

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10267 of 2020

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Madhusudan Sharma, Son of Sajjandhari Singh, Resident of Ward No. 11,
Nageshwari Nagar, Paipura Kalan, P.S.- Paliganj, District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The D.I.G. of Police, Military Police, Northern Zone, Muzaffarpur.
4. The Commandant, B.M.P.- 12, Saharsa (I.R.B.- 2) Camp at Bhimnagar, Supaul.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ram Hriday Prasad, Adv.
For the Respondent/s : Mr. Suman Kumar Jha, AC to AAG 3

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 02-07-2026

Heard Mr. Ram Hriday Prasad, learned Advocate for the petitioner and Mr. Suman Kumar Jha, learned Advocate for the State.

2. The petitioner has invoked the jurisdiction of this Court on being aggrieved with the order of the Commandant, B.M.P.- 12, Saharsa (I.R.B.- 2) dated 18.10.2019 (Annexure-6), by which he has been inflicted with the punishment of withholding of increments for two years, which is equivalent to three black mark; and further challenged the order of the D.I.G. of Police, Military Police, Northern Zone, Muzaffarpur dated 26.04.2020, by which the appeal of the petitioner has been



rejected.

3. The short facts of the case, which led to filing of the present writ petition are that the petitioner was duly appointed as Constable on 24.08.1983. On being found eligible he was promoted to the post of Havildar in the year 2016 and accordingly posted in BMP-12, Saharsa (IRB-2). During his deputation in *Daftari Tea Estate Pvt. Limited Kachakhua under Pothia P.S.*, an incidence took place, that allegedly the petitioner became violent and disobeyed the order of his higher authorities and locked the gate and started abusing and warned to face consequences. The aforesaid incidence led to framing of charge under Memo dated 27.11.2018. The petitioner upon service of notice entered his appearance before the Enquiry Officer and submitted a detailed explanation. The enquiry commenced and one Subhash Kumar Mandal, the then SHO was examined. However, it is contended that during cross examination witness gave specific statement that the Constable, Md. Salauddin was the person who locked the gate and he was assisted by four constables. Statement of the witnesses along with all materials available on record was duly considered and the Enquiry Officer found no material to prove the charges levelled against the petitioner.



4. The said enquiry was finally concluded and on 30.09.2019 a report was duly submitted. The Commandant, B.M.P.-12, who was the disciplinary authority accordingly passed the impugned order of punishment withholding of increments for two years equivalent to three black mark vide order dated 18.10.2019 (Annexure-6). The appeal preferred by the petitioner did not find any merit and finally rejected by the D.I.G. of Police, Military Police, Northern Zone, Muzaffarpur on 06.01.2020, which is also placed on record as Anneuxre-7.

5. Learned Advocate for the petitioner while assailing the impugned order has categorically submitted that the order of punishment is wholly illegal and unsustainable as the Commandant, B.M.P.- 12, the disciplinary authority without differing with the enquiry report of the Enquiry Officer has passed the impugned order in a most arbitrary manner. At no point of time before passing of the impugned order the petitioner was given any fresh show cause notice with respect to disagreement with the finding of the enquiring authority. To support the aforesaid contention, Mr. Ram Hriday Prasad, learned Advocate for the petitioner placed heavy reliance on a decision rendered by the Apex Court in the case of ***Punjab National Bank & Ors. Vs. Kunj Behari Misra [(1998) 7 SCC***



84/ where the Court has ruled that whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. A categorical statement in this regard has been made in the writ petition. However, the same has not been refuted by the respondents, though a counter affidavit is filed in the matter, is the contention of the petitioner.

6. On the other hand, learned Advocate for the State Mr. Suman Kumar Jha submitted that during the course of enquiry it has come to notice that Md. Salauddin was assisted by this petitioner and they have created a ruckus and disobeyed the order of the higher authorities, nonetheless the Enquiry Officer has given premium to the petitioner by exonerating him from the charges and, as such, the disciplinary authority has also issued a show cause notice to the Enquiry Officer seeking explanation on this point. However, the learned Advocate has shown his inability to clarify the position as to whether before inflicting the punishment any fresh show cause notice on the difference of opinion of the Enquiry Officer has been give to the petitioner or not?



7. This Court has heard the learned Advocates for the respective parties. Before parting with the case, it would be relevant to take note of Rule 18 of the Bihar Government Servants (CCA) Rules, 2005, especially sub-rule(2) thereof which reads as follows:

“18.(2) The disciplinary authority, after receipt of the enquiry report as per Rule 17 (23)(ii) or as per sub-rule (1), shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own finding on such charge, if the evidences on record is sufficient for the purpose.”

8. Bare reading of the aforesaid provision, it is evident that when the disciplinary authority disagrees with the findings of the enquiring authority on any article of charge, he is statutorily obliged to record its reasons for such disagreement and record its own finding on such charge, if the evidences on record is sufficient for the purpose. Notwithstanding the aforesaid provisions, from the record it is evident that at no point of time before inflicting the punishment the petitioner has been served with any notice by the disciplinary authority assigning the reason for disagreement with the findings of the enquiring authority on any article of charge. The significant ruling of the Hon'ble Supreme Court rendered in the case of **Kunj Behari Misra** (supra) also succinctly clarified this aspect, wherein the Court in para-18 has held as follows:



“18. Under Regulation 6, the enquiry proceedings can be conducted either by an enquiry officer or by the disciplinary authority itself. When the enquiry is conducted by the enquiry officer, his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with the decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the enquiry officer. Where the disciplinary authority itself holds an enquiry, an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the enquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the enquiry officer, they are deprived of representing to the disciplinary authority before that authority differs with the enquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation, the charged officer must have an opportunity to represent before the disciplinary authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of enquiry as explained in Karunakar case”.

Emphasis supplied

9. After considering the aforesaid position of law and the admitted fact that before inflicting the punishment of withholding of increments for two years which is equivalent to three black mark, the disciplinary authority has neither issued



any notice nor extended any opportunity of hearing with regard to disagreement with the findings of the Enquiry Officer, this Court has no hesitation to hold that the impugned order passed by the Commandant, B.M.P.- 12, Saharsa (I.R.B.- 2) dated 18.10.2019 is wholly illegal and unsustainable in law accordingly hereby set aside. Once the order of disciplinary authority stands set aside, the appellate order passed by the D.I.G. of Police, Military Police, Northern Zone, Muzaffarpur dated 26.04.2020 does not survive. Accordingly, the appellate order is also set aside. Upon setting aside of the impugned orders, consequences shall follow and the petitioner shall be given all the benefits, preferably within a period of three months from the date of receipt/production of a copy of this order.

10. The writ petition stands allowed.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	
CAV DATE	
Uploading Date	03 .07.2026.
Transmission Date	

