the petitioner has also, in order to be saved from the charges, subsequently inserted the letter numbers and dates in the general despatch register. He further contended that the disciplinary authority was competent to consider the past misconduct of the petitioner while inflicting the punishment and there is no error in the order of the disciplinary authority, who inflicted the order of dismissal.

9. It is lastly contended that if the impugned order suffers from any technicalities, in such circumstances, the order should be set aside and remanded to the authority concerned, who shall continue the proceeding from the defective stage. To support the aforesaid contention, reliance has been placed on a Division Bench decision of this Court in the case of ***State of Bihar & Ors. Vs. Ashok Kumar*** (L.P.A. No. 496 of 2019).

10. This Court has given anxious consideration to the

submissions advanced by the learned Advocate for the respective parties and also meticulously perused the materials available on record.

11. The very genesis of the initiation of departmental proceeding rests upon a complaint filed by one Shri Alok Kumar Gupta in respect of non-payment of his gratuity amount, alleging therein that despite the authorization letter issued by the Accountant General, Bihar, Patna, the petitioner maliciously withheld the same for two years by adopting a dilatory tactics. This allegation led to issuance of the show-cause notice and on being dissatisfied with the response filed by the petitioner, a departmental proceeding came to be initiated by framing two charges; firstly regarding withholding of payment of gratuity amount and, secondly that the petitioner failed to clarify that what action was taken by him with respect to issuance of letter of authority by the Accountant General on 26.08.2015 and the act of the petitioner clearly indicates that he deliberately concealed the material facts and adopted a dilatory tactics while discharging his duty as Senior Treasury Officer.

12. Bare perusal of the Memo of charge, the copy of which is marked as Annexure-P/12, it is evident that there is no list of witnesses and the charges are proposed to be sustained

only on the documentary evidences, as disclosed therein. This Court has no confrontation with respect to the position of law that in a departmental proceeding the charges may also be sustained based upon the documentary evidence, if the same are admissible by the parties or is of impeccable character or public document. Once the very formation of the charges is based upon a complaint filed by the complainant, in such circumstances, the complainant and the witnesses, who have supported such complaint must be produced before the Court to be examined and cross-examined in order to arrive at a fair conclusion. It is for the said purpose that the legislature while making 2005 Rules has cautiously incorporated Rule 17(3) and (4) therein by specifying that wherever the disciplinary authority proposed to hold an inquiry against a government servant under this Rule, the disciplinary authority shall draw up or cause to be drawn up not only the substance of the imputations of misconduct or misbehaviour as a definite and distinct article of charge, which shall contain statement of all relevant facts including any admission or confession made by the Government Servant and a list of such document by which, and a list of such witnesses by whom, the articles of charge are proposed to be sustained.

13. The Hon'ble Supreme Court recently in the case

of ***Jai Prakash Saini Vs. Managing Director, U.P. Cooperative Federation & Ors***. : ***2026(3) PLJR (SC) 125*** has observed that unless the charged employee accepts his guilt in clear terms, an enquiry on the charges drawn against him would have to be held. In the enquiry, the employer/department would have to take steps first to lead evidence against the workmen/ delinquent charged and give an opportunity to him to cross examine those witnesses. Only thereafter, he shall be asked whether he wants to lead any evidence and/or submit an explanation about the evidence led against him. Even in a case based solely on documentary evidence, unless the relied upon documents are admitted by the charged employee, a witness would have to be examined to prove those documents and when so examined, the witness would have to be tendered for cross-examination.

Since the department had failed to produce any witness in the enquiry even though the charges levelled upon the delinquent were denied by him, the Hon'ble Supreme Court set aside the order of punishment/recovery.

14. It would also be gainful to recapitulate the decision of the Hon'ble Supreme Court in the case of ***Roop Singh Negi*** (supra) where the Court in clear terms ruled that mere production of documents are not enough. Contents of

documentary evidence has to be proved by examining witnesses.

15. This Court further takes note of the facts that on receipt of show-cause notice, the petitioner appeared before the conducting officer and filed a detailed written statement of defence. After careful consideration of the same, this Court finds, the petitioner while explaining the delay in disbursing the gratuity amount mentioned that a prompt and procedurally correct action has been taken in accordance with the provisions of the Bihar Treasury Code, 2011 as well as the Bihar Pension Rules, 1950 and the instructions issued by the Finance Department. The petitioner has categorically submitted before the conducting officer that the complainant in his complaint did not mention regarding the specific dates on which he appeared before the petitioner for disbursement of the gratuity amount, accompanied by the Succession Certificate, the personal copy of the Gratuity Payment Authority issued by the office of Accountant General, a receipt and a self-attested copy of the bank account details, which documents were compulsorily required for payment. Rule 236 of the Bihar Treasury code, 2011 and the stipulation mentioned in the gratuity payment order clearly says that in order to receive payment, the personal copy of the authority letter must be

presented before the Treasury Officer.

16. It is also submitted that on receipt of the authority letter issued by the office of Accountant General on 26.08.2015, letters were issued thrice to the complainant to appear in person at the office along with personal copy of the authority letter and Bank account details, so as to facilitate the expeditious disbursement of payment, but he did not turn up and in the meanwhile the authorization for gratuity payment, which remains valid only for a period of one year, and in terms of Rule 240 of the Bihar Treasury Code, the authorization letter was sent to the office of the Accountant General for its renewal/revalidation and the renewal authorization letter was received under letter no. 1509 dated 19.01.2017. Soon thereafter the letters were sent to the complainant vide letter no. 182 dated 28.02.2017, letter no. 457 dated 19.05.2017 and letter no. 511 dated 01.06.2017 directing him to appear in person along with all the necessary documents, including the individual copy of the gratuity authorization letter. The complainant finally appeared on 15.06.2017 and on completion of all the formalities, the bill was forwarded to the concerned Bank and on the very same day payment was made.

17. Despite the specific contention of the petitioner to

supply evidences received from the complainant regarding the specific dates on which he appeared, he was not called upon in the enquiry and surprisingly the defence of the petitioner has not been accepted only on the ground that some of the letters have not been found mentioned in the main despatch register. Neither the main register and general register nor any witness has been produced to clarify or rebut the statement of the petitioner. Once the petitioner has denied of the charges with the specific contentions by supporting evidences, it was incumbent upon the department to produce the complainant and witness to sustain the charges. Non-examination of complainant, in such cases, where the charges rest upon the complaint, it clearly violates the principles of natural justice and the delinquent gets deprived of cross-examination. Reliance in this regard, may be taken to a decision passed by the Hon'ble Supreme Court in the case of ***Commissioner of Police, Delhi Vs. Jai Bhagwan : (2011) 6 SCC 376.***

18. This principle needs hardly any emphasis that the Court while exercising the power of judicial review cannot sit in appeal over those findings and assumes the role of appellate authority, but this does not mean that in no circumstances, the Court can interfere with the conclusion, if there was no evidence

to support the finding or the findings recorded were such as could not have been reached by a prudent man or the findings were perverse or made by the dictate of superior authority. The enquiry officer performs a quasi judicial function, who upon analysis of the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the materials available on record. However, in no circumstances, he is supposed to be a representative of the department/ disciplinary authority. This Court also finds that in the case at hand, the enquiry officer has acted as a representative of the department, once he failed to discuss the opinion of the presenting officer, who has in sum and substance not confronted the stand of the petitioner, but nonetheless, the enquiry officer brought home all the charges, without examining the complainant and witnesses, only relying upon the documents, the contents of which has never even been proved.

19. In case of ***Saroj Kumar Sinha*** (supra) the Hon'ble Supreme Court in para. 28, 29 and 30 has ruled as follows:

> *"28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the*

department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

29. Apart from the above, by virtue of Article 311(2) of the Constitution of India the departmental enquiry had to be conducted in accordance with the rules of natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee.

30. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure *that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.”*

20. Now coming to the impugned order, as contained in Memo No. 3298 dated 19.06.2020, issued under the signature of Additional Secretary, Finance Department, Government of Bihar, Patna (Annexure-21), it is pertinent to take note of the fact that after submission of the enquiry report by the conducting officer, the petitioner was served with the second show-cause notice, a detailed reply thereof has been filed by the petitioner, the copy of which is placed on record as Annexure-17 to the writ petition raising all the legal issues, besides his detailed explanation as to under what circumstances, the delay has occurred in disbursing the remaining amount of gratuity to the tune of Rs.62,568/-. But unfortunately there is no cogent appreciation of his explanation, rather some of the stand of the petitioner has been refuted in flimsy manner by stating that the petitioner has placed reliance upon the Bihar Treasury Code, which is not fit for consideration, as the departmental proceeding being conducted under 2005 Rules. It is further opined that it is the delinquent, who should ask for production of complainant or witnesses, but he failed to do so thereby

wrongly shifting the burden of proof upon the petitioner; since the enquiry officer has returned the finding of guilt, the disciplinary authority has taken a decision to reject the second show-cause reply of the petitioner.

21. Further while rejecting the reply of the second show-cause, the disciplinary authority took note of the previous proceeding in relation to which the petitioner was inflicted with the punishment of reduction to a lower stage in time scale of pay and in the year 2016 a complaint has also been lodged with regard to excess withdrawal of Provident fund amount of some employees, due to which his salary was also stopped and thus the disciplinary authority has come to the conclusion that the petitioner is not fit to remain in government service and accordingly the order of dismissal came to be passed. The previous misconduct of the petitioner had never been formed either as a part of the charge or the second show-cause and thus the petitioner was never given any opportunity as to whether the previous order of punishment and the action initiated against him are yet sustained, modified, altered or dependable in view of changed circumstances. It would also be gainful to quote the relevant paragraph of the decision in the case of ***Mohd. Yunus Khan Vs. State of U.P. : (2010) 10 SCC 539***, which underscored

the aforenoted proposition of law;

"34. The courts below and the statutory authorities failed to appreciate that if the disciplinary authority wants to consider the past conduct of the employee in imposing a punishment, the delinquent is entitled to notice thereof and generally the charge-sheet should contain such an article or at least he should be informed of the same at the stage of the show-cause notice, before imposing the punishment.

35. This Court in Union of India v. Bishamber Das Dogra [(2009) 13 SCC 102 : (2010) 1 SCC (L&S) 212] considered the earlier judgments of this Court in State of Assam v. Bimal Kumar Pandit [AIR 1963 SC 1612], India Marine Service (P) Ltd. v. Workmen [AIR 1963 SC 528], State of Mysore v. K. Manche Gowda [AIR 1964 SC 506], Colour-Chem Ltd. v. A.L. Alaspurkar [(1998) 3 SCC 192 : 1998 SCC (L&S) 771 : AIR 1998 SC 948], DG, RPF v. Sai Babu [(2003) 4 SCC 331 : 2003 SCC (L&S) 464], Bharat Forge Co. Ltd. v. Uttam Manohar Nakate [(2005) 2 SCC 489 : 2005 SCC (L&S) 298] and Govt. of A.P. v. Mohd. Taher Ali [(2007) 8 SCC 656 : (2007) 2 SCC (L&S) 990] and came to the conclusion that it is desirable that the delinquent employee be informed by the disciplinary authority that his past conduct could be taken into consideration while

> *imposing the punishment. However, in case of misconduct of a grave nature, even in the absence of statutory rules, the authority may take into consideration the indisputable past conduct/service record of the delinquent for "adding the weight to the decision of imposing the punishment if the fact of the case so required".*

22. Prima facie, it appears that the disciplinary authority swayed away and influenced with the previous conduct of the petitioner, which in the opinion of this Court is wholly unsustainable, unless either it forms the part of the charges or contains in the second show-cause notice. In any circumstances, the petitioner ought to be given sufficient opportunity to clarify the position with respect to his past conduct, based upon which the extreme punishment of dismissal has been passed. It is neither the case of the complainant nor of the department that the petitioner has adopted dilatory tactics for extraneous reason or demanded any bribe or favour any one and for the sake of argument, even if it is accepted that the enquiry officer has returned the finding of guilt, the punishment of dismissal is disproportionate to the charges levelled against the petitioner and shocks the conscience of this court.

23. It is also worth mentioning here that against the

impugned order of punishment, the petitioner has also preferred an exhaustive review application under Rule 24 (2) of the 2005 Rules before the Government of Bihar, but the same has been turned down and rejected by the competent authority, as it has not been found fit for consideration. The rejection of the review application of the petitioner by holding that the same is found not fit for consideration, in the opinion of this court would make the entire provision of the review redundant.

24. It would be pertinent to mention here that time without number, the Court has cautioned the State and its authority that a 'decision' does not merely mean the "conclusion" it embraces within its fold the reasons which form the basis for arriving at the "conclusions." [Vide: ***Mukhtiar Singh and Anr. Vs. State of Punjab : (1995) 1 SCC 760]***. Absence of sound reason is not mere irregularity, but patent illegality. However, the reviewing authority has not even assigned any reason, much less any speaking and reasoned order.

25. Before parting with the case, this Court would fail to its duty, if the contention of the learned Advocate for the State is not dealt with to the extent wherein he submits that once the impugned order passed in the departmental proceeding is set

aside on account of technical reason, the matter ought to be remanded to the authority to commence the enquiry from the defective stage and conclude the same in accordance with law and pass fresh order. This Court finds that such plea, in the facts of the present case, is wholly misconceived and not acceptable. It would be worth noting here that where in an enquiry, there was no proper evidence led and the conducting officer has acted as a representative of the department and based upon the enquiry report the disciplinary authority has passed the order of disproportionate punishment by showing the previous conduct of the petitioner. It would be offering a premium to the negligence of the enquiry officer/department and condoing the levity with which the departmental enquiry was conducted. [Vide ***Srikant Singh Vs. The State of Bihar & Ors: 2024 SCC Online Pat 7877*** and ***The State of Bihar & Ors Vs. Vikash Kumar: LPA No. 446 of 2024***]

26. In view of the discussions made hereinabove and the position obtaining in law, this Court finds that the impugned enquiry as well as order passed by the disciplinary authority contained in Memo No. 3298 dated 19.06.2020 as well as the order passed by the Reviewing authority as contained in letter no. 5056 dated 29.09.2020 are unsustainable and fit to be set

aside and accordingly the impugned orders are hereby quashed. Upon quashing of the impugned orders, the consequences shall follow in accordance with law.

27. The writ petition stands allowed.

28. Interlocutory application(s), if any, stands disposed of

29. There shall be no order as to costs.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.07.2026
Transmission Date	NA